

TITLE 5 - CIVIL CODE
CHAPTER 3 – RESIDENTIAL LANDLORD AND TENANT

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**TITLE 5 – CIVIL CODE
CHAPTER 3 – RESIDENTIAL LANDLORD AND TENANT**

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Amended and Recodified August 9, 2006 by Resolution No. C08 -313-06 which repealed and replaced in its entirety former Chapter One, Landlord and Tenant of Title 10 Housing, of the Pascua Yaqui Code.

Recodified on August 9, 2006 by Resolution No. C08-313-06.

On April 22, 2009, Title 5, Chapter 3, Section 210 was hereby amended by Resolution No. C04-63-09 and Ordinance No. 11-09.

SUBCHAPTER A GENERAL PROVISIONS

Section 10 Short title (5 PYTC § 3-10)

This Ordinance shall be known and may be cited as the Pascua Yaqui Tribe Residential Landlord and Tenant Ordinance.

Section 20 Purposes (5 PYTC § 3-20)

- (A) The underlying purposes and policies of this Ordinance are:
 - (1) To simplify, clarify, modernize and revise the law governing the rental of dwellings and the rights and obligations of landlord and tenant.
 - (2) To encourage landlord and tenant to maintain and improve the quality of housing.

Section 30 Applicability (5 PYTC § 3-30)

This Ordinance applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling located on the Pascua Yaqui Reservation.

Section 40 Conflict of Laws (5 PYTC § 3-40)

Any conflict between the provisions of Rules of Court and Code of Civil Procedure with the provisions of this Ordinance shall be governed by the provisions of this Ordinance.

Section 50 Definitions (5 PYTC § 3-50)

- (A) "Abandonment" means the absence of the tenant from the dwelling, without notice to the landlord if rent for the dwelling is outstanding and unpaid for ten consecutive days and there is no reasonable evidence that the tenant is occupying the dwelling, other than the presence of tenant's personal property.
- (B) "Action" includes damages, recovery, counterclaim, setoff, eviction, equity, and any other proceeding in which rights are determined except for injunctive relief.
- (C) "Building and Housing Codes" include any applicable law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any dwelling or residential premises.

- (D) "Court Day" means any day in which the court hearing the matter is conducting judicial business.
- (E) "Delivery of possession" means returning dwelling keys to the landlord and vacating the dwelling.
- (F) "Dwelling" means a structure or the part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or two or more persons who maintain a common household. Dwelling excludes real property used to accommodate a mobile home, unless the mobile home is rented to tenants by the landlord.
- (G) "Forcible Detainer" means:
- (1) Holding or keeping possession by force, or by menace and threats of violence, of any dwelling;
 - (2) Unlawfully entering into the dwelling and after demand is made for the surrender thereof, refusing to surrender possession of the dwelling to the former occupant. The occupant of the dwelling, within the meaning of this subsection is one who, within five days preceding such unlawful entry, was in the lawful possession of the dwelling.
- (H) "Forcible Entry," means:
- (1) Breaking open doors, windows, or other parts of a house, or by any kind of violence or circumstance of terror to enter into any dwelling; or,
 - (2) After entering peaceably into a dwelling, removing by force, threats, or menacing conduct, the tenant.
 - (3) The "tenant" means any person who rents a dwelling and includes a boarder or lodger.
- (I) "Good faith" means honesty in fact in the conduct or transaction concerned.
- (J) "Holdover Tenancy" means a tenancy arising when a person who has been in lawful possession of property wrongfully remains in possession as a holdover after his or her rental agreement has expired.
- (K) "Housing Department" means the Pascua Yaqui Tribe Housing Department, or any successor entity which has the authority to lease, sell, and otherwise grant to private parties and public bodies the right to use Tribe owned housing and any other premises under its authority and control.
- (L) "Landlord" means the owner, lessor, sublessor or manager of the dwelling. "Landlord" also means the Housing Department.
- (M) "Low Rent Tenancy" means a tenancy created by written agreement in compliance with the requirements of the Federal Department of Housing and Urban Development (HUD) or the Housing Department.
- (N) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate trust, partnership or association, two or more persons having a joint or common interest and any other legal or commercial entity which is a landlord, owner, manager or agent.
- (O) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of the legal title to a dwelling or property or all or part of the beneficial ownership. The term includes a mortgagee in possession.

- (P) "Periodic Tenancy" means a tenancy that automatically continues for successive periods usually month to month or year to year, unless terminated at the end of a period by notice such as a month-to-month or year-to-year residential rental agreement or by breach of the rental agreement.
- (Q) "Premises" means a dwelling and the structure of which it is a part with any existing facilities, including furniture and utilities where applicable and common grounds available for the use of tenants generally.
- (R) "Rent" means payment to be made to the landlord in full consideration for the rented premises.
- (S) "Rental Agreement" means all agreements, written, oral or implied by law, and the terms and conditions concerning the use and occupancy of a dwelling and premises subject to this Ordinance.
- (T) "Security Deposit" means money given to assure payment or performance under a rental agreement which may include a reasonable charge for redecorating or cleaning.
- (U) "Single family dwelling" means a structure maintained and used as a single dwelling unit. Even if a dwelling shares one or more walls with another dwelling unit, it is a single family dwelling if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential service with any other dwelling.
- (V) "Tenancy at Will" means a tenancy in which the tenant holds possession with the landlord's consent but without fixed terms (as for duration or rent). Such a tenancy may be terminated by either party upon reasonable notice.
- (W) "Tenant" means any person who is entitled to occupy a dwelling to the exclusion of others pursuant to an agreement, written, oral or implied by law, with the landlord of that dwelling.

Section 60 Notice (5 PYTC § 3-60)

- (A) A person has notice of a fact if he has actual knowledge of it, has received a notice or notification of it, or from all the facts and circumstances known to him at the time in question he has reason to know that it exists. A person "knows" or "has knowledge" of a fact if he has actual knowledge of it.
- (B) A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform the other in the ordinary course of events whether or not the other actually comes to know of it.
 - (1) A person "receives" a notice or notification when it comes to his attention, or in the case of the landlord, it is delivered in hand or mailed by registered or certified mail to the place of business of the landlord through which the rental agreement was made or at any place held out by him as the place for receipt of the communication or delivered to any individual who is designated by the landlord as an agent of the landlord.
 - (2) In the case of service upon the landlord, it is delivered to any individual who is a designated agent of the landlord. In the case of service upon the tenant, it is delivered in hand to the tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known place of resident.
 - (3) If notice is mailed by registered or certified mail, the tenant or landlord is deemed to have received such notice on the date the notice is actually received by him or three days from the date the notice is mailed, whichever occurs first.

SUBCHAPTER B JOINT RIGHTS AND OBLIGATIONS

Section 70 Written Rental Agreement-Required Terms and Conditions (5 PYTC § 3-70)

Every written rental agreement shall contain the following provisions:

- (A) An accurate description of the dwelling to be rented;
- (B) The length of the term of possession under rental agreement;
- (C) Names and addresses of the landlord and tenant;
- (D) Amount of rent to be paid;
- (E) Date when the rental payment(s) shall be due;
- (F) An accurate description of any events which will be considered violations of the rental agreement.
- (G) Amount of any security deposit together with a description of how the security deposit will be used and returned to tenant on termination of the rental agreement.
- (H) The complete text of the Health and Safety Obligations set forth in full from this Ordinance.

Section 80 Obligation of Good Faith (5 PYTC § 3-80)

Every duty under this Ordinance and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Ordinance imposes an obligation of good faith in its performance or enforcement.

Section 90 Landlord and Tenant (5 PYTC § 3-90)

A tenant shall have the right to peaceful possession of the rented property, provided the tenant has complied with the terms of the rental agreement, especially the timely payment of rent. The landlord shall have the right to his timely rental payment and reasonable rights of inspection.

Section 100 Absence of Rental Agreement (5 PYTC § 3-100)

In the absence of a rental agreement, the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling.

Section 110 Access (5 PYTC § 3-110)

- (A) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.
- (B) The landlord shall not abuse the right to access or use it to harass the tenant. Except in case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least 48 hours notice of his intent to enter and enter only at reasonable times.

Section 120 Ownership and Tenancy limited to enrolled Tribal members (5 PYTC § 3-120)

- (A) All owners of dwellings must be enrolled Pascua Yaqui Tribal members approved by the Pascua Yaqui Tribe Land Department.

- (B) Tenants must be enrolled members of the Pascua Yaqui Tribe.
- (C) The non-member surviving spouse of a deceased Tribal member may occupy a dwelling with his/her children upon obtaining a Certificate of Use and Occupancy.

SUBCHAPTER C LANDLORD RIGHTS AND OBLIGATIONS

Section 130 Landlord to Maintain Premises (5 PYTC § 3-130)

The landlord shall:

- (A) Comply with the requirements of applicable building codes affecting health and safety.
- (B) Make all repairs as necessary to keep the premises in a fit and habitable condition.
- (C) Keep common areas in a safe condition.
- (D) Maintain in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by the landlord.
- (E) Provide and maintain appropriate outside trash receptacles.

Section 140 Retaliatory Conduct Prohibited (5 PYTC § 3-140)

- (A) A landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession if:
 - (1) The tenant has complained to a governmental agency charged with the responsibility for enforcement of a building or housing code of a violation applicable to the premises.
 - (2) The tenant has complained to the landlord of a violation under Sections 190 or 200 of this Ordinance.

Section 150 Discrimination by Landlord Against Tenant with Children Prohibited, Penalty (5 PYTC § 3-150)

Except as provided by federal law, regulations or requirements of federally funded programs, a person, other than the Housing Department, who refuses to rent to any other person a dwelling for the reason that the other person has a child or children, or who advertises in connection with the rental a restriction against children, shall be punished for the first offense by a fine of not more than \$500 and for a subsequent conviction by a fine of \$500 or by imprisonment for 30 days, or both. This section shall not apply to the Housing Department except as required by federal law.

Section 160 Recovery of Possession Limited (5 PYTC § 3-160)

A landlord, other than the Housing Department under the specific conditions enumerated in this Ordinance, may not recover or take possession of the dwelling by action or otherwise, including forcible removal of the tenant or his possessions, willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender or as permitted in this Ordinance.

Section 170 Security Deposits (5 PYTC § 3-170)

- (A) A landlord shall not demand security deposits and prepaid rent in an amount or value in excess of one and a half months' rent. This section shall not apply to the Pascua Yaqui Housing Department pursuant to requirements of federal law.
- (B) Upon termination of a tenancy which requires a security deposit, money held by the landlord as prepaid rent and Security Deposit may be applied to the payment of accrued rent and the amount of damages, which the landlord has suffered by reason of the tenant's noncompliance with Sections 190 and/or 220 and leaning required in excess of normal wear and tear as itemized by the landlord in a written notice to the tenant. Any balance of prepaid rent and/or security deposit shall be returned to the tenant within 14 days of termination of tenancy. This section shall not apply to the Housing Department except as required under federal law.

Section 180 Rules and Regulations (5 PYTC § 3-180)

- (A) Landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. Such rules or regulations are enforceable against the tenant only if:
 - (1) Their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities for the tenants generally.
 - (2) They are reasonably related to the purpose for which adopted.
 - (3) They apply to all tenants in the premises in a fair manner.
 - (4) They are sufficiently explicit in prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what he must or must not do to comply.
 - (5) They are not for the purpose of evading the obligations of the landlord.
 - (6) The tenant has notice of them at the time rental agreement is signed.
- (B) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if 30 days notice of its adoption is given to the tenant and it does not work a substantial modification of his rental agreement.

SUBCHAPTER D TENANT RIGHTS AND OBLIGATIONS

Section 190 Tenant to Maintain Dwelling (5 PYTC § 3-190)

The tenant shall:

- (A) Comply with all obligations primarily imposed upon tenants by applicable provisions of building codes materially affecting health and safety.
- (B) Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permits.
- (C) Dispose from the dwelling and the premises all ashes, rubbish, garbage and other waste in a clean and safe manner.

- (D) Keep all plumbing fixtures in the dwelling or used by the tenant as clean as their condition permits.
- (E) Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances in the premises.
- (F) Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.
- (G) Conduct himself and cause all persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb a neighbor's peaceful enjoyment of his premises.
- (H) Remove all inoperable vehicles from the premises unless vehicles are stored in an enclosed garage or building.

Section 200 Self-Help for Minor Defects (5 PYTC § 3-200)

- (A) If the landlord fails to comply with a written request for repair, and the reasonable cost of compliance is less than \$150, or an amount equal to one-half of the monthly rent, whichever is greater, the tenant may recover damages for the breach, or may notify the landlord of his intention to correct the condition at the landlord's expense. After being notified by the tenant in writing, if the landlord fails to comply within five days, or within one day as conditions require in case of emergency, the tenant may cause the work to be done by a licensed contractor and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost of the work, not exceeding the amount specified in this section.
- (B) A tenant may not repair at the landlord's expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's family or other person on the premises with the tenant's consent.
- (C) This section shall not apply to the Pascua Yaqui Housing Department except as required by federal law.

Section 210 Tenant's Health and Safety Obligations (5 PYTC § 3-210)

- (A) In addition to the requirements set forth in Section 190, neither the tenant, nor any member of the tenant's household, nor guest shall engage in criminal activity, including drug related criminal activity, on or near the premises, while the tenant is a tenant. Reasonable cause that such criminal activity is or has occurred shall constitute sufficient cause for termination of tenancy, whether or not enumerated as such in any rental agreement. It is not necessary that the tenant, member of the tenant's household or guest be convicted of the offending act. Such acts include, but are not limited to, any act which constitutes a violation of any tribal, state or federal law chargeable in any tribal, state, or federal jurisdiction or Court which involves any of the following:
 - (1) injury, imminent threat, or imperilment to person or property;
 - (2) theft;
 - (3) neglect or abuse of children;
 - (4) use, possession, or handling of firearms or explosives;
 - (5) use, possession, manufacture, production, dispensation, transportation, sale, or offer for sale of any narcotic, hallucinogenic, or dangerous drug or illegal or controlled substance;
 - (6) any violence against another person, including threats;

- (7) any act of vandalism on the reservation, including graffiti, property destruction, or theft.
 - (8) membership in, or active affiliation with, any criminally oriented group or organization, including any “gang” whose activities include the acts described in this Section.
- (B) The Tribal Council has declared this Section as a “Zero Tolerance” Policy. The Zero Tolerance Policy supersedes any attempt by a landlord to grant amnesty, provide a grace period, or a refuse to evict. There shall be no amnesty or grace period for any of the above-referenced acts except by an Exemption Resolution adopted by the Tribal Council. Elder Abuse Exemption Resolution: Within forty-five (45) calendar days after receiving the Notice of Termination from the Housing Department, the Elder Tenant desiring an Exemption Resolution from the Zero Tolerance Policy must submit to the Tribal Council a written request for an Exemption Resolution under this provision and provide the Tribal Council with the facts and/or reports set forth in Subsection (B)(3) below. The Tribal Council’s consideration of the request for an Exemption Resolution shall not delay any lease termination or eviction proceedings conducted by the Housing Department.
- (1) Definitions:
 - (a) “Elder Tenant” means an enrolled member of the Pascua Yaqui Tribe over the age of 55 years.
 - (b) “Elder Abuse” means:
 - (i) Intentional infliction of physical harm.
 - (ii) Injury caused by negligent acts or omissions.
 - (iii) Unreasonable confinement.
 - (iv) Sexual abuse or sexual assault.
 - (v) Neglect of an Elder. “Neglect” means a pattern of conduct without the Elder’s informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health.
 - (2) An Elder Tenant shall be exempt from the Zero Tolerance Policy of this Subsection (B) upon a finding by the Tribal Council of at least one of the following factors:
 - (a) The Elder Tenant is unable physically to live unassisted;
 - (b) The Elder Tenant is unable mentally to live unassisted;
 - (c) The Elder Tenant is subject to undue influence or coercion by a family member or other third party;
 - (d) The Elder Tenant has been taken advantage of financially by a trusted family member or trusted third party;
 - (e) The Elder Tenant is subject to Elder Abuse as defined in Subsection (B)(1)(b) above.
 - (3) The Tribal Council may consider any of the following evidence to determine whether the Elder Tenant qualifies for the Exemption Resolution pursuant to Subsection (B)(2) above:
 - (a) If the Elder Tenant is claiming physical or mental incapacity, report(s) from the physician, psychologist or psychiatrist of the Elder Tenant;

- (b) Report(s) from the Tribal Health Department, Indian Health Service, or other health care agency;
 - (c) Report(s) from the Tribal Department of Social Services or other social services agency;
 - (d) Reports from Tribal Police or other law enforcement agencies;
 - (e) Testimony of two or more family members of the Elder Tenant who were not participants in the acts which created the violation of the lease or lease/purchase agreement.
- (4) Upon finding that the Elder Tenant is exempt from the Zero Tolerance provisions of this Subsection (B), the Tribal Council shall **adopt** an Exemption Resolution incorporating conditions to prevent the recurrence of the circumstances which created the Elder Abuse and/or the breach of the lease agreement. The conditions may include any or all of the following:
- (a) Requiring the Elder Tenant to have a caretaker;
 - (b) Requiring the Elder Tenant to register all prospective guests with the Housing Department prior to occupancy within the Elder Tenant's home;
 - (c) Permanent or temporary expulsion of any family member or other occupant of the Elder Tenant's residence;
 - (d) Requiring all prospective or current occupants of the Elder Tenant's residence to submit to criminal background checks;
 - (e) Requiring the Elder Tenant to waive search and seizure restrictions to law enforcement officers;
 - (f) Imposition of probationary conditions on the tenancy;
 - (g) The probation and/or conditions may be permanent or of a specific duration as set forth in the Exemption Resolution;
 - (h) Any other conditions deemed necessary by Tribal Council.
- (5) The Elder Tenant shall agree to and sign a lease amendment containing the conditions set forth in the Exemption Resolution no later than thirty (30) calendar days after adoption of the Exemption Resolution by the Tribal Council. In the event the lease amendment is unsigned by the Elder Tenant, the Exemption Resolution shall expire and be of no force or effect upon the 31st calendar day following adoption.
- (C) The Housing Department is authorized to enforce this Section for dwellings under its control and all other dwellings owned by private persons if the private landlord refuses to take action."

Section 220 Damages to Premises Prohibited (5 PYTC § 3-220)

Removal or willful and material alteration or damage of any part of a dwelling building, the furnishings of, or any permanent improvement on the premises, by or with the consent or knowledge of the tenant, members of tenant's household, or guests of the tenant, without prior written permission of the landlord or his agent, is prohibited and may be subject to monetary damages awarded against the tenant at any court hearing.

Section 230 Fire or Casualty Damage; Partial Destruction; Reduction of Rent (5 PYTC § 3-230)

- (A) If the dwelling or premises are damaged or destroyed by fire, condemnation, or other cause through no fault of the tenant to an extent that the dwelling is substantially impaired, the tenant must do either of the following:
- (1) Immediately vacate the premises and notify the landlord in writing within 14 days after the event of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating. Verbal notification under this section is permissible provided it is witnessed.
 - (2) If continued occupancy is lawful, vacate any part of the dwelling rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling.

Section 240 Premises Rendered Uninhabitable Without Fault of Tenant, Non-Liability of Tenant (5 PYTC § 3-240)

A tenant of a dwelling which, without fault or neglect on the part of the tenant, is condemned, destroyed or so injured by the elements or any other cause as to be unfit for occupancy, is not liable thereafter to pay rent to landlord unless expressly provided by written agreement and the tenant may thereupon quit and surrender possession of the dwelling to the landlord.

SUBCHAPTER E TERMINATION

Section 250 Termination of Tenancies (5 PYTC § 3-250)

- (A) A tenancy from year to year terminates at the end of each year unless written permission is given to remain for a longer period. The permission shall specify the time the tenant may remain and upon termination of such time, the tenancy expires.
- (B) A rental agreement from month to month may be terminated by the landlord giving at least ten days written notice thereof. A tenant from month to month shall give ten days written notice of his intention to terminate possession of the premises. Failure to give notice renders the tenant liable for the rent for the ensuing ten days.
- (C) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least seven days prior to the termination date specified in the notice.
- (D) When a tenancy is for a certain period under verbal or written agreement, and the time expressed has expired, the tenant shall surrender possession, without necessity of notice to quit, and demand of possession is not then necessary.

Section 260 Notice of Termination (5 PYTC § 3-260)

Notice of termination of a tenancy requires a minimum ten day notice or the period specified in the rental agreement, whichever is greater. However, notice of termination pursuant to a Health and Safety violation (Section 210) shall be immediate.

Section 270 Hold-over Remedies (5 PYTC § 3-270)

- (A) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an eviction action. If the tenant's holdover is found to be willful and not in good faith the landlord, in addition, may recover the sum of two months periodic rent or twice the actual damages sustained by the landlord, whichever is greater.

- (B) When a tenant holds over and retains possession after expiration of the term of the rental agreement without express contract with the owner, the holding over shall not operate to renew the rental agreement for the term of the former rental agreement but shall create a tenancy at will.

Section 280 Non-Payment of Rent (5 PYTC § 3-280)

- (A) If rent is unpaid when due and the tenant fails to pay rent within five days after written notice by the landlord of non-payment and his intention to terminate the rental agreement, the landlord may terminate the rental agreement and file an eviction action pursuant to Section 310.
 - (1) Prior to the filing of an eviction action, the rental agreement shall be reinstated if the tenant tenders the entire past due but unpaid periodic rent and a reasonable late fee set forth in a written rental agreement.
 - (2) After an eviction action is filed, the rental agreement is reinstated only if the tenant pays the entire past due but unpaid periodic rent, a reasonable late fee set forth in the written rental agreement, attorney's fees and court costs.
- (B) The landlord may recover all reasonable damages resulting from nonperformance by the tenant with the rental agreement or occupancy of the dwelling, reasonable attorney's fees and all quantifiable damage to the dwelling by tenant or tenant's guests.

Section 290 Abandonment, Remedies (5 PYTC § 3-290)

- (A) If a dwelling or property is abandoned, the landlord shall send a notice of abandonment by certified mail, return receipt requested, addressed to the tenant's last known address. The landlord shall also post a notice of abandonment on the door to the dwelling for ten consecutive days.
- (B) Ten days after notice of abandonment has been posted and mailed, the landlord may retake possession of and secure the premises. In all cases, after the landlord retakes possession of the dwelling or property, the security deposit held by the landlord is forfeited to the landlord and shall be applied to the payment of any accrued rent, damages, and costs incurred by the landlord by reason of tenant's abandonment.
- (C) If the dwelling or property was abandoned and the landlord rents to a new tenant, the previous rental agreement is deemed terminated as of the date of the declared abandonment.
- (D) In the event the landlord has retaken possession and the tenant has left personal property on the premises, the landlord shall thereafter send to the tenant's last known address a five day notice advising the tenant of any personal property left on the premises and the disposal of the personal property if it is not removed by the tenant. Upon the failure of the tenant to remove the personal property, or provide notification as set forth in Subsection (E) of this Section within five days after the postmark of the notice, the landlord shall take possession and handle the property as set forth in Subsections (E) and (F) of this Section.
- (E) If the tenant notifies the landlord in writing within the time period set forth in Subsection (D) of this Section, that the tenant intends to remove personal property from the dwelling or a place of safekeeping, the tenant has five days after providing such notice to reclaim the personal property. To reclaim the personal property, the tenant must pay the landlord only the cost of removal and storage for the period the tenant's personal property remained in the landlord's safekeeping.
- (F) If the property is unclaimed after 35 days following taking possession, the landlord may sell the property, retain the proceeds and apply it toward the tenant's outstanding rent. The landlord may destroy or dispose of some or all of the property if the landlord reasonably determines that the value of the property is so low that the cost of moving, storage and conducting a public sale exceeds the amount that would be realized from the sale.

SUBCHAPTER F REMEDIES

Section 300 Eviction Actions - Substantive Provisions (5 PYTC § 3-300)

- (A) “Eviction” proceeding is available under the following circumstances:
- (1) A tenant at will or a tenant from month to month or any other period whose tenancy has been terminated, retains possession after his tenancy has been terminated or after he receives written demand of possession by the landlord.
 - (2) The tenant or a person who has made a forcible entry refuses after written demand to give possession to the person upon whose possession the forcible entry was made. Additionally, any of the following cases where possession of any dwelling is retained after the occupant receives written demand of possession from the landlord may be removed through an action for eviction:
 - (3) If the dwelling has been sold through the foreclosure of a mortgage, deed of trust or contract for conveyance of the dwelling.
 - (4) If the dwelling has been sold through a trustee's sale under a deed of trust.
 - (5) If the dwelling has been forfeited through a contract for conveyance of real property.
 - (6) If the dwelling has been sold by virtue of an execution and the title has been duly transferred.
 - (7) If the residential structure has been sold by the owner and the title has been duly transferred unless the transfer was subject to the existing rental agreement.
 - (8) If the tribal land assignment to the parcel under the dwelling has been conveyed to another owner.
 - (9) Violation of the Health and Safety Obligations set forth in this Ordinance.

Section 310 Eviction Actions - Procedural Provisions (5 PYTC § 3-310)

- (A) Eviction actions, except those based upon violation of Health and Safety Obligations of a rental agreement or this Ordinance shall be instituted by filing a complaint in Tribal Court. The following provisions shall govern in all forcible entry, forcible detainer and eviction actions notwithstanding the provisions of the Rules of Civil Procedure.
- (B) Service of Pleadings and Notices.
- (1) When a party files a complaint for an eviction action, the summons shall be issued on the day the complaint is filed and shall command the person against whom the complaint is made to appear for trial and file a written answer to the complaint at the time and place named not more than six nor less than three days from the date of issuance of the summons.
 - (2) The tenant is deemed to have received the summons three days after the summons is mailed by first class postage pre-paid mail or within one day if personally served, or within two days if copies of the summons and complaint are conspicuously posted on the main entrance of the tenant's resident; and within three days if the summons and

complaint are sent by both first class postage pre-paid and by certified mail, return receipt requested, to the tenant's last known address.

- (3) In all instances, the defendant must be served with the summons and complaint at least two days prior to the trial date. In the event the defendant has not been served within two days of the trial date, upon request of the plaintiff, the Court may grant a continuance of the trial date.
 - (4) The defendant may file a written answer to the complaint prior to the trial date with written proof of prior delivery to the plaintiff. No written answer will be accepted by the Court on the trial date. The filing of a written answer will not excuse the defendant from personally appearing at the trial.
 - (5) The failure of the defendant to either file a written answer to the complaint prior to trial date or to personally appear at the date and time scheduled for the trial shall constitute a default. Upon proof acceptable to the Court, the Court shall immediately issue and enter a default judgment in favor of the plaintiff for the relief requested in the complaint.
- (C) For good cause shown, supported by an affidavit signed under penalty of perjury from the defendant, the trial may be postponed for not more than three days.
- (D) If the plaintiff is the prevailing party in the eviction action, the Court shall grant judgment in the form of a writ of restitution or writ of possession for the premises in favor of the plaintiff against the defendant and all parties in possession. The judgment may also include the following forms of relief: damages to recompense plaintiff for any physical damage to the premises beyond normal wear and tear, late charges stated in the rental agreement, attorney's fees, costs, and for all rent found to be due and unpaid at the date of judgment.
- (E) If the defendant is the prevailing party in the eviction action and the plaintiff has acquired possession of the premises since commencement of the action, the Court shall grant a writ of restitution or writ of possession in favor of the defendant. In addition, the Court may grant judgment in favor of the defendant against the plaintiff for attorney's fees and costs. However, if the plaintiff is the landlord, no award of attorney's fees or costs shall be granted unless provided in the rental agreement.

Section 320 Termination and Eviction Based upon Health and Safety Violations by Housing Department (5 PYTC § 3-320)

- (A) In the event of the violation of any Health and Safety Obligation set forth in Section 210 of this Ordinance, the landlord shall be entitled to terminate the rental agreement immediately. The termination notice shall advise the tenant of the violation of one or more of the acts set forth in Section 210 and shall include a hearing date no later than three days after the date of notice for an administrative hearing and further advise the tenant of the right to inspect the documentation relied upon by the landlord prior to or at the administrative hearing. The administrative hearing for a dwelling controlled by the Housing Department shall be conducted by the Housing Department. The administrative hearing for a private landlord shall be conducted by the Housing Review Board.
- (B) If, upon conclusion of the administrative hearing, the landlord has determined a violation of the Health and Safety provisions set forth in Section 210 of this Ordinance has occurred, the landlord or Director of the Housing Department, as appropriate, may issue an eviction notice which will confirm the termination date of the rental agreement or purchase agreement and state the date upon which the tenant must vacate the premises. The eviction notice shall be enforced by any Tribal law enforcement officer. In the event the tenant fails to vacate the premises on the date stated in the eviction notice, possession of the premises shall be immediately delivered to the landlord by the law enforcement officer.

- (C) The administrative hearing for a dwelling controlled by the Housing Department will be mediated by a staff member of the Housing Department. The tenant shall be allowed to review all documentation in the possession of the landlord relevant to the violation of Health and Safety and present a defense. The tenant may be represented by legal counsel or a lay advocate admitted to practice in the Pascua Yaqui Court at the administrative hearing.
- (D) The tenant may appeal the decision of the landlord to the Tribal Court by the filing a wrongful eviction complaint. However, the filing of the wrongful eviction complaint shall not delay or stay the date the tenant is required to vacate the premises. The tenant shall also serve a copy of the summons and complaint upon the landlord within one day after the filing date. The Court shall schedule a trial date following the completion of service of the summons upon the landlord. The landlord may file and serve a written response no later than two days prior to the trial date. The tenant shall have the burden of proof beyond a preponderance of the evidence to demonstrate the eviction decision resulting from the administrative hearing was arbitrary, capricious, an abuse of discretion, or contrary to tribal or federal law.
- (E) All evictions, other than Health and Safety violations, shall be subject to the provisions of Section 310 of this Ordinance.

Section 330 Election of Private Landlord (5 PYTC § 3-330)

A private landlord may elect to prosecute an eviction based upon a violation of the Health and Safety Obligations of a rental agreement or this Ordinance by filing an eviction complaint in the Tribal Court or by scheduling an administrative hearing before the Housing Review Board.

Section 340 Administrative Action to Enforce Health and Safety Obligations; Housing Review Board (5 PYTC § 3-340)

- (A) A Housing Review Board consisting of not less than three nor more than five members appointed by the Tribal Council shall be authorized to conduct administrative hearings concerning violations of the Health and Safety Obligations of a tenant. The members of the Housing Review Board shall be enrolled tribal members, at least 21 years of age, and shall not have been convicted of a felony in any court, or of any crime involving deceit, fraud or misappropriation of funds. No Board member may concurrently hold a seat on the Tribal Council, nor shall be a nominee for the Board be a current Council member.
- (B) A landlord shall schedule an administrative hearing before the Housing Review Board following service of a notice of termination upon the tenant. The tenant shall be served with notice of the administrative hearing no later than two days before the date for the administrative hearing.
- (C) The Housing Review Board shall conduct the administrative hearings pursuant to the following procedures:
 - (1) The tenant will be allowed to present and argue any legal objections to the termination set forth in the termination notice; the landlord may thereupon present his responsive argument; and thereafter the tenant may present rebuttal argument. The matter will then be submitted to the hearing panel for decision. The hearing panel may rule upon such objections immediately or take the matter under advisement and proceed with the hearing. The standard for such objections shall be relevance.
 - (2) The landlord will present his opening statement on the merits. The tenant will then be permitted to make an opening statement of the defense, or he may reserve the same until commencement of the presentation of the defense.
 - (3) The landlord will then present his case in chief in support of the termination.

- (4) The tenant shall thereupon present the case for the defense.
 - (5) Upon conclusion of the tenant's case, the landlord may present his case in rebuttal.
 - (6) Upon conclusion of the landlord's case in rebuttal, the landlord shall present his closing argument, the tenant may present answering argument, and thereafter the landlord may present rebuttal argument. Thereupon the matter will stand submitted for decision by the hearing panel.
 - (7) Any member of the hearing panel may ask questions of witnesses, and may request or allow additional evidence at any time, including additional rebuttal evidence.
- (D) The Housing Review Board shall be authorized to affirm or deny the termination notice of the landlord. The decision of the Board shall be enforced by any Tribal law enforcement agency. The decision of the Housing Review Board may be appealed to the Tribal Court.

Section 350 Judicial Remedies in Eviction Proceedings (5 PYTC § 3-350)

In the event the tenant is the prevailing party in the wrongful eviction action, the Court shall restore possession of the premises to the tenant pursuant to the rental agreement which existed at the time of the eviction. In the event the landlord is the prevailing party, it shall be awarded a writ of possession for the premises and the landlord may rent the premises to another eligible tenant. The Court may award damages in the form of delinquent rents, attorney's fees, and/or recompense of physical damage to the rental unit. The Court shall not award punitive or emotional distress damages. In no event shall monetary damages or costs be awarded against the Housing Department or the Tribe.

Section 360 Proceedings No Bar to Certain Actions (5 PYTC § 3-360)

The proceedings under a forcible entry or eviction shall not bar an action for trespass, damages, waste, rent, or profits.

Section 370 Landlord and Tenant Remedies for Abuse of Access (5 PYTC § 3-370)

- (A) If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages.
- (B) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. This section shall not apply to the Housing Department except as required by federal law.

Section 380 Damages; Mitigation; Enforcement (5 PYTC § 3-380)

- (A) If the remedies provided by this Ordinance are so administered that the aggrieved party may recover appropriate damages, the aggrieved party has a duty to mitigate damages.
- (B) Any right or obligation declared by this Ordinance is enforceable by action unless the provision declaring it specifies a different and limited effect.

Section 390 Trial by Jury (5 PYTC § 3-390)

Trial by jury shall not be available in any proceeding pursuant to this Ordinance.

Section 400 Superior Rights of Person in Possession; No Preclusion of Additional Remedies

(5 PYTC § 3-400)

- (A) The remedies provided by this subchapter do not affect the rights of persons in possession under a rental agreement or other possessory right which is superior to the interest sold, forfeited or executed upon.
- (B) The remedies provided by this section are in addition to and do not preclude any other remedy granted by law except injunctive relief.

Section 410 Priority on Court Schedule (5 PYTC § 3-410)

Eviction trials and other eviction proceedings shall have priority over all other civil matters on the Court calendar. Criminal proceedings shall have priority over eviction hearing and trial dates.

SUBCHAPTER G APPEAL

Section 420 Appeal to Court of Appeal; Stay; Bond (5 PYTC § 3-420)

- (A) Either party may appeal a final judgment from a Trial Court to the Court of Appeal pursuant to the Rules of Appellate Procedure; however, the filing of an appeal shall not entitle the tenant to request a stay of execution pursuant to PYTRAP Rule 23 except as set forth below.
- (B) A party seeking to appeal a judgment may stay the execution of either the final judgment for possession or any judgment for money damages by filing a supersedeas bond. The Trial Court shall hold a hearing on the motion within five court days after the parties advise the Trial Court of their failure to stipulate on the amount of the bond. The stay is effective when the supersedeas bond or bonds are filed.
- (C) The party seeking to stay the execution of the judgment for possession shall
 - (1) file a supersedeas bond in the amount of rent accruing from the date of the judgment until the next periodic rental date, together with costs and attorney fees, if any. The tenant shall pay to the clerk of the Trial Court, on or before each periodic rental due date during the pendency of the appeal, the amount of rent due under the terms of the rental agreement. Such amounts shall be made payable by the Trial Court to the owner, landlord or agent as they accrue to satisfy the amount of periodic rent due under the rental agreement.
 - (2) In all cases where the rent due under the terms of the rental agreement is paid through the Trial Court as set forth in this subsection, the order of the Court may include a one-time handling fee in the amount of ten dollars to be paid by the party seeking to stay the execution of the judgment for possession. In no event shall the amounts paid per month exceed the amount of monthly rent charged by the landlord pursuant to the rental agreement or the fair rental value.
 - (3) If the tenant raises habitability as an affirmative defense to the nonpayment of rent or the tenant has filed a counterclaim asserting a habitability issue, the Trial Court shall retain all money paid under this subsection pending a final judgment.
- (D) If during the pendency of the appeal the party seeking to stay the execution of the judgment for possession is obligated to pay rent and fails to pay the rent on the periodic rental due date, the party in whose favor a judgment for possession was issued may move the Court to lift the stay of the execution of the judgment for possession. The Trial Court shall hear the motion to lift the stay of the execution of the judgment for possession and release accrued monies, if any, within five court days from the failure of the party to pay the periodic rent due under the terms of the rental agreement. If the judgment appealed from involves a finding of a material and irreparable breach,

the Trial Court shall treat it as an emergency matter and conduct a hearing on a motion to lift the stay of execution of the writ of restitution within three days. If the third day is a Saturday, Sunday or other legal holiday, the hearing shall be held on the next day thereafter.

Section 430 Stay of Proceedings on Judgment (5 PYTC § 3-430)

When the appeal bond is filed and approved pursuant to Section 420 of this Ordinance, a stay of proceedings may be sought pursuant to the Rules of Appellate Procedure.

Section 440 Trial and Judgment on Appeal; Writ of Restitution (5 PYTC § 3-440)

- (A) On final decision of the Court of Appeals, the prevailing party, if out of possession and the right of possession is adjudged to him, shall be entitled to for withholding possession of the premises during pendency of the appeal and the Court shall also render judgment in favor of prevailing party and against the losing party and the sureties on his bond for damages and costs proved.
- (B) The writ of restitution, possession, or execution shall be issued by the clerk of the Trial Court and enforced by any law enforcement officer.

Section 450 No Damages Awarded Against Tribe (5 PYTC § 3-450)

In no event shall the Court award monetary damages or costs against the Housing Department or the Tribe under this Ordinance.

Section 460 No Waiver of Sovereign Immunity (5 PYTC § 3-460)

Nothing in this Ordinance shall be construed as a waiver by the Pascua Yaqui Tribe or the landlord to any rights held under the Constitution of the Pascua Yaqui Tribe including, but not limited to, Article XXIV, Sovereign Immunity.

DISPOSITION TABLE

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NEW	Section 20
NEW	Section 30
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Section 1101	Section 50
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Title 5, Chapter 3	Subchapter B
NEW	Section 70
NEW	Section 80
Section 1102	Section 90
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Section 1119	Section 310
NEW	Section 320
NEW	Section 330
NEW	Section 340
NEW	Section 350
NEW	Section 360
NEW	Section 370

Former Section	New Section
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NEW	Section 390
NEW	Section 400
NEW	Section 410
Title 5, Chapter 3	Subchapter G
NEW	Section 420
NEW	Section 430
NEW	Section 440
NEW	Section 450
NEW	Section 460