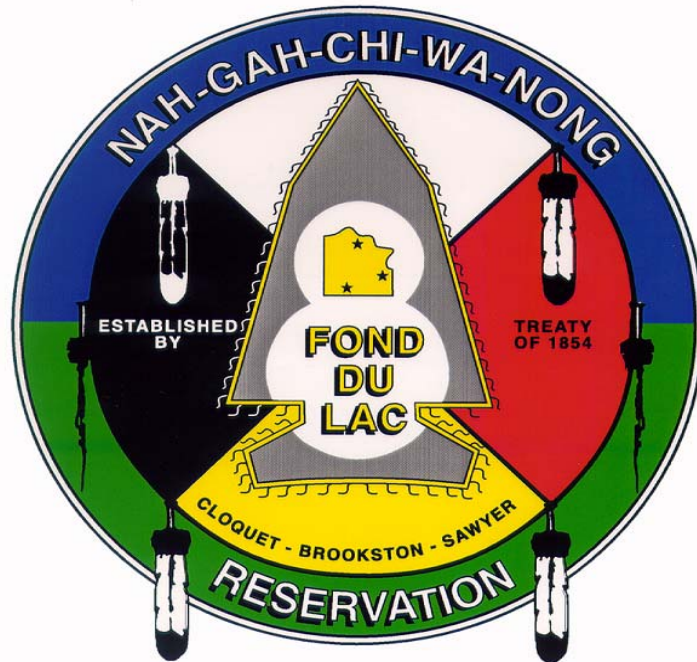


# FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL COURT

## LANDLORD EVICTION PACKET



These instructions, information and forms are not a complete statement of the law. The Court assumes no responsibility and accepts no liability for actions taken by users of these documents, including reliance on their contents. For legal information visit your local law library.

FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA

TRIBAL COURT

LANDLORD EVICTION PACKET

Enclosed are the instructions and forms for a private party to file an eviction action in Tribal Court. Read the instructions and the Eviction Procedures Ordinance #01/17 carefully to identify what is required.

If you have any questions you should contact the **Tribal Court Clerk at (218) 878-7151**. Please understand, however, that the Tribal Court Clerk cannot give you legal advice. If you need legal advice about filing an eviction case, you should consult an attorney.

Contents of Packet:

1. Instructions
  
2. Forms
  - a. Notice of Termination and Notice to Vacate
  - b. Petition for Eviction
  - c. Affidavit of Service
  
3. Eviction Procedures Ordinance

## **NOTICE ABOUT THESE INSTRUCTIONS AND INFORMATION**

These instructions and information are not a complete statement of the law. They cover basic information for filing an eviction case in Tribal Court. For legal information visit your local law library. Attorneys are permitted to represent parties in eviction cases and you may consult an attorney if you wish.

If you wish to have your eviction petition reviewed by the Tribal Court, it is important for you to read, very carefully, THE ENTIRE INSTRUCTION PACKET, AS WELL AS THE EVICTION PROCEDURES ORDINANCE.

### **I. WHO SHOULD USE THIS PACKET?**

This packet is for individuals who own, have a beneficial ownership of, or have a lease or land assignment interest in land or a dwelling and want to evict people from that land or dwelling. This packet can only be used if the land or dwelling is subject to the Fond du Lac Tribal Court's jurisdiction (e.g., is on the Fond du Lac Reservation or on Fond du Lac trust land).

An eviction is only needed if a person has established residency on the land or in the dwelling. If a person is merely trespassing and has not established residency, you may be able to remove the person by issuing a Notice of Trespass. Please see Fond du Lac Ordinance #04/99, Removal and Exclusion of Persons from Band Lands, for information about issuing a Notice of Trespass.

Some examples of situations when this packet might be used include:

- A Fond du Lac Band member owns fee land on the Fond du Lac Reservation, has leased the land to another person, and wants to evict the person for lease violations;
- A Fond du Lac Housing Division homeowner has allowed a roommate to move in with him and the homeowner wants to evict the roommate;
- A Fond du Lac Development Housing Program homeowner has allowed a roommate to move in with her and the homeowner wants to evict the roommate;
- A person has moved onto allotment land on the Fond du Lac Reservation without authorization and an allotment owner wants to remove the person from the land.

### **II. INTENT OF THIS PACKET**

Eviction is a complex process. This packet is designed to provide basic guidance and forms for landlords who choose not to hire an attorney. This packet does not attempt to provide comprehensive guidance about the steps that may be necessary to obtain an eviction. In order to determine if and how you can obtain an eviction, you will need to review the lease, the ordinance,

and the particular facts of your case. Many individuals seeking an eviction would be best served by hiring an attorney and having an attorney draft the eviction petition.

### **III. NOTICE OF TERMINATION AND NOTICE TO VACATE**

In many cases, you will need to serve a notice of termination and notice to vacate on the defendant before filing an eviction petition. This packet contains a template for a Notice of Termination and to Vacate. To use the template, you will need to:

- Write the name and address of the person(s) you are seeking to evict in the “To” section;
  - Note: The same form may be used if multiple people are being evicted together for the same reason;
- Write the date you are filling out the form in the “Date” section;
- If you are terminating a lease, check the first box and provide the date of the lease, the address of the premises, and the reasons for the termination;
- If you are telling the person to vacate the premises, check the second box and provide the address of the premises and the date when the person must leave; and
- Provide your signature, name, and address at the bottom of the form.

You will then need to serve the completed notice on the tenant. You can usually serve the notice by handing the tenant a copy of notice or, if you’re unable to find the tenant, by leaving a copy at the tenant’s last know dwelling. But, your lease may contain more specific rules about serving the notice.

### **IV. PETITION FOR EVICTION**

You will need to file a petition for eviction with the Tribal Court and serve a copy of the petition on the individual you are evicting. This packet contains a template for a Petition for Eviction. To use the template, you will need to:

1. Write your name in the Plaintiff line in the case caption and the name of the individual you are evicting in the Defendant line.
2. In paragraph 1, you should check the appropriate boxes to indicate the type of relief you are seeking from the Court. In most cases, you will check the first box and list the address of the premises or dwelling at issue. If you have a lease with the defendant and you are seeking to terminate the lease, you should check the second box. If you are seeking payment for back rent or other damages, you should check the third box.
3. In paragraph 2, you should check the appropriate box to indicate what authority you have over the property and how you are authorized to bring the eviction petition. This can be because you own the premises or dwelling, you are an allotment owner of the premises, or you have a lease or land assignment for the premises of dwelling. You must provide evidence of your right to possession of the property by attaching a copy of your deed, a

property tax statement in your name, a BIA Title Status Report or Indian Land Owner Statement, or a copy of your master lease agreement or land assignment, or other documentation of your property rights.

4. In paragraph 3, you should check the appropriate box to indicate whether you have a written lease with the defendant. If you have a written lease, you must provide the date of the lease and attach a copy of the lease.
5. In paragraph 4, you should check the appropriate box to indicate whether you have served the defendant with a notice of termination and notice to vacate. If you have served notices, you must list the dates of service and attach copies of the notices.
6. In paragraph 5, you should list the reasons for requesting an eviction. This might include non-payment of rent or violations of a lease. You should provide as many specific facts as possible, including dates and times. If you have documentation of facts, you may attach copies with the petition.
7. In paragraph 6, you should list the amount of back rent and other fees (if any) the defendant owes you.
8. In paragraph 7, if the defendant has damaged the premises or dwelling, you should describe the damage and list the actual or estimated cost to repair the damages. If you have receipts or estimates for repair or replacement costs, you may attach copies with the petition.
9. At the bottom of the petition, you should sign the petition, provide your printed name, and provide your address and phone number.

You will then need to file the completed petition with the Fond du Lac Tribal Court at the John A. Smith Memorial Building at 28 University Road, Cloquet, MN.

**A \$50.00 filing fee will be due at the time of filing.**

## **V. SERVICE AND AFFIDAVIT OF SERVICE**

After filing the completed petition, the Tribal Court will issue a summons and notice of hearing. You will be responsible for having copies of the summons, the petition for eviction with attachments, and the notice of hearing served on the defendant. Service can be completed by any person over the age of 18 who is not a party in the case and is not anticipated to be a witness in the case. The plaintiff cannot serve the documents himself or herself.

Service can be completed by handing the documents to the defendant or by leaving the documents with a person of suitable age and discretion residing at the defendant's last usual place of dwelling. If personal service cannot be reasonably completed, the defendant may be served by posting the documents in a clearly visible place at the dwelling and mailing a copy by certified mail to the defendant's last known address.

After the documents are served, the person completing the service will need to complete an Affidavit of Service. This packet contains a template for an affidavit of service. The person completing the form will need to list the names of the plaintiff and defendant, the date of service, check the box to indicate the method of service, provide contact information, and sign the affidavit. You will then need to file the affidavit of service with the Tribal Court.

## **VI. HEARING AND FURTHER PROCEEDINGS**

At the hearing, you will have the burden of proving your case. The hearing and all further proceedings will be conducted in accordance with the Eviction Procedures Ordinance and you should familiarize yourself with the ordinance. The ordinance allows for informal proceedings, but you will still need to present evidence and/or witnesses in support of your case. If you are successful and the Court finds for the plaintiff, the Court will issue a judgment and order in your favor. You will then need to work with the Fond du Lac Police Department to recover the premises based on that order.

**NOTICE OF TERMINATION AND NOTICE TO VACATE**

To: \_\_\_\_\_ (Name of Party to be Evicted)  
\_\_\_\_\_  
\_\_\_\_\_ (Address of Party to be Evicted)

Date: \_\_\_\_\_

PLEASE TAKE NOTICE THAT:

I am terminating the lease dated \_\_\_\_\_ for the premises and/or dwelling located at \_\_\_\_\_.

The termination is based on the following lease violations:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PLEASE TAKE NOTICE THAT:

You must vacate the premises and/or dwelling located at \_\_\_\_\_, including all of your personal belongings and effects, on or before \_\_\_\_\_.

I will file a Petition for Eviction with the Fond du Lac Band of Lake Superior Chippewa Tribal Court to promptly enforce the termination and terms of the Lease, including regaining possession of the property should it remain occupied after the deadline for vacating the premises expires.

Sincerely,

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_









8. As of the date of this Petition, the Defendant(s) has not vacated the premises or dwelling.
9. The Fond du Lac Tribal Court has jurisdiction over this matter because it is a proceeding brought under Section 103(a) of Ordinance #01/17. The action arises within the exterior boundaries of the Fond du Lac Reservation and the persons and entities are within the Reservation and subject to the jurisdiction and governmental powers of the Band.

WHEREFORE, the Plaintiff seeks relief described in paragraph 1, above, plus attorney's fees and costs.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Plaintiff's Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA  
TRIBAL COURT**

\_\_\_\_\_ ) **Case No.** \_\_\_\_\_  
 )  
**Plaintiff(s),** )  
 )  
**vs.** ) **AFFIDAVIT OF SERVICE**  
 )  
\_\_\_\_\_ )  
**Defendant(s).** )  
\_\_\_\_\_ )

I state that I am at least 18 years of age, that I am not a party or anticipated to be a witness in this case, and that on \_\_\_\_\_ I served the Summons, Petition for Eviction, and Notice of Hearing, in this matter upon the Defendant(s), \_\_\_\_\_

- by handing a true and correct copy of the documents to him/her at \_\_\_\_\_
- by leaving a true and correct copy of the documents at, \_\_\_\_\_, the defendant's last usual place of dwelling with, \_\_\_\_\_, a person of suitable age and discretion living there.
- because service could not be reasonably completed through personal service, by posting the documents in a clearly visible place at the dwelling at \_\_\_\_\_ and by mailing a copy via certified mail to defendant's last known address at \_\_\_\_\_.

**I declare under penalty of perjury that everything I have stated in this document is correct.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

**ORDINANCE #01/17**

**EVICTION PROCEDURES**

**Adopted by Resolution #1048/17 of the Fond du Lac Reservation Business Committee on February 21, 2017.**

**Amended by Resolution #1242/21 of the Fond du Lac Reservation Business Committee on June 6, 2021.**

**Amended by Resolution #1219/22 of the Fond du Lac Reservation Business Committee on June 29, 2022.**

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**FOND DU LAC BAND OF LAKE SUPERIOR CHIPPEWA**

**ORDINANCE #01/17**

**EVICITION PROCEDURES**

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**CHAPTER 1  
GENERAL PROVISIONS**

---

**Section 101. Authority**

This ordinance is enacted pursuant to the inherent sovereign authority of the Fond du Lac Band of Lake Superior Chippewa, acting through the Reservation Business Committee as the governing body, as delegated in Article VI of the Revised Constitution of the Minnesota Chippewa Tribe, and as recognized by the United States under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, and the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. § 4101 et seq.

**Section 102. Purpose**

The purpose of this Ordinance is to establish a uniform process for eviction of individuals who unlawfully retain possession of premises and dwellings. This Ordinance shall be interpreted to preserve the peace, harmony, safety, health and general welfare of the Fond du Lac community and protect and balance the rights of landlords and tenants.

**Section 103. Scope**

- a. This Ordinance applies to evictions from premises and dwellings subject to the jurisdiction of the Fond du Lac Tribal Court, except as provided in paragraph c.
- b. This Ordinance authorizes evictions to be brought by:
  - i) The Fond du Lac Band or a Band entity (including the Fond du Lac Housing Division, Fond du Lac Supportive Housing Program, the Fond du Lac Development Corp. Housing Program) or any of their agents or assigns, from properties or dwellings owned, beneficially owned, operated by, or managed by the Band or the Band entity; and
  - ii) Individuals who own, have beneficial ownership of, or have a lease or land assignment interest in premises or a dwelling.
- c. This Ordinance shall not be used to terminate or cancel agreements where an administrative process exists for the termination or cancellation, such as in Fond du Lac Housing agreements; leases of trust lands issued pursuant to Ordinance #02/15, as amended, Land Lease Ordinance; land assignments issued pursuant to Ordinance #02/11, as amended,

Land Assignment and Land Lease Ordinance; leases of trust or allotted land approved by the Bureau of Indian Affairs; Fond du Lac Assisted Living Residence Leases; and leases or other interests subject to the foreclosure proceedings contained in Fond du Lac Ordinance #05/05, Procedures Governing Leasehold Mortgages Made to Secure Loans Under the Fond du Lac Section 184 Loan Program, as amended. But this Ordinance may be used to recover possession of a property or dwelling after any lease or land assignment is terminated or cancelled, as well as to obtain a judgment for unpaid rent or property damages.

**Section 104. Reservation of Rights**

The RBC reserves the right to amend or repeal all or any part of this Ordinance at any time. All the rights, privileges, and immunities conferred by this Ordinance or by acts done pursuant to this Ordinance shall exist subject to the powers of the Band. Nothing in this Ordinance shall be construed to constitute a waiver of the sovereign immunity of the Band or a consent to jurisdiction by any government or forum not expressly authorized to exercise jurisdiction under this Ordinance.



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## CHAPTER 2 DEFINITIONS

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### Section 201. Definitions

For the purposes of this Ordinance, the following definitions shall apply:

- a. **“Court”** or **“Tribal Court”** means the Fond du Lac Band of Lake Superior Chippewa Tribal Court.
- b. **“Damages”** means payments owed by the lessee for unpaid rent of lease fees, for damages to the premises, or for other money due under the lease.
- c. **“Dwelling”** an apartment, building or group of buildings or portion thereof which is used as a home or residence, by any person, not including public transient accommodations such as hotel rooms.
- d. **“Eviction”** means removal of a person and their personal property from property or a dwelling by legal action.
- e. **“Fond du Lac Band,”** or **“Band”** means the Fond du Lac Band of Lake Superior Chippewa, a federally recognized Indian tribe.
- f. **“Lease”** means the written agreement establishing that the lessee has a right to occupy the premises.
- g. **“Lessee”** or **“Tenant”** means a person who has acquired a legal right to possess premises through a lease for consideration.
- h. **“Lessor”** or **“Landlord”** means either (1) an individual who owns, has beneficial ownership of, or has a lease or land assignment interest in premises or a dwelling rented to a tenant or (2) a Fond du Lac Band owned, operated, or contracted entity that has been delegated the authority of the Fond du Lac Band to administer and manage housing and who has transferred to another person(s) a legal right of possession of premises through a lease for consideration.
- i. **“Petition”** or **“Petition for Eviction”** means a formal written request filed with the Tribal Court which includes any dispute between persons or entities which relate to the rental, use or occupancy of any dwelling.
- j. **“Property”** or **“Land”** means land owned in fee by the Band or a Band member or any land held in trust by the United States for the Band, the Minnesota Chippewa Tribe, or an Individual Indian.

- k. **“Reservation”** means the Fond du Lac Indian Reservation, as established by the Treaty of La Pointe of September 30, 1854, 10 Stat. 1109, and as extended by the Secretary of the Interior in accordance with Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465.
- l. **“Reservation Business Committee”** or **“RBC”** means the duly elected Reservation Business Committee of the Fond du Lac Band established pursuant to Article III, Section 2 of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and recognized by the Tribal Executive Committee of the Minnesota Chippewa Tribe as the lawful governing body of the Band.
- m. **“Termination”** means an action to end a person or entity’s lease or agreement.

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**CHAPTER 3**  
**UNLAWFUL DETAINER PROHIBITED;**  
**EVICITION RIGHTS AND DEFENSES**

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**Section 301. Forcible Entry and Unlawful Detainer Prohibited**

No person may occupy or take possession of a property or dwelling except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.

**Section 302. Grounds for Eviction**

- a. A person shall be guilty of unlawful detainer when the person has made unlawful or forcible entry into a property or dwelling and detains the same, or having peaceably entered, unlawfully detains the same; the person entitled to the premises may recover possession by eviction as provided in this Ordinance.
- b. The entity or individual entitled to the premises or dwelling may recover possession by eviction when any person holds over a property or dwelling:
  - i) After a sale of a dwelling on an execution or judgement;
  - ii) After the expiration of the time for redemption on foreclosure of a mortgage, or after termination of contract to convey the dwelling;
  - iii) Without permission or agreement, following any reasonable demand to leave by a person in authority over the property or dwelling;
  - iv) After termination of the time for which it is demised or leased to that person;
  - v) After any rent becomes due according to the terms of such lease or agreement, if the person is given at least 72-hours notice in writing requiring payment of the rent and the rent remains unpaid upon expiration of the notice;
  - vi) If there is material noncompliance with the conditions or covenants of the lease or agreement under which that person holds, other than non-payment of rent; the person is given at least 72-hours notice in writing specifying the act or omission constituting the noncompliance and stating that noncompliance must be remedied; and the noncompliance is not remedied upon expiration of the notice;
  - vii) After the person is given at least 72-hours notice in writing of termination, with no opportunity to remedy noncompliance, if
    - (1). The person has failed to pay rent in a timely manner on at least two occasions

within the four-month period proceeding the notice to terminate the lease;

- (2). The person committed substantially the same act or omission for which notice under subsection (b)(iv) was given within one-year proceeding the latest noncompliance;
  - (3). The noncompliance by the person or any other resident or guest at the premises or dwelling poses an actual and imminent threat to the health or safety of any person;
  - (4). The person or any other resident or guest at the premises or dwelling has committed a criminal act; or
  - (5). The person does not have a written lease, has not paid rent in the previous 60 days, and resides on the same premises or in the same dwelling as the individual seeking the termination.
- viii) After the expiration of any notice of termination of tenancy, notice to vacate a dwelling, notice to quit, or other notice of termination or cancellation issued in accordance with a written lease agreement.
- ix) When any dwelling unit which had been vacant is currently in possession by a person who has no lawful right to occupy the dwelling.

### **Section 303. Retaliation Defense**

- a. It is a defense to an action for recovery of premises following the alleged termination of a tenancy for the defendant to prove by a fair preponderance of the evidence that:
  - i) The alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the Fond du Lac Band of Lake Superior Chippewa or of the United States; or
  - ii) The alleged termination was intended in whole or part as a penalty for the defendant's report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.
- b. If the notice of termination was served within ninety days of the date of any act of the tenant coming within the terms of clause (i) or (ii) of subparagraph (a) of this section, then the burden of proving that the notice of termination was not served in whole or part for the retaliatory purpose shall rest with the plaintiff.

### **Section 304. Defense to Rent Increase as Penalty**

In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense in the proceeding if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any

lawful act of the tenant as described in Section 303(a)(ii), providing that the tenant tender to the Tribal Court or to the plaintiff the amount of rent due and payable under the original obligation.

**Section 305. Non-limitation of Landlord's Rights**

Nothing contained in this Ordinance shall limit the right of the lessor to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under his direction or control.

**Section 306. Combining Allegations**

- a. An action for recovery of the premises may combine the allegation of nonpayment of rent, the allegation of material violation of the lease, and all other relief and damages sought to be recovered, which shall be heard as alternative grounds.
- b. In cases where rent is outstanding, a tenant is not required to pay into the Tribal Court the amount of arrears, interest, and costs to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.
- c. If the landlord does not prevail in proving material violation of the lease supporting the termination of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the Tribal Court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the Court to be due. The Court may order the tenant to pay rent and costs determined to be due directly to the landlord or to the deposited with the Court.

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**CHAPTER 4**  
**PETITION; HEARING; JUDGMENT**

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**Section 401. Petition for Eviction**

- a. The entity or individual seeking an eviction shall file a Petition for Eviction with the Tribal Court, and shall include the following:
  - i) The full name(s) of the adult person(s) against whom the complaint is made, and in the names of Jane Doe and John Doe if the name of the occupant is unknown;
  - ii) A description of the property of which possession is claimed;
  - iii) Identify the lease or rental agreement, if any;
  - iv) A statement of the facts which authorize the recovery of possession;
  - v) A statement showing that any required notice of termination or notice to vacate has been served in accordance with the terms of such lease or agreement; and
  - vi) A statement asking for recovery of the premises and any other monetary damages, fees, costs or relief sought.
- b. The petition shall be signed by the Director, Manager, or lead administrator of the entity administering the property or dwelling under the authority of the Fond du Lac Band, or the attorney for such entity.

**Section 402. Summons**

- a. Within two days of filing the petition, the Tribal Court shall issue a summons, commanding the person(s) against whom the petition is made to appear before the Court on a day and time, and at a place stated in the summons.
- b. The appearance shall be not less than seven nor more than 30 days from the day of issuing the summons.
- c. The summons must include a statement notifying the defendant that failure to appear at the time, date and place set forth in the summons may result in default judgment against him and an award by the Court for the relief requested in the petition.
- d. A copy of the petition shall be attached to the summons, which shall state that the copy is attached and that the original has been filed with the Tribal Court.

**Section 403. Service of Summons**

- a. The entity or individual seeking the eviction shall have the summons, petition, and notice of hearing served on the defendant(s). The summons, petition and notice of hearing shall be served by law enforcement or any person who has reached 18 years of age and is not a party or anticipated to be a witness in the case.
- b. The summons, petition and notice of hearing shall be served as follows:
  - i) By personal service on any tenant; or
  - ii) Leaving a copy at the defendant's last usual place of dwelling with a person of suitable age and discretion residing there.
- c. If service cannot reasonably be completed through personal service, then service may be accomplished by:
  - i) Posting the summons, petition and notice of hearing in a clearly visible place at the dwelling; and
  - ii) Mailing a copy via certified mail to defendant at defendant's last known address.
- d. An affidavit of service attesting that the summons, petition and notice of hearing was served in compliance with the requirements of this section and which method of service was used shall be filed with the Tribal Court.

**Section 404. Answer by Defendant**

- a. The defendant(s) shall be exempt from the requirement to file an answer in the Civil Code of the Tribal Court.
- b. At the hearing specified in the summons, if the defendant(s) appear, he or she may answer the petition and all matters therein, and the Court shall hear and decide the action.
- c. Unless the defendant(s) affirmatively admits an allegation, the defendant(s) shall be presumed to have denied all allegations in the petition.

**Section 405. Request for Extension**

- a. The Court may, in its discretion, for good cause shown, grant a request for an extension of time for the hearing, for no more than 7 days, unless all parties consent to a longer continuance.
- b. Upon motion of the plaintiff, the Tribal Court shall have discretion to require the defendant to post with the Court a reasonable sum for the fair rental value of the premises between the date on which the petition was filed and the date of the continued hearing.

- c. Notwithstanding Section 405(a), the Tribal Court shall not extend the hearing date where the petition is based upon conduct which is alleged to constitute a serious danger to the health, safety, welfare or peace of the public.

**Section 406. Evidence**

Evidence in proceedings under this Ordinance shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records will be received upon their presentation to the Court; provided, however, that the parties may examine the custodian of such records as to their contents.

**Section 407. Burden of Proof**

The burden of proof in all proceedings under this Ordinance shall be a preponderance of the evidence.

**Section 408. Hearing**

- a. If the Tribal Court, sitting without a jury, finds for the plaintiff, the Court shall immediately enter judgment that:
  - i) The plaintiff shall have recovery of the premises;
  - ii) If damages were requested, the Court shall make a finding of the amount of actual damages and order that damages are owed by the lessee or a finding that damages were not established; and
  - iii) All costs, and fees, including reasonable attorney's fees, shall be awarded to the prevailing party.
- b. The Court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of recovery of the premises and order defendant to vacate.
- c. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would cause a severe and substantial hardship upon the defendant. Upon a proper showing by the defendant of severe and substantial hardship, the judge may stay the writ of restitution for a reasonable period, not to exceed 7 calendar days.
- d. If the party against whom the judgment for restitution is rendered or his or her counsel states to the Court an intent to file an appeal, a writ of restitution shall not issue for 72 hours after judgment, unless the complaint is based upon conduct which is alleged to constitute a serious danger to the health, safety, welfare or peace of the public, then the writ shall be issued immediately as otherwise required by this Ordinance, notwithstanding such notice of appeal.



**Section 409. Form of Order**

- e. If the finding of the Tribal Court is in favor of the plaintiff in an eviction action then the order shall be substantially in the following form:

At a hearing on the . . . day of . . . , year. . . , before the Hon. . . . , a judge in and for the Fond du Lac Band of Lake Superior Chippewa, in an action between . . . , Plaintiff, who appeared personally and was represented by. . . and . . . , Defendant, who appeared personally, and was represented by . . . , the Court finds that the facts alleged in the complaint are true, and that the Plaintiff shall recover possession of the premises and the Defendant(s) shall vacate the premises immediately.

**Order**

1. Plaintiff's petition for recovery of possession of the premises is GRANTED/DENIED.
2. A lien on any personal property of Defendant in favor of Plaintiff is GRANTED.
3. Plaintiff's petition for damages in the amount of \$. . . is GRANTED/DENIED.
4. Plaintiff's costs and fees in the amount of \$. . . is GRANTED. Plaintiff shall be entitled to an order allowing for the recovery of Court awarded costs and fees after filing an affidavit attesting to the actual amount of costs and fees.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

- f. If the finding is for the defendant, it shall be sufficient to find that the facts alleged in the petition are not true.

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**CHAPTER 5**  
**EXECUTION OF WRIT AND APPEALS**

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**Section 501. Execution of the Writ**

- a. The eviction order and writ of restitution shall be personally served by an officer of the Tribal Police Department when possible, or other local law enforcement officer, upon the defendant if he or she can be found, or on any adult member of the defendant's family or household occupying the premises, within 72 hours of issuance, demanding that they relinquish possession and leave the property, taking family and all personal property from the premises, within 24 hours.
- b. If the law enforcement officer is unable to locate the defendant or any adult member of the defendant's family or household occupying the premises within 72 hours of issuance of the eviction order and writ of restitution then the officer shall post copies of the eviction order and writ of restitution on the doors of the premises and post a notice that the defendant is demanded to vacate the premises within 24 hours and include in the notice to the defendant the date and time to comply with the 24 hour demand to vacate and include the name of such law enforcement department authorized to post the order, writ and notice.
- c. If the defendant fails to comply with the demand to vacate within 24 hours, the officer shall be authorized to use the force of law, and if necessary, break in and bring any assistance, at the cost of the plaintiff. The officer shall remove the defendant, family, and all individuals from the premises and place the plaintiff in possession.
- d. The plaintiff may remove the defendant's personal property and must prepare an inventory of the property. The inventory shall be signed by the plaintiff, state the address where the property is stored, and be filed with the Tribal Court by the plaintiff.
- e. Plaintiff shall have a lien upon all the goods and personal property found on the premises for the reasonable costs and expenses incurred for removing the defendant and defendant's property. Plaintiff shall use reasonable precautions in storing the possessions of the tenant and other occupants of the property. The tenant may redeem his/her possessions within thirty (30) days of service of the order and writ by paying to the prevailing party the reasonable costs of storage of the tenant's possessions. In the event that an appeal is filed under Section 502, the 30-day waiting period will be stayed during the pendency of the appeal. Upon the expiration of the waiting period the plaintiff may dispose of the possessions within his/her discretion.
- f. If any personal property is seized by any law enforcement officer or any other person after lawful entry of any judgment and said seizure involves a ceremonial item or a basic life-sustaining item required for the general welfare of any person then that item shall be

returned to the owner of such item upon request by the owner, with assistance from the Tribal Police Department, if necessary.

- g. Enforcement of other portions of the Order and Judgment shall be enforced in the manner otherwise provided by law.

**Section 502. Appeals**

- a. A party who feels aggrieved by the judgment may appeal within 10 days. All orders of the Court will remain in effect during the pendency of an appeal under this Ordinance unless a stay of execution is granted by the Tribal Court.
- b. A defendant may apply for a stay of execution during the pendency of an appeal if the following is established:
  - i) Execution of the judgment could result in extreme hardship for the defendant;
  - ii) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; and
  - iii) A bond is posted or monies are paid to the Court, to satisfy the judgment or for payment for the reasonable use and occupancy of the premises during the period of the time following the judgment. No stay may exceed ninety days.

**CERTIFICATION**

We do hereby certify that the foregoing Ordinance #01/17 was duly presented and adopted by Resolution #1048/17 by a vote of 3 for, 0 against, 0 silent, with a quorum of 4 being present at a Special meeting of the Fond du Lac Reservation Business Committee held on February 21, 2017 on the Fond du Lac Reservation, and subsequently amended by Resolution #1242/21 on June 6, 2021; and Resolution #1219/22 on June 29, 2022.



Kevin R. Dupuis, Sr.  
Chairman



Ferdinand Martineau, Jr.  
Secretary/Treasurer