



**BOIS FORTE BAND OF CHIPPEWA
TRIBAL CODE**

**TITLE 21
FORCIBLE ENTRY AND UNLAWFUL DETAINER**

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BOIS FORTE TRIBAL CODE

PREAMBLE

The purpose of the Bois Forte Tribal Code (BFTC) is to, whenever possible, restore Minobimaadiziwin (the Good Path of Life) to all persons it serves by providing a progressive, non-judgmental path to health and forgiveness, in accordance with the community's traditional practices and values. First and foremost, the Bois Forte Tribal Court shall be guided by the seven defining Anishinabe teachings or core values:

1. *Nibwaakaawin* — Wisdom;
2. *Zaagi'idiwin* — Love;
3. *Minaadendamowin* — Respect;
4. *Zoongide'ewin* — Bravery;
5. *Gwayakwaadiziwin* — Honesty;
6. *Dabaadendiziwin* — Humility; and
7. *Debwewin* — Truth.

Accordingly, the Bois Forte Tribal Court's focus in all decisions shall be on the impact it will have seven generations in the future. If necessary, the presiding Judge may consult a community spiritual leader or elder for guidance when endeavoring to adhere to these principles and the Bois Forte Reservation Council may enact a resolution designating appropriate spiritual leaders or elders available for such consultation.

**TITLE 21
FORCIBLE ENTRY AND UNLAWFUL DETAINER**

CHAPTER 1

21.1.1. Forcible Entry.

No person shall make entry into lands or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force but only in a peaceable manner.

21.1.2. Right to Recovery of Possession.

- (a) When any person has made unlawful or forcible entry into lands or tenements, and detains the same, or having peaceably entered, unlawfully detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.
- (b) When any person holds over lands, buildings, houses and premises after a sale thereof on an execution or judgment, or on a foreclosure of a mortgage, and expiration of the time for redemption, or after termination of contract to convey the same, provided that if the person holding such lands or tenements after the sale, foreclosure, or termination is a tenant, the person has received at least one month's written notice of the termination of tenancy as a result of the sale, foreclosure, or termination; or when any person holds over lands, buildings, houses and premises after termination of the time for which they are demised or let to that person or to the persons under whom that person holds possession, or contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or when any tenant at will holds over after the determination or any such estate by notice to quit; in all such cases the person entitled to the premises may recover possession of the property under this section.

21.1.3. Complaint.

The person complaining shall file a complaint with the tribal judge or other official designated by the Tribal Council, describing the premises of which possession is claimed, stating the facts which authorize the recovering and request restitution thereof. The judge shall thereupon issue a summons, commanding the person against whom such complaint is made to appear on a day and at a place in such summons named, which shall not be less than three, nor more than ten days from the day of issuing same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached and that the original has been filed.

21.1.4. Recovery of Possession; Defenses.

- (a) It shall be a defense to an action for recovery of premises following the alleged termination of tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:

- (1) 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 lease or contract, oral or written, or under the laws of the Bois Forte Band of Chippewa Indians;
 - (2) 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) In any proceeding for the restitution of premises upon the ground of nonpayment of rent, it shall be a defense thereto, if the defendant establishes by a preponderance of the evidence that the plaintiff increased the defendant's rent or decreased the services as a penalty in whole or part for any lawful act of the defendant as described in 21.1.4(a)(2), providing that the defendant tender to the Court or to the plaintiff the amount of rent due and payable under his original obligation.
- (c) Nothing contained in Section 21.1.4(a)(1) and (2) and 21.1.4(b) 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.

21.1.5. Prohibition on Restitution.

No restitution shall be made under this Section of any lands, buildings, houses and premises of which the party complained of, or his ancestor, or those under whom he holds the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein.

21.1.6. Answer.

After the return of the summons at the time and place appointed therein, if the defendant appeared, he may answer the complaint and all matters in excuse, justification or avoidance of the allegations thereof, shall be set up in the answer and thereupon, the judge shall hear and determine the action. The proceedings in such action shall be the same as in other civil actions in a Tribal Court, except as in this Chapter, otherwise provided.

21.1.7. Adjournment.

The judge, using discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in Section 21.1.2(b), except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney shall make oath that he cannot safely proceed to trial for want of a material witness, naming him and that he has made due exertion to obtain the witness and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial or his deposition and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency

of the action and all costs and damages consequent upon such adjournment, the judge shall adjourn the trial for such time as may appear necessary, not exceeding three months.

21.1.8. Entry of Judgment.

- (a) If upon the trial, the judge or jury finds for the plaintiff, the judge shall immediately thereupon, enter judgment that the plaintiff have restitution of the premises and tax the cost for him. The judge shall issue execution in favor of the plaintiff for such costs and also immediately issue a writ of restitution. No stay of the writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper showing by the defendant of substantial hardship, the judge may stay the writ of restitution for a reasonable period not to exceed seven days, except that no stay of the writ of restitution shall extend later than three days prior to the date the rent is next due. If the judge or jury shall find for the defendant, he shall enter judgment for the defendant, tax the costs against the plaintiff and issue execution therefor.
- (b) If the party against whom judgment for restitution is rendered or his attorney state to the judge that he intends to take an appeal, a writ of restitution shall not issue for 72 hours after judgment. In an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof, by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on appeal the judgment of restitution be reversed and a new trial ordered.

21.1.9. Appeal.

If either party feels aggrieved by the judgment he may appeal within ten days except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the Court may make therein and pay all rents and other damages justly accruing to the part excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof, or termination thereof, by notice to quit, if the plaintiff give bond as provided in Section 21.1.8(b), a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

21.1.10. Form of Court Finding.

The finding of the Court in favor of the plaintiff in any action under this Section shall be substantially in the following form:

At a Court held at _____, on the _____ day of _____, 20____, before _____, Judge in an action between _____, Plaintiff, and _____, Defendant, the Court finds that the facts alleged in the Complaint are true, and the said Plaintiff

that of the goods and chattel of the said _____ within the Bois Forte Reservation, you cause to be levied, and the same being disposed of according to law, to be paid to the said _____ the sum of \$_____, being the costs taxed against the said _____ for the said _____, at the Court aforesaid, together with \$1.00 for this Writ; and thereof, together with this Writ, make due return within thirty (30) days from the date hereof, according to law.

Dated at _____, this _____ day of _____, 20____.

Judge, Bois Forte Band
of Chippewa Indians

21.1.13. Execution of Writ of Restitution.

The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found on the Reservation or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same and that the defendant remove himself, his family and all of his personal property from such premises within 24 hours after such demand. If defendant fails to comply with the demand, then the officer shall take with him, the force of the Reservation and whatever assistance may be necessary, at the cost of the complainant. remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof.

In case defendant cannot be found on the Reservation and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of the premises, breaking in if necessary, and remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon all of the goods upon the premises for the reasonable costs and expenses incurred for removing the personal property and for the proper caring and storing the same and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from the premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of non-payment for 60 days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale.

CHAPTER 2

21.2.1. Unlawful Removable or Exclusion; Recovery of Possession.

Any tenant who is unlawfully removed or excluded from lands or tenements which are demised or let to him may recover possession of the premises in the manner described in this Section and continued in Chapters 3, 4, and 5 of this Ordinance.

21.2.2. Verified Petition.

- (a) The tenant shall present a verified petition to the Tribal Court in which the premises are located, which petition shall:
 - (1) Describe the premises of which possession is claimed and the person or party alleged to be responsible for the unlawful removal;
 - (2) Specifically state the facts and grounds that demonstrate that the removal or exclusion was unlawful, including a statement that no judgment and writ of restitution have been issued under Section 21.1.8 in favor of the owner and against petitioner as to the premises and executed in accordance with Section 21.1.15.
- (b) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of petitioner or his counsel or agent that the removal or exclusion was unlawful, the Court shall immediately order that petitioner have possession of the premises.

21.2.3. Security.

The petitioner shall furnish monetary or other security if any as the Court deems appropriate under the circumstances for payment of all costs and damages the defendant may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of any security the Court shall consider petitioner's ability to afford monetary security.

21.2.4. Possession of the Premises.

The Court shall direct the order to any law enforcement officer of the Band and the officer shall execute the order immediately by making a person in charge of the premises, for possession of premises. If the defendant fails to comply with the demand, the officer shall take with him whatever assistance may be necessary and immediately place the petitioner in possession of the premises. If the defendant or his agent or other person in control of the premises cannot be found and if there is no person in charge of the premises detained so that no demand can be made, the officer shall immediately enter into possession of the premises and place the petitioner in possession of the premises. The officer shall also serve the order and verified petition or affidavit without delay upon the defendant or upon his agent, in the same manner as a summons is required to be served in a civil action.

CHAPTER 3

21.3.1. Unlawful Removal or Exclusion: Procedures for Recovery of Possession.

The defendant by written motion and notice served by mail or personally upon petitioner or his attorney at least two days prior to the hearing date on the motion may obtain dissolution or modification of the order for possession, issued pursuant to Section 21.3.1 unless the petitioner

proves the facts and grounds upon which the writ is issued. A defendant bringing a motion pursuant to this Section 21.3.1 may recover possession of the premises only in accordance with Sections 21.1.2(b) to 21.1.13 or otherwise provided by law. Upon the dissolution of the order, the Court shall tax costs to petitioner, subject to the provisions of Section 21.1.7 and may allow damages and reasonable attorney's fees for the wrongful granting of the order for possession. If the order is affirmed the Court shall tax costs against defendant and may allow petitioner reasonable attorney's fees.

CHAPTER 4

21.4.1. Appeal of Order for Recovery.

An order issued under Section 21.2.2(b) or affirmed, modified, or dissolved under Section 21.3.1 is a final order for purposes of appeal, and either party aggrieved by the order may appeal within ten days after the entry of the order. If the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of the appeal, to abide by the order the Court may make, and to pay all rent and other damages justly accruing to the party excluded from possession during the pendency of the appeal.

CHAPTER 5

21.5.1. Public Policy of the Band.

Any provisions, whether oral or written, of any lease or other agreement whereby any provision of Chapters 1 through 5 is waived by a tenant is contrary to public policy and void.