

Yurok Tribal Code, Land Management and Property

YUROK TRIBE UNLAWFUL DETAINER ORDINANCE

Pursuant to its authority under Article IV, Section 5 of the Yurok Constitution, as certified on November 24, 1993, the Yurok Tribal Council hereby enacts the following ordinance establishing a summary Tribal Court procedure for obtaining possession of Yurok lands:

GENERAL PROVISIONS

SECTION 4001. Short Title

This ordinance shall be referred to as the “Yurok Unlawful Detainer Ordinance.”

SECTION 4002. Findings

The Tribal Council finds and declares that:

(a) The Tribe, YIHA, and Tribal members lease Yurok lands and otherwise allow individuals temporary possession of such land.

(b) The Tribe does not authorize self-help methods to recover possession of Yurok Lands and requires a procedure for recovering immediate possession of such land when an individual’s permission to use such land has been terminated or the individual otherwise lacks the legal authority to possess or remain in possession thereof.

SECTION 4003. Purpose

The Tribe adopts this ordinance in order to confirm Yurok Tribal Court’s concurrent authority to adjudicate the right to possession of Yurok Lands and to provide a summary procedure for recovering possession thereof.

SECTION 4004. Scope

This ordinance shall apply to the Tribe, YIHA, any Tribal member, and any person who enters a consensual relationship with the Tribe, YIHA, or a Tribal member or whose conduct threatens or directly affects the political integrity, economic security, or the health or welfare of the Tribe or Tribal members and whose activity on Yurok lands is the subject of this ordinance.

YIHA maintains authority to seek remedies for activities that are the subject of this ordinance in another tribal court pursuant to applicable law or a memorandum of agreement between YIHA and another tribe or tribally designated housing entity with the approval of the Tribal Council. YIHA shall not oppose any motion to change venue or otherwise transfer the action to Yurok Tribal Court.

SECTION 4005. Sovereign Immunity Preserved

Except as judicial review is authorized in this ordinance, and in accordance with the Yurok Tribe’s Supreme Ordinance, nothing in this ordinance shall be interpreted as a waiver of the Tribe’s or YIHA’s sovereign immunity from unconsented lawsuit, or as authorization for a claim for monetary damages against the Tribe or YIHA.

SECTION 4006. Severability

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

SECTION 4007. Effective Date

This ordinance shall take effect immediately after its adoption by Council.

SECTION 4008. Repeal of Conflicting Ordinance Provisions

All prior ordinance provisions previously enacted by the Tribal Council and inconsistent with the provisions of this ordinance are hereby repealed. If the provisions of this ordinance conflict with the provisions of any other previously enacted ordinance, the provisions of this ordinance shall control.

SECTION 4009. Definitions

- (a) *Council* or *Tribal Council* means the Yurok Tribal Council.
- (b) *County* means the California county where a premises at issue is located.
- (c) *Forcible Detainer* means the wrongful retention or possession of land or real property by one originally in lawful possession, often with threats or actual use of violence, as further described in Section 4102.
- (d) *Forcible Entry* means the act of violently taking and keeping possession of land or real property without lawful authority as further described in Section 4101.
- (e) *House* means a home, dwelling, or residence, including a mobilehome.
- (f) *Junior Lienholder* means a person, other than a legal owner, holding a security interest in a manufactured home, mobilehome, commercial coach, floating home, or truck camper perfected by filing the appropriate documents with the State of California.
- (g) *Landlord* means a person who rents or leases real property to another and may include the Tribe, YIHA or a Tribal member.
- (h) *Lease* means any permit or other written or oral agreement regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, mobilehome, or premises, including a lease-to-purchase agreement.
- (i) *Legal Owner* means a person holding a security interest in a manufactured home, mobilehome, commercial coach, floating home, or truck camper perfected by filing the appropriate documents with the State of California.
- (j) *Mobilehome* means a structure designed for human habitation and for being moved on a street or highway under permit and includes a manufactured home. Mobilehome does not include a commercial coach or a recreational vehicle that is self-propelled, truck-mounted, or permanently towable on state highways without a permit, unless the recreational vehicle occupies a mobilehome site in a park pursuant to a lease of at least one month or has continuously occupied the mobilehome site for at least 9 months.
- (k) *Occupant* means a person who has lawful possession of, possessory rights in, or control over certain premises.
- (l) *Person* means any individual, partnership, corporation, government, organization, or any group acting in combination as a unit. Person does not mean the Tribe or YIHA.
- (m) *Possession* means possession by a tenant or subtenant.

(n) *Premises* means a house or building together with any portion of Yurok lands on which the house or building is located.

(o) *Reservation* or *Yurok Reservation* means all lands within the exterior boundaries of the Yurok Reservation.

(p) *Subtenant* means a person who has a lease or agreement with a tenant to hold, occupy, or possess a premises and who is not a part of a lease or other agreement with the landlord.

(q) *Tenant* means a person who has a lease or agreement with a landlord to hold, occupy, or possess a premises.

(r) *Trust Lands* means all land the fee title to which is owned by the United States of America and held in trust for the benefit of the Tribe or a Tribal member.

(s) *Tribal Council* or *Council* means the Yurok Tribal Council, the governing body of the Tribe pursuant to Article IV, Section 5 of the Yurok Constitution, or its duly authorized representative.

(t) *Tribal Court* means the Yurok Tribal Court, which was established by the Judicial Branch Ordinance and maintains jurisdiction to hear violations of this ordinance.

(u) *Tribal Member* means a duly enrolled member of the Yurok Tribe listed on the Yurok Tribal Membership Roll.

(v) *Tribe* means the Yurok Tribe, including any Tribal agency, subdivision, instrumentality, officer, and employee, acting at the direction of Council.

(w) *Unlawful Detainer* means the act of retaining possession of real property without legal right or justification by one whose original entry was lawful as further described in section 4104.

(x) *YIHA* means the Tribally designated housing authority for the Tribe pursuant to the Native American Housing and Self-Determination Act, 25 U.S.C. § 4103(21).

(y) *Yurok Lands* means all lands within the Reservation, Yurok trust lands, and lands owned by the Tribe, YIHA or a Tribal member.

CHAPTER 1. PROHIBITED CONDUCT

SECTION 4101. Forcible Entry Defined. A person commits a forcible entry who:

(a) breaks open doors, windows, or other parts of a house on a premises or by any kind of violence or circumstance of terror enters upon or onto any premises; or

(b) after peaceable entry upon a premises turns out or keeps out by force, threats, or menacing conduct, the property owner, occupant, or landlord.

SECTION 4102. Forcible Detainer Defined. A person commits a forcible detainer who:

(a) by force or by menace and threats of violence, unlawfully holds and maintains possession of any premises whether the person was originally in lawful possession or not; or

(b) during the absence of the occupant, unlawfully enters upon said premises and who, after demand is made for the surrender thereof, refuses to surrender the same to such former occupant, the owner, or the landlord.

SECTION 4103. Forcible Entry and Detainer Prohibited. Forcible entry and detainer are hereby prohibited. Any person committing forcible entry or detainer shall be evicted and removed from the premises by an action in Tribal Court in accordance with the procedures set forth in this ordinance for unlawful detainer.

SECTION 4104. Unlawful Detainer Defined. A tenant commits unlawful detainer if the conditions of any subsection (a) – (e) are satisfied:

(a) The tenant continues to possess all or part of the premises, directly or by subtenant, after the expiration of the term for which the premises is leased to the tenant, including a month-to-month tenancy terminated by notice of non-renewal. In the absence of a written lease specifying the term of the tenancy, the tenancy term is conclusively presumed to coincide with the payment of rent, but the term shall not be less than one month. Except as provided in section 4203, notices to terminate a month-to-month tenancy must be given not less than 30 days before the termination date.

(b) The tenant continues in possession, directly or by subtenant, without lawful authority, after default in the payment of the rent required by the lease or rental agreement, and five days have passed since the service of a written notice. The notice must demand payment or possession, and shall state the amount which is due. The notice shall declare a forfeiture of the lease, if the landlord seeks such forfeiture. The notice must be served on the tenant and any subtenant in actual occupation of the premises. Such notice may be served at any time within six months after the rent becomes due.

(c) The tenant continues in possession, directly or by subtenant, after neglecting or failing to perform other conditions or covenants of the lease under which the premises is held, including any covenant not to assign or sublet, and, in the case of a curable breach of the lease, the tenant has had a reasonable amount of time to satisfy the conditions or covenants, not to exceed 15 days. The notice shall require the performance of such conditions or covenants. The notice shall declare a forfeiture of the lease, if the landlord seeks such forfeiture. The notice must be served on the tenant and any subtenant in actual occupation of the premises. If the conditions or covenants of the lease are satisfied within a reasonable time not to exceed 15 days, the lease is saved from forfeiture.

(d) The tenant, directly or by subtenant:

- (1) assigns, sublets, or commits waste upon the premises contrary to the conditions or covenants of the tenant's lease; or
- (2) maintains, commits, or permits the maintenance or commission of a nuisance upon the premises; or
- (3) uses such premises for an unlawful purpose.

For purposes of this subsection, a person who illegally manufactures, possesses, or sells a controlled substance upon the premises, or uses the premises to further such purposes, shall be deemed to have committed a nuisance upon the premises. However, a nuisance is not limited to such an act. The commission by the tenant or subtenant of any of the forgoing acts listed in this subsection thereby terminates the lease, and the landlord shall upon service of a five day notice to quit upon the tenant be entitled to compensation for injury or loss and immediate possession of such premises.

(e) The tenant gives written notice of the tenant's intent to terminate occupation of the premises or makes a written offer to surrender, which is accepted in writing by the landlord, but fails to deliver possession at the time specified in such written notice or offer.

SECTION 4105. Unlawful Detainer Prohibited. Unlawful detainer is hereby prohibited. Any person committing unlawful detainer shall be evicted and removed from the premises by an action in Tribal Court in accordance with the procedures set forth in this ordinance for unlawful detainer. A landlord may initiate proceedings for unlawful detainer to take possession of premises let to a subtenant or held by a servant, employee, agent or licensee in case of that person's unlawful detainer of the premises sublet or held by the person. After the first six months of a month-to-month tenancy, a landlord can only terminate a tenancy for cause.

CHAPTER 2. UNLAWFUL DETAINER PROCEEDING

SECTION 4201. Service of Notice Generally. The notices required by this ordinance may be served by either:

- (a) delivering a copy to the tenant or subtenant personally; or
- (b) if the tenant or subtenant is absent from that person's residence or usual place of business, by leaving a copy with a competent person of over 18 years of age at either place and sending a copy by registered mail addressed to the tenant's place of residence; or
- (c) if a competent person over 18 years of age cannot be found at such places, then by affixing a copy in a conspicuous place on the premises, delivering a copy to a person there residing, if such person can be found, and also sending a copy by registered mail addressed to the tenant or subtenant at the premises.

SECTION 4202. Service of Notice for Forcible Detainer and Enter Not Required. No notice is required to a person committing forcible entry or detainer.

SECTION 4203. Service of Notice for Mobilehomes. A copy of every notice permitted or required by this ordinance shall be sent by registered mail to the legal owner, each junior lienholder and the registered owner of the mobilehome, if other than the tenant or subtenant, at the same time that it is served on the tenant or subtenant. Notice to terminate a month-to-month tenancy must be given not less than 60 days before the termination date. This section does not apply to a space or lot leased to a tenant for a mobilehome owned by the Tribe or YIHA.

SECTION 4204. Necessary Party Tenants; Joinder; Judgment; Subtenants after Notice to Tenant; Persons Bound by Judgment. Except in the case of a mobilehome, only the tenant of the premises and the subtenant, if there is one, in actual occupation of the premises when the complaint is filed need be made a defendant in the proceeding. If any of the parties served or appearing in the proceeding have committed forcible detainer or unlawful detainer, judgment shall be rendered against the tenant or subtenant. If a person becomes a subtenant of the premises in controversy after service of notice upon the tenant, the fact that such notice was not served on each subtenant shall constitute no defense to the action. Any person who enters the premises under color of the tenant's authority after commencement of the suit shall be bound by the judgment, the same as if

they had been made a party to the action. In the case of a mobilehome, the legal and registered owners and any junior lienholder may but need not be named as defendants.

SECTION 4205. Complaint; Summons. The complaint shall set forth the facts establishing a violation of this ordinance entitling the plaintiff to relief and the remedies sought, including a specific monetary amount for damages, if any. In the case of a complaint alleging forcible entry or detainer in which the defendant has not been served notice, the complaint must include a written declaration signed by the plaintiff. If the unlawful detainer is based upon a default in rent payment, the complaint must state the default amount. Upon filing the complaint, a summons shall be issued by the Tribal Court.

SECTION 4206. Immediate Possession by Writ. Upon filing the complaint, the plaintiff may, upon motion, be granted immediate possession of the premises by a writ of possession issued by the Tribal Court. Written notice of the hearing on the motion shall be served on the defendant by the plaintiff in accordance with Tribal Court procedure, and shall inform the defendant that the defendant may file affidavits on the defendant's behalf with the Tribal Court and may appear and present testimony on the defendant's behalf, and that, if the defendant fails to appear, the plaintiff may apply to the Tribal Court for a writ of possession. Such notice shall also explain that a writ of possession means the defendant must leave the premises by a certain time period or law enforcement will be authorized to forcibly remove the defendant. After a hearing on the motion, from the verified complaint and from any affidavits filed or oral testimony given by or on behalf of the parties, Tribal Court may issue a writ for possession directed to appropriate law enforcement upon determining that the defendant has violated this ordinance and resides off of the Reservation, has departed from the Reservation, cannot after due diligence be found on the Reservation, or has concealed oneself to avoid the service of summons.

SECTION 4207. Undertaking; Limitation on Defendant's Damage Action. Tribal Court may require a plaintiff, other than the Tribe and YIHA, to file an undertaking with good and sufficient sureties in a sum to be fixed and determined by the Tribal Court. If the plaintiff fails to recover judgment against the defendant for the possession of the premises or if the suit is dismissed, Tribal Court may order the plaintiff, other than the Tribe and YIHA, to pay the defendant such damages, not to exceed the amount fixed in the undertaking, as may be sustained by the defendant by reason of such dispossession under the writ of possession. An action to recover such damages shall be commenced by the defendant in Tribal Court within 6 months from the date of entry of dismissal or of final judgment in favor of the defendant.

SECTION 4208. Summons; Form; Issuance; Service and Return. The summons shall be issued, served, and returned in the same manner as a summons in a civil action specified under Tribal Court procedure. The summons shall include notice that an answer or other response to the complaint must be filed within 5 business days of service.

SECTION 4209. Pleading; Time Allowed. In any action under this ordinance, the defendant shall have 5 business days after the summons is served to answer the complaint or an amended complaint, amend the answer or otherwise appropriately respond. The Tribal Court may extend defendant's time to plead for good cause up to an additional 5 business days.

SECTION 4210. Motion to Quash Service or Stay or Dismiss Action; Time Allowed.

Notwithstanding any other provision of law to the contrary, if the defendant in any action under this ordinance files a notice of motion to challenge service of the complaint, stay proceedings, or dismiss the complaint pursuant to Tribal Court procedure, the time for filing the motion shall be the same as for filing an answer. Such notice of motion shall automatically extend the defendant's time to plead to five business days after service upon the defendant of written notice of an order denying the defendant's motion.

SECTION 4211. Hearing on a Motion. Tribal Court shall schedule any hearing on a motion under section 4209 at the next calendared court date after the motion is filed, unless such date is within 3 days of filing of the motion.

SECTION 4212. Extension of Time; Consent of Adverse Party. An extension of time is allowed with the consent of the adverse party. Tribal Court for good cause may extend a party's time to plead or respond up to an additional 15 business days.

CHAPTER 3. TRIAL AND JUDGMENT

SECTION 4301. Applicable Rules of Practice. Any proceedings before the Tribal Court under this ordinance not specified herein shall be governed by generally applicable Tribal Court procedures.

SECTION 4302. Priority of Actions. In all proceeding brought before the Tribal Court to recover the possession of trust lands or Yurok lands pursuant to the provisions of this ordinance, the Tribal Court shall give such actions precedence over all other non-urgent civil actions in setting the hearing or trial. The Tribal Court shall make all efforts to promptly hear and determine such actions.

SECTION 4303. Entry of Default; Application for Relief. If a party fails to file a pleading or response within the required time or to appear for trial or a hearing, the adverse party may request the Tribal Court to enter that party's default. After default has been entered against a party, the prevailing party may apply to the Court for available remedies. Evidence in support may be submitted by affidavit or through testimony at a hearing conducted by the Court.

SECTION 4304. Trials; Prima Facie Case. No party shall have the right to a trial by jury under this ordinance. In a trial for any forcible entry or detainer, plaintiff shall only be required to show, in addition to the forcible entry or detainer complained of, that plaintiff was peaceably in actual possession of the premises at the time of the forcible entry or was entitled to possession at the time of the forcible detainer.

SECTION 4305. Defenses. Tribal Court shall grant remedies provided within this ordinance unless clear and convincing evidence is presented demonstrating:

(a) The premises is uninhabitable or presents a condition constituting constructive eviction by the plaintiff or its agent, that defendant provided reasonable and proper notice to the plaintiff of the condition, and that plaintiff failed to timely remedy any serious hazard to human health and safety. Infringement upon an aesthetic use of the property, whether adversely affecting the quiet use and enjoyment of the property by the defendant, shall not constitute a serious hazard.

(b) There are monies due and owing to the defendant because defendant has been required to make repairs on conditions over which the plaintiff is responsible and plaintiff after reasonable notice has failed or refused to make the repairs. Sums owing to the defendant may be a complete or partial defense to a complaint filed under this ordinance, but only to the extent that such sums set off monies validly owed to the defendant pursuant to the lease or other housing agreement. Eviction may be ordered after offset if defendant fails or refuses to comply with the terms of the lease.

(c) The defendant or lawful members of the household have been injured due to improper conduct of plaintiff to the degree that justice is served by modification or denial of remedies, including but not limited to the equitable defenses of estoppel, laches, fraud, misrepresentation and breach of material obligations to public health and safety to a degree that offends community standards of peace and justice.

(d) Serious and material breach of applicable federal and Tribal laws by the plaintiff such that a grant of remedy would be adverse to justice and against public policy.

(e) The cause for eviction is apparently the race, color, national origin, religion, sex, familial status or handicap of the defendant or lawful members of the household.

(f) Other material facts presented by the defendant that clearly demonstrates that eviction is unjust pursuant to Yurok custom or beliefs or contrary to public interest.

(g) In the case of a proceeding for forcible entry or detainer, defendant, or those whose interests in such premises defendant claims, was in lawful and quiet possession of the premises and that defendant's interest in the premises was not then ended or determined or did not violate any applicable provisions of Tribal or federal law.

SECTION 4306. Final Judgment. The decision of the Tribal Court Judge shall be final and non-appealable. Any party with an adverse judgment under this ordinance may apply to the Tribal Court for reconsideration pursuant to Tribal Court procedure.

CHAPTER 4. REMEDIES AND ENFORCEMENT

SECTION 4401. Restitution of Premises; Forfeiture of Lease. If Tribal Court rules for the plaintiff, judgment shall be entered against the defendant or defendants requiring compensation for injury or loss or returning possession of the premises. If the notice required by section 4104 declared a forfeiture of the lease, the judgment shall also declare a forfeiture of the lease. If no notice is required by section 4104, the judgment shall declare a forfeiture of the lease.

SECTION 4402. Damages.

(a) Tribal Court shall determine and include in the judgment damages to which the plaintiff is entitled which were caused by or recoverable on account of any forcible entry or detainer or unlawful detainer proved at trial or otherwise. If Tribal Court determines that defendant committed forcible entry or detainer or unlawful detainer with malice, Tribal Court shall determine and award damages and rent found due and may award punitive damages in an amount not to exceed three times the amount of damages and rent due.

(b) Tribal Court shall determine and include in the judgment damages and any rent due at the time of judgment, including prejudgment interest, if any, at the prime rate then prevailing but not less than 5% simple annual interest. Tribal Court may award the prevailing party court costs, including reasonable attorneys' fees and expenses if applicable law allows or the lease contains a provision awarding attorneys' fees to the prevailing party. Costs shall also include the cost of title reports or investigations required of the prevailing party to comply with the requirements of this ordinance.

(c) Nothing in this section shall constitute authorization for the Tribal Court to issue or enforce a judgment for monetary damages against the Tribe or YIHA.

SECTION 4403. Enforcement; Disposition of Personal Property.

(a) Any judgment entered pursuant to this section may be certified by the Court Clerk and submitted to the County Superior Court for entry as a state court judgment. Tribal Court shall provide any information reasonably requested to aid in entering that judgment in County Superior Court.

(b) If the premises are leased as site for a mobilehome and the mobilehome is not owned by the plaintiff, defendant shall have 60 days after entry of judgment to remove the mobilehome from the premises before a writ of possession may be issued on the judgment. If the mobilehome remains on the premises after that time period has expired, a writ of possession shall issue and may be enforced. The mobilehome and its contents shall be considered personal property and may be disposed of as in the case of any other personal property remaining on the premises, after possession of the real property has been restored to the plaintiff in accordance with a tribal abandoned property ordinance, or, in the absence of such an ordinance, California Civil Code Sections 1951.3 and 1981-1991.

(c) A plaintiff having obtained a writ of possession shall be entitled to have the premises restored by appropriate law enforcement. Promptly upon payment of any reasonable costs of service, the enforcing officer shall serve notice of the writ of possession. The writ of possession shall include a statement that the personal property remaining on the premises at the time possession is restored to the plaintiff may be claimed or disposed of in accordance with a tribal abandoned property ordinance, or, in the absence of such an ordinance, California Civil Code Sections 1951.3 and 1981-1991.

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

THE FOREGOING ORDINANCE, ENTITLED THE YUOK UNLAWFUL DETAINER ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON JULY 12, 2013, AT WHICH A QUORUM WAS PRESENT, AND THIS ORDINANCE WAS ADOPTED BY CONSENSUS IN ACCORDANCE WITH TRIBAL TRADITION AND ARTICLE V, SECTION 6 AND ARTICLE IV, SECTION 5(j) OF THE CONSTITUTION OF THE YUOK TRIBE.

DATED THIS 12TH DAY OF JULY 2013



Thomas P. O'Rourke, Sr., Chairperson 7/15/13
Yurok Tribal Council

ATTEST:



Bonnie Green, Secretary
Yurok Tribal Council