

TITLE IV

JUDGMENT AND EXECUTION

CHAPTER 4.1

General Provisions

- 4.100 Judgment. In all civil cases, judgment shall consist of an order of the court and Notice of Entry of Judgment. Notice shall be given to the Defendant within ten (10) days of entry of judgment.
- 4.101 Stay of execution, posting of bond.
- A. The Judge of the Tribal Court shall grant a stay of execution of any final judgment, order, or writ of the Tribal Court pending an appeal, provided the appellant posts a bond with the Clerk of the Tribal Court and a cash fee to cover costs and disbursements. The amount of the bond shall be set by the Judge of the Tribal Court, but in no case shall it exceed:
1. In a criminal case, the amount of the fine, including costs imposed, plus the cash equivalent of the jail sentence imposed, if any, calculated at ten dollars (\$10.00) per day.
 2. In a civil case, the equivalent of the amount of the judgment, including costs, or the value of the property, including costs, if the judgment is for the return of property, either real or personal.
- B. The Clerk of the Tribal Court shall, within five (5) days of the posting of the bond, notify the appellee by registered letter of the stay of execution pending appeal. If a request for an appeal is not filed with the Clerk of the Tribal Court within twenty-one (21) days of the date of judgment, the bond and fees shall be forfeited and executed according to the original decree. The Clerk of the Tribal Court shall enter this fact on the docket and notify the Judge of the Tribal Court of such default.
- 4.102 Full faith and credit. Full faith and credit shall be given to public acts, records and judicial proceedings of all other Reservations, and all Federal and State jurisdictions that have enacted a full faith and credit provision in their constitution or applicable laws which, in the estimation of the Judge, would operate to extend full faith and credit to judgments and orders of the Saginaw Chippewa Tribal Court.

- 4.103 Lawful debt in proceedings to distribute decedents' estates. A judgment shall be considered a lawful debt in all proceedings held by the United States Department of the Interior or by the Saginaw Chippewa Tribal Court to distribute decedents' estates provided, however, that nothing herein shall in any way defect the inherent powers of tribunals of the Department of the Interior of the United States of America in performing its statutory duties. The remedy of one possessing a judgment against a deceased person is more fully set forth within 4.105 of this Code.
- 4.104 Payment from individual Indian moneys. Whenever the Court of the Saginaw Chippewa Tribe, by writ of execution, shall have ordered payment of money damages to a party, and the judgment debtor refuses to make such payment within the time set for payment by the Court, and when the judgment debtor has funds to his credit, in excess of those specified in Section 4.111 with the United States Government, Bureau of Indian Affairs, sufficient in amount to pay all or part of such judgment, the Agency Superintendent upon receipt of the writ of execution shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the secretary shall so direct the disbursing agent shall pay over to the injured party the amount of the judgment from the account of the judgment debtor.
- 4.105 Writs of execution: generally. The party in whose favor a money judgment is given by the Saginaw Chippewa Tribal Court may at any time within six (6) years after entry thereof have a writ of execution issued for its enforcement. Prior to the expiration of the six (6) year period, the judgment creditor, upon application may renew the judgment for an additional period of six (6) years. No execution, however, shall issue after the death of the judgment creditor's remedy shall be against the decedent's estate in the form of a creditor's claim. A judgment creditor may have as many writs of execution as are necessary to effect collection of the entire amount of the judgment.
- 4.106 Issuance: contents. A writ of execution shall be issued by the Clerk of the Saginaw Chippewa Tribal Court and addressed to a Tribal or Bureau of Indian Affairs policeman and shall direct him to seize and deliver to the Clerk of Court sufficient, unrestricted and non-exempt personal property of the debtor to pay the judgment and costs of sale. The writ of execution shall specify the particular property to be seized and the time and place of docketing.
- 4.107 Return. Within thirty (30) days of his receipt of the writ of execution, the police officer shall return the same to the Clerk of the Saginaw Chippewa Tribal Court with the property he has seized, or with a written explanation of why he cannot deliver such property.

4.108 Appraisal of property seized. Immediately upon receipt of the property seized under a writ of execution, the Clerk of the Tribal Court shall cause it to be appraised item by item by three (3) disinterested parties, one to be selected by the Plaintiff, one by the Defendant and one by the Clerk of Court, all of whom shall be placed under oath by the Clerk to make a just and true appraisal. If either Plaintiff or Defendant or both fail to select an appraiser, within seven (7) days of notification of their right to do so, the Clerk shall make their selection. If a majority of the appraisers cannot agree on an appraisal of any item or seized property within forty-eight (48) hours of their appointment, the Clerk may appoint new appraisers.

4.109 Notice and public sale of property seized; proceeds, bill of sale. Within seven (7) days after appraisal of property seized under a writ of execution, the Clerk of Court shall post at the place designated by the tribal Council for the posting or legal notices and at least two public places within the Saginaw Chippewa Tribal jurisdiction, notices of sale containing a full description of the property to be sold, together with the appraised value of each item and the time and place of sale.

The sale shall be held not less than ten nor more than twenty (20) days after the posting of notice as provided above. the sale shall be conducted between the hours of 9:00 a.m. and 4:00 p.m. at the Saginaw Chippewa Tribal Center, or such other public place as may be designated by the Clerk.

The Clerk of the Court shall sell the property publicly to the highest bidder for cash, but for not less than the appraised price. He may sell it by item or bulk, in his discretion.

The Clerk shall pay into the Court the expenses of sale and any unpaid court costs of either party from the proceeds of sale, and shall pay the balance up to the full amount of the judgment less unpaid court costs to the Plaintiff. Any excess shall be paid to the judgment debtor.

The Clerk shall deliver a bill of sale or deed, whichever shall be appropriate, to the buyer upon request.

4.110 Private sale of property seized; delivery of unsold property to Plaintiff or return to Defendant.

A. If the Clerk shall be unable to sell the property seized under a writ of execution for at least its appraised value, he may hold it for fourteen (14) days after the date of the attempted sale, during which time he shall sell it to the first person offering him the appraised value in cash.

- B. The Clerk, at any time within the fourteen (14) day period following an unsuccessful public sale, upon request of the Plaintiff and payment of all costs, may deliver the property to him and credit the appraised value thereof against the judgment debt. The judgment creditor shall have a judgment against the judgment debtor for costs as they are allowed under Section 4.502. If the appraised value is greater than the debt, he shall not deliver the property to the Plaintiff until the Plaintiff pays the judgment debtor in cash for such excess value.
- C. If at the end of fourteen (14) days the property remains unsold and unclaimed by the Plaintiff, the clerk shall return it to the judgment debtor.

4.111 Property subject to execution and property exempt from execution.

- A. Except as provided in subsection (2) of this Section, the following property shall be subject to execution:
 - 1. All personal property to which the judgment debtor holds title except:
 - a. Tools utilized by the judgment debtor in his trade or business up to a value of Five Hundred (\$500.00) Dollars.
 - b. Home furnishings up to a value of One Thousand (\$1,000.00) Dollars.
 - c. Clothing and personal effects as authorized by the Court.
 - d. Additional personal property in an amount of One Hundred (\$100.00) Dollars for each dependent residing within the judgment debtor's household. for the purposes of this paragraph a "dependent" is defined as a person meeting the qualifications for that term as set forth in the U.S. Internal Revenue Code.
 - e. Such other personal property as is exempt by Federal law.
 - 2. Any personal property, legal title to which is in the Defendant or upon which the defendant holds a lawful lien, provided the writ of execution specified the personal property.
 - 3. Any real estate, or interest therein, to which the judgment debtor holds, title, except where the same is exempted by law.

- B. The property declared exempt by subsection (1) of this section is not exempt from execution or sale of an action brought or judgment recovered for the purchase price of the property so long as ownership of the property remains in the possession of the original purchaser, unless transfer of ownership is made for the purpose of defrauding the judgment creditor with the knowledge of the transferee of such purpose.

4.112 Execution prior to judgment; perishable goods.

- A. No execution shall issue prior to judgment except upon good cause shown. Any creditor seeking such remedy shall strictly comply with the following requirements:
 - 1. Suit shall have been commenced in the Saginaw Chippewa Tribal Court claiming a sum certain which is readily ascertainable.
 - 2. The creditor shall petition the Court for a writ of execution before judgment which petition shall, with specificity, set forth good cause why execution is necessary and appropriate prior to judgment as well as the property to be suggested upon, such petition shall be noticed for hearing by the creditor and shall, together with a copy of such notice, be personally served upon the Defendant, or his representative, or upon the person in whose custody the property is retained, not less than twenty-four (24) hours prior to the time set for hearing.
 - 3. At the time set for hearing on the Petition the Court may issue a writ of execution prior to judgment if it shall find all the following:
 - a. That the creditor is in compliance with the procedural requirements of this Section.
 - b. That the creditor has shown, by clear and convincing evidence, that there is good cause for execution prior to judgment and that the same is necessary and appropriate under the circumstances.
- C. Prior to the issuance of such a writ the creditor shall furnish the Court with cash bond in twice the amount of the value of the goods to be seized. Such bond shall be subject to forfeit in the event that the action is not expeditiously prosecuted to completion by the Plaintiff-Creditor.
- D. Any property seized hereunder shall be held in the custody of the court

until such time as the action shall be completed. Should judgment be for the creditor the court shall proceed in conformity with the provisions of Section 4.108 et.seq. of this Chapter and shall discharge the bond of the creditor. Should judgment be for the debtor the Court shall return the property seized thereto and shall discharge the creditor from his bond, retaining therefrom, however, any court costs assessed against the creditor as well as reasonable storage charges.

4.113 Garnishment After Judgment.

A. Definitions.

1. Designation of Parties. For the purposes of sections 4.113 and 4.114, “Plaintiff” refers to any judgment creditor and “Principal Defendant” refers to any judgment debtor.
2. For the purpose of this section, Earnings shall have the same definition as defined in 15 USC 1673 § 302(a) as may be amended.
3. For purposes of this Code, Per Capita Payments means payments provided to Tribal Members pursuant to the Saginaw Chippewa Indian Tribe of Michigan Tribal Gaming Revenue Allocation Plan approved by the Tribal Council and the United States Department of Interior under 25 USC §2710(b)(3)(B).

B. Availability of Writ. This section applies to a garnishment after judgment proceedings. Section 4.114 governs prejudgment garnishments.

C. Forms. The Tribal Clerk/Magistrate shall provide approved forms for use in garnishment proceedings.

D. Affidavit for Garnishment. The Clerk of the Court shall issue a writ of garnishment if the Plaintiff, or the Plaintiff’s representative, makes and files an affidavit stating:

1. That a judgment has been entered against the Principal Defendant and remains unsatisfied;
2. The amount of the judgment and that amount which remains unpaid;
3. That the affiant knows or has good reason to believe that:

- a. A named person, the Tribe or tribal entity or subdivision, or an entity other than the Tribe control of property belonging to the Principal Defendant; or
 - b. A named person, the Tribe or a tribal entity or subdivision, or an entity other than the Tribe is indebted to the Principal Defendant.
- E. Writ of Garnishment. The writ of garnishment must have attached and must include a copy of the garnishment affidavit. The garnishment affidavit must include sufficient information to allow the garnishee defendant to identify the Principal Defendant such as the Principal Defendant's address, social security number, employee identification number, or account number, if known. The writ shall:
 - 1. Direct the garnishee defendant:
 - a. To file a disclosure in accordance with subsection 4.113(H) with the Court Clerk within 7 days after service of the writ of garnishment.
 - i. The disclosure shall be given under oath and shall indicate the garnishee defendant's liability as specified in subsection G(1) to the Principal Defendant;
 - b. To refrain from delivering any tangible or intangible property to the Principal Defendant unless expressly authorized by applicable law or court rule;
 - c. To refrain from paying any obligation to the Principal Defendant unless expressly authorized by applicable law or court rule; and
 - d. To promptly provide the Principal Defendant with a copy of the writ and affidavit by personal delivery or by first class mail directed to the Principal Defendant's last known address;
 - 2. Direct the Principal Defendant to refrain from disposing of:
 - a. Any negotiable instrument representing a debt of the garnishee defendant (except a negotiable instrument

representing the earnings of the Principal Defendant); or

- b. Any negotiable instrument of title representing property in which the Principal Defendant claims an interest held in the possession or control of the garnishee defendant;
3. Inform the Principal Defendant that unless the Principal Defendant moves to set aside the writ, answers, or otherwise defends within 14 days after the disclosure is filed, an order may enter without further notice directing that the property or debt held pursuant to the garnishment be applied to the satisfaction of the Plaintiff's judgment; and
4. Command the process server to serve the writ and disclosure form and to file a proof of service.

F. Service of Writ.

1. The writ of garnishment, the disclosure form, and a copy of the writ for each Principal Defendant, must be served on the garnishee defendant in the manner provided for the service of a summons and complaint pursuant to Chapter 3.4 of Title III of the Saginaw Chippewa Tribal Code.
2. The service of the writ of garnishment on the Principal Defendant restrains the Principal Defendant from disposing in any way of
 - a. Any negotiable instrument representing a debt of the garnishee defendant (except a negotiable instrument representing the earnings of the Principal Defendant); or
 - b. Any negotiable document of title representing property in which he or she claims an interest held in the possession or control of the garnishee defendant, except as expressly authorized by applicable law or court rule.

G. Liability of Garnishee Defendant.

1. Subject to the provisions of applicable garnishment law and any setoff permitted by applicable law or this title, the garnishee defendant is liable for:
 - a. All tangible or intangible property belonging to the

Principal Defendant in the garnishee defendant's possession or control when the writ is served on the garnishee defendant, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the Principal Defendant;

- b. All negotiable documents of title and all goods represented by negotiable documents of title belonging to the Principal Defendant if the documents of title are in the garnishee defendant's possession when the writ is served on the garnishee defendant;
- c. All corporate share certificates belonging to the Principal Defendant in the garnishee defendant's possession or control when the writ is served on the garnishee defendant;
- d. All debts, whether or not due, owing by the garnishee defendant to the Principal Defendant when the writ is served on the garnishee defendant, except for debts evidenced by negotiable instruments or representing Principal Defendant's earnings;
- e. All debts owing by the garnishee defendant evidenced by negotiable instruments held or owned by the Principal Defendant when the writ of garnishment is served on the Principal Defendant, as long as the instruments are brought before the court before their negotiation to a bona fide purchaser for value;
- f. The portion of the Principal Defendant's Earnings that are subject to garnishment under the Consumer Credit Protection Act, 15 USC 1673;
- g. An amount of the Principal Defendant's Per Capita Payment(s) which shall not exceed the following percentages of the amount remaining after deductions have been made to satisfy income tax obligations and obligations to satisfy debts owed to the Tribe;
 - i. Twenty percent (20%) for any garnishment order less than \$100,000.00 issued by the Tribal Court or any other court where such order meets the requirements of section 4.102 Full Faith and Credit.

- ii. Fifty percent (50%) for any garnishment order that is equal to or greater than \$100,000.00 and issued by the Tribal Court or any other court where such order meets the requirements of section 4.102 Full Faith and Credit.
 - iii. Fifty percent (50%) for child support orders where the Principal Defendant is supporting a spouse and/or a dependent child(ren) who is not the subject of the garnishment unless Principal Defendant's support payments are 12 weeks in arrears in which case, the maximum limit is 55%.
 - iv. Sixty percent (60%) for child support orders where the Principal Defendant is not supporting a spouse and/or a dependent child(ren) who is not the subject of the garnishment unless Principal Defendant's support payments are 12 weeks in arrears in which case, the maximum limit is 65%.
 - h. All judgments in favor of the Principal Defendant against the garnishee defendant in force when the writ is served on the garnishee defendant;
 - i. All tangible or intangible property belonging to the Principal Defendant which, when the writ is served on the garnishee defendant, the garnishee defendant holds by conveyance, transfer, or title that is void as to creditors of the Principal Defendant, whether or not the Principal Defendant could maintain an action against the garnishee defendant to recover the property; and
 - j. The value of all tangible or intangible property belonging to the Principal Defendant which, before the writ is served on the garnishee defendant, the garnishee defendant received or held by conveyance, transfer, or title that was void as to creditors of the Principal Defendant, but which the garnishee defendant no longer held at the time the writ was served, whether or not the Principal Defendant could maintain an action against the garnishee defendant for the value of the property.
2. The garnishee defendant is liable for no more than 1-1/4 times the

amount of the judgment remaining unpaid as stated in the affidavit for the writ of garnishment. Property or debts exceeding 1-1/4 times the amount of the unpaid judgment may be delivered or paid to the Principal Defendant notwithstanding the garnishment.

3. Any persons subject to judgments exceeding the garnishment limits contained herein may petition the Court for the purposes of amending the garnishment in accordance with this section.

H. Disclosure. The garnishee defendant must file a disclosure which garnishee defendant serve on the Plaintiff and Principal Defendant. The disclosure shall be given under oath within 7 days after garnishee defendant is served with the writ. The disclosure:

1. Must state the garnishee defendant's liability to the Principal Defendant as specified in subsection G(1);
2. May claim any setoff that the garnishee defendant would have against the Principal Defendant, except for claims for unliquidated damages for wrongs or injuries; and
3. Must state the date on and describe the manner in which notice was given to the Principal Defendant under Subsection E(1)(d).

I. Payment or Deposit into Court. If the garnishee defendant is indebted to the Principal Defendant, he or she may pay the indebtedness to the Court Clerk. The garnishee defendant may move for permission to deliver property subject to the garnishment to the court clerk or to secure the delivery of the property. The court clerk shall give the garnishee defendant a receipt in complete discharge of liability to the extent of the indebtedness paid or the property delivered or secured.

J. Steps After Disclosure; Third Parties; Interpleader; Discovery.

1. Within 14 days after service of the garnishee defendant's disclosure, the Plaintiff may either serve the garnishee defendant with written interrogatories or notice garnishee defendant's deposition. The answers to the interrogatories or the written notice of deposition testimony shall become part of the disclosure.
2. If the garnishee defendant's disclosure declares that a named person other than the Principal Defendant and the Plaintiff claims all or part of the disclosed indebtedness or property, the court may order

that the claimant be added as a defendant in the garnishment action. The garnishee defendant may proceed as in interpleader actions. Additional claimants may move to intervene in the garnishment action .

3. The discovery rules apply to garnishment proceedings.
4. The filing of a disclosure, the filing of answers to interrogatories, or the personal appearance by or on behalf of the garnishee defendant at a deposition does not waive the garnishee defendant's right to question the court's jurisdiction, the validity of the proceeding, or the Plaintiff's right to judgment.

K. Dissolution of Garnishment.

1. The Principal Defendant may object to the garnishment or move to dissolve it at any time. The general motion practice rules apply.
2. A garnishment of earnings shall dissolve 56 days after the disclosure was filed and the garnishee defendant may pay the withheld earnings to the Principal Defendant without liability to Plaintiff, unless:
 - a. The garnishee defendant has paid the withheld earnings to the clerk under subsection (I);
 - b. The garnishee defendant has been ordered to pay the withheld earnings to the clerk under subsection L(2);
 - c. The Court has entered an order extending the effect of the garnishment or directing the garnishee defendant to pay the withheld earnings to the Plaintiff or some other person; or
 - d. There is a pending objection to the garnishment by the garnishee defendant or the Principal Defendant, a claim to the withheld earnings by a third person, or a motion for one of the orders listed in subsection (K)(2)(b) or (c).
3. Except as to a garnishment of earnings, the garnishment shall dissolve 182 days after the disclosure was filed and the garnishee defendant may deliver the property or pay the obligation to the Principal Defendant without liability to the Plaintiff, unless:

- a. The garnishee defendant has paid the indebtedness or delivered the property to the Clerk under subsection (I);
 - b. The garnishee defendant has been ordered to pay the indebtedness to the Clerk under subsection L(2);
 - c. The Court has entered an order extending the effect of the garnishment or directing the garnishee defendant to pay the indebtedness to the Plaintiff or some other person;
 - d. The Court has entered an order under subsection L(4) directing the garnishee defendant to dispose of the property in another way; or
 - e. There is a pending objection to the garnishment by the garnishee defendant or the principal defendant, a claim by a third person, or a motion for one of the orders listed in subsection K(3)(b), (c), or (d).
4. If the garnishment has been dissolved under subsection K(2) or (3) at the request of the Principal Defendant or the garnishee defendant without notice to the Plaintiff, the clerk shall issue an order releasing the garnishee defendant from liability under the writ.

L. Payment to Plaintiff When Liability Is Not Disputed.

1. Upon service of a subsection 4.113(H) disclosure, the Principal Defendant has 14 days to file an objection. If the the Principal Defendant does not file a timely objection, the Clerk shall release any indebtedness paid into the court by garnishee defendant under subsection (I) to the Plaintiff to be applied to the satisfaction of the judgment.
2. If the disclosure admits indebtedness to the Principal Defendant, but the garnishee defendant did not pay the indebtedness to the Clerk under subsection (I), and the Principal Defendant has not filed an objection, the court shall order the garnishee defendant to pay the indebtedness to the clerk. The order shall provide that unless an objection is filed within 14 days, the clerk will pay the money to the Plaintiff. The clerk shall mail a copy of the order to each party.
3. Payment by the clerk to the Plaintiff under subsection L(1) or (2) may not exceed the amount of the unpaid judgment and costs

stated in the affidavit for the writ of garnishment. If the Plaintiff claims to be entitled to a larger amount, he or she must proceed by motion with notice to the Principal Defendant.

4. If the disclosure states that the garnishee defendant holds property belonging to the Principal Defendant, the Plaintiff must proceed by motion (with notice to the Principal Defendant and the garnishee defendant) to seek an appropriate order regarding application of the property to the judgment.

M. Determination of Garnishee's Liability.

1. If there is a dispute as to the garnishee defendant's liability or if another person claims an interest in the garnishee defendant's property or obligation, the issue shall be tried in the same manner as other civil actions.
2. The garnishment affidavit acts as the Plaintiff's complaint against the garnishee defendant, and the disclosure serves as the answer. The facts stated in the disclosure must be accepted as true unless the Plaintiff has served interrogatories or noticed a deposition within the time allowed by subsection J(1) or another party has filed a pleading or motion denying the accuracy of the disclosure. Except as the facts stated in the affidavit are admitted by the disclosure, they are denied. Admissions have the effect of admissions in responsive pleadings. The Principal Defendant and other claimants added under subsection J(2) may plead their claims and defenses as in other civil actions. The garnishee defendant's liability to the Plaintiff shall be tried on the issues thus framed.
3. Even if the amount of the garnishee defendant's liability is disputed, the Plaintiff may move for judgment against the garnishee defendant to the extent of the admissions in the disclosure. The general motion practice rules govern notice (including notice to the garnishee defendant and the Principal Defendant) and hearing on the motion.
4. The issues between the Plaintiff and garnishee defendant will be tried by the court unless a party files a demand for jury trial within 7 days after the filing of the disclosure, answers to interrogatories, or deposition transcript, whichever is filed last. The Principal Defendant or a third party waives any right to a jury trial unless he or she files a demand for a jury with the pleading stating his or her

claim.

5. On the trial of the garnishee defendant's liability, the Plaintiff may offer the record of the garnishment proceeding and other evidence. In the discretion of the court, the garnishee defendant may offer evidence which does not controvert the disclosure, but may show errors or mistakes that were made in the disclosure.
6. If the Court determines that the garnishee defendant is indebted to the Principal Defendant, but the time for payment has not arrived, a judgment may not be entered until after the time of maturity stated in the verdict or finding.

N. Judgment and Execution.

1. Judgment may be entered against the garnishee defendant for the payment of money or the delivery of specific property as the facts warrant. A money judgment against the garnishee defendant may not be entered in an amount greater than 1-1/4 times the amount remaining unpaid as stated in the affidavit for the writ of garnishment. Judgment for specific property may be enforced only to the extent necessary to satisfy the judgment against the principal defendant.
2. The judgment against the garnishee defendant discharges him or her from all demands by the Principal Defendant for the money paid or property delivered in satisfaction of the judgment. If the garnishee defendant is sued by the Principal Defendant for anything done under the provisions of these garnishment rules, the garnishee defendant may introduce as evidence the judgment and the satisfaction.
3. If the garnishee defendant is chargeable for specific property which the garnishee defendant holds for or is bound to deliver to the Principal Defendant, judgment may be entered and execution issued against the interest of the Principal Defendant in the property for no more than is necessary to satisfy the judgment against the Principal Defendant. The garnishee defendant must deliver the property to the officer serving the execution who shall sell, apply, and account as in other executions.
4. If the garnishee defendant is found to be under contract for the delivery of specific property to the Principal Defendant, judgment

may be entered and execution issued against the interest of the Principal Defendant in the property for no more than is necessary to satisfy the judgment against the Principal Defendant. The garnishee defendant must deliver the property to the officer serving the execution according to the terms of the contract. The officer shall sell, apply, and account as in ordinary execution.

5. If the garnishee defendant is chargeable for specific property and refuses to expose it so that execution may be levied on it, the court may order the garnishee defendant to show cause why general execution should not issue against him or her. Unless sufficient cause is shown to the contrary, the court may order that execution issue against the garnishee defendant in an amount not to exceed twice the value of the specifically chargeable property.
6. The court may issue execution against the Principal Defendant for the full amount due the Plaintiff on the judgment against the Principal Defendant. Execution against the garnishee defendant may not be ordered by separate writ but must always be ordered by endorsement on or by incorporation within the writ of execution against the Principal Defendant. The court may order additional executions to satisfy the plaintiff's judgment as justice requires.
7. Satisfaction of all or part of the judgment against the garnishee defendant constitutes satisfaction of judgment to the same extent against the Principal Defendant.

O. Appeals. A judgment or order in a garnishment proceeding may be set aside or appealed in the same manner and with the same effect as judgments or orders in other civil actions.

P. Receivership.

1. If on disclosure or trial of the garnishee defendant's liability, it appears that when the writ was served the garnishee defendant had in his or her possession,
 - a. A written promise for the payment of money or the delivery of property belonging to the Principal Defendant, or
 - b. Personal property belonging to the Principal Defendant, the court may order the garnishee defendant to deliver it to a person appointed as receiver.

2. The receiver must
 - a. Collect the written promise for payment of money or for the delivery of property and apply the proceeds on any judgment in favor of the Plaintiff against the garnishee defendant and pay any surplus the garnishee defendant, and
 - b. Dispose of the property if an amount greater than any encumbrance on it can be obtained, and after paying the amount of the encumbrance, apply the balance to the Plaintiff's judgment against the garnishee defendant and pay any surplus to the garnishee defendant.
3. If the garnishee defendant refuses to comply with the delivery order, the garnishee defendant is liable for the amount of the written promise for the payment of money, the value of the promise for the delivery of property, or the value of the Principal Defendant's interest in the encumbered personal property. The facts of the refusal and the valuation must be included in the receiver's report to the court.
4. The receiver shall report all actions pertaining to the promise or property to the court. The report must include a description and valuation of any property, with the valuation to be ascertained by appraisal on oath or in a manner the court may direct.

Q. Costs and Fees.

1. A fee of \$5.00 must be paid to the court and a fee of \$1.00 must be paid to the garnishee defendant at the time the writ is served.
2. If the garnishee defendant is not indebted to the Principal Defendant, does not hold any property subject to garnishment, and is not the Principal Defendant's employer, the Plaintiff is not entitled to recover the costs of that garnishment.
3. Other costs and fees are as provided by law or these rules.

R. Failure to Disclose or to Do Other Acts; Default; Contempt.

1. If the garnishee defendant fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee defendant

may not exceed the amount of the garnishee defendants liability as provided in subsection G(1).

2. If the garnishee defendant fails to comply with a court order, the garnishee defendant may be adjudged in contempt of court.
3. In addition to other actions permitted by law or these rules, the court may impose costs on a garnishee defendant whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than \$100.

S. Judicial Discretion. On motion the Court may order and extend the time for:

1. The garnishee defendant's disclosure;
2. The Plaintiff's filing of written interrogatories;
3. The Plaintiff's filing of a demand for oral examination of the garnishee defendant;
4. The garnishee defendant's answer to written interrogatories;
5. The garnishee defendant's appearance for oral examination; and
6. The demand for jury trial. The order must be filed with the court and served on the other parties.

4.114 Garnishment Before Judgment.

A. Availability of Prejudgment Garnishment.

1. After commencing an action on a contract, the plaintiff may obtain a prejudgment writ of garnishment under the circumstances and by the procedures provided in this rule.
2. Except as provided in subsection A(3), a prejudgment garnishment may not be used
 - a. Unless the defendant is subject to the jurisdiction of the Court;
 - b. To garnish a defendant's earnings; or

- c. To garnish property held or an obligation owed by the tribe or a governmental subdivision of the Tribe.
- 3. This rule also applies to a prejudgment garnishment in an action brought to enforce a foreign judgment. However, the following provisions apply:
 - a. The principal defendant need not be subject to the Court's Jurisdiction;
 - b. The affidavit for garnishment must show that
 - i. The defendant is indebted to the plaintiff on a valid foreign judgment in a stated amount in excess of all setoffs;
 - ii. The defendant is not subject to the jurisdiction of the state, or that after diligent effort the plaintiff cannot serve the defendant with process; and
 - iii. The affiant knows or has good reason to believe that named person
 - aa. Has control of property belonging to the defendant, or
 - ab. Is indebted to the defendant.
 - c. Subsection H does not apply.

B. Affidavit for Garnishment. After commencing an action, the plaintiff may seek a writ of garnishment by filing an ex parte motion supported by an affidavit setting forth specific facts showing that:

- 1. The defendant is indebted to the plaintiff on a contract in a stated amount in excess of all setoff;
- 2. The defendant is subject to the jurisdiction of the Tribe;
- 3. After diligent effort the plaintiff cannot serve the defendant with process; and
- 4. The affiant knows or has good reason to believe that a named

person:

- a. Has control of property belonging to the defendant, or
- b. Is indebted to the defendant.

On a finding that the writ is available under this rule and that the affidavit states a sufficient basis for issuance of the writ, the judge to whom the action is assigned may issue the writ.

- C. Writ of Garnishment. The writ of garnishment must have attached or include a copy of the garnishment affidavit, and must:
 1. Direct the garnishee defendant to:
 - a. File with the Court Clerk within 7 days after the service of the writ on him or her a disclosure under oath indicating his or her liability (as specified in subsection E) to the principal defendant;
 - b. Deliver no tangible or intangible property to the principal defendant, unless allowed by the Tribal Code, Ordinances or court rule;
 - c. Pay no obligation to the principal defendant, unless allowed by applicable law or court rule; and
 - d. Promptly provide the principal defendant with a copy of the writ and affidavit by personal delivery or by first class mail directed to the principal defendant's last known address;
 2. Direct the principal defendant to refrain from disposing of any negotiable instrument representing a debt of the garnishee defendant or of any negotiable instrument of title representing property in which he or she claims an interest held in the possession or control of the garnishee defendant;
 3. Inform the principal defendant that unless the principal defendant moves to set aside the writ, or appears and submits to the jurisdiction of the court, an order may enter requiring the garnishee defendant to deliver the garnished property or pay the obligation to be applied to the satisfaction of the plaintiff's claim; and

- 4. Command the process server to serve the writ and to file a proof of service.
- D. Service of Writ. Section 4.113F applies to prejudgment garnishment.
- E. Liability of Garnishee. Section 4.113G applies to prejudgment garnishment except that the earnings of the defendant may not be garnished before judgment.
- F. Disclosure. The garnishee defendant shall file and serve a disclosure as provided in Section 4.113H.
- G. Payment or Deposit into Court. Section 4.113I applies to prejudgment garnishment.
- H. Dissolution of Prejudgment Garnishment. Dissolution of a prejudgment garnishment is governed by the rule for dissolution of attachments.
- I. Proceedings After Judgment.
 - 1. If the garnishment remains in effect until entry of judgment in favor of the plaintiff against the principal defendant, the garnished property or obligation may be applied to the satisfaction of the judgment in the manner provided in Section 4.113L, M, and N.
 - 2. Section 4.113 O and P applies to prejudgment garnishment.
- J. Costs and Fees; Default; Contempt; Judicial Discretion. Section 4.113Q, R, and T apply to prejudgment garnishment.

Chapter 4.2
Enforcement and Execution of Foreign Money Judgments

4.201

Definitions.

- A. "Foreign State" means any governmental unit other than the United States, or the Saginaw Chippewa Indian Tribe of Michigan, it refers to any other Tribe, state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the trust territory of the Pacific Islands or the Ryukyu Islands.
- B. "Foreign Judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, including a judgment for support in

matrimonial or family matters, but not including a judgment for taxes, a fine or other penalty.

4.202 Application. This act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

4.203 Conclusiveness of judgment; enforceability. Except as provided in Section 4.504, a foreign judgment meeting the requirements of Section 5.402 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable is entitled to full faith and credit, or after a hearing de novo to determine if there is subject matter jurisdiction and jurisdiction in persona.

4.204 Judgments not conclusive.

A. A foreign judgment is not conclusive if:

1. The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law.
2. The foreign court did not have personal jurisdiction over the defendant.
3. The foreign court did not have jurisdiction over the subject matter.

B. A foreign judgment need not be recognized if:

1. The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend.
2. The judgment was obtained by fraud.
3. The cause of action on which the judgment is based is repugnant to the public policy of the Tribe.
4. The judgment conflicts with another final and conclusive judgment.
5. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be

settled otherwise than by proceedings in that court.

6. In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

4.205 Judgments lacking personal jurisdiction; other basis of jurisdiction.

A. The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:

1. The defendant was served personally in the foreign state.
2. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him.
3. The defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the matter involved.
4. The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state.
5. The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state.
6. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.

B. The Court may recognize other basis of jurisdiction.

4.206 Stay pending appeal. If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

- 4.207 Other situations. This Chapter does not prevent the recognition of a foreign judgment in situations not covered by this act.
- 4.208 Construction. This Chapter shall also be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.
- 4.209 Short title. This Chapter shall be known and may be cited as the "uniform foreign judgments recognition act".
- 4.210 Hearings to enforce. In each case where there is an application to recognize and enforce a foreign judgment the Tribal Court shall conduct a show cause hearing to determine if an order shall issue.
- 4.211 Foreign claims; limitations; effective time of amendatory act. An action based upon a cause of action accruing without this Tribe shall not be commenced after the expiration of the statute of limitations of either this Tribe or the place where the cause of action accrued except that where the cause of action accrued in favor of a resident of the Isabella Reservation the statute of limitations of the Tribe shall apply. This amendatory act shall be effective as to all actions hereinafter commenced and all actions heretofore commenced now pending in the trial or appellate court.

Chapter 4.3

Forcible Entry, Detainer and Claim and Delivery

- 4.301 Definitions.
- A. A person is guilty of forcible entry and detainer, or of forcible detainer, as the case may be, if he:
1. Makes an entry into any lands, tenements or other real property, except in cases where entry is authorized by law.
 2. Willfully holds over any lands, tenements or other real property after termination of his right to possession, after demand made in writing for the possession thereof by the person entitled to such possession, or by any other aggrieved party.
- B. A "forcible entry", or an entry where entry is not authorized by law within the meaning of this article, is:
1. An entry without the consent of the person having the actual

possession.

2. As to a landlord, an entry upon the possession of his tenant, without the tenant's consent.

C. There is a forcible detainer if:

1. A tenant at will or by sufferance, after termination of his tenancy or after written demand of possession by his landlord, or a tenant from month to month or a lesser period whose rent is due and unpaid or any other person without legal authority, fails or refuses for five days after demand in writing to surrender and give possession to his landlord, or any other aggrieved party.
2. The tenant of a person who has made a forcible entry refuses for seven days after written demand to give possession to the person upon whose possession the forcible entry was made.
3. A person who has made a forcible entry upon the possession of one who acquired such possession by forcible entry refuses for five days after written demand to give possession to the person upon whose possession the first forcible entry was made.
4. A person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord for five days after written demand, after the term expires. If the writ expires while a writ of forcible entry applied for by the tenant is pending, the landlord may at his own cost and for his own benefit, prosecute it in the name of the tenant.

D. An aggrieved party under this Chapter shall be any person entitled to possession of any land, tenements or other real property subject to this Chapter, the Saginaw Chippewa Indian Tribe of Michigan or the United States of America.

E. Claim and Delivery is a civil action to recover:

1. Possession of goods or chattels which have been unlawfully taken or unlawfully detained; and
2. Damages sustained by the unlawful taking or unlawful detention. (All references to the action of replevin shall be construed as reference to the action of claim and delivery.)

4.302 Complaint, Summons and Answer.

- A. When an aggrieved party files a complaint of forcible entry or forcible detainer, in writing and under oath, with the Clerk of the Tribal Court, summons shall immediately issue commanding the person against whom the complaint is made to appear and answer the complaint at a time and place named, not more than six nor less than three days from the date of service of the summons.
- B. The complaint shall contain a description of the premises of which the possession is claimed in sufficient detail to identify them, and shall also state the facts which authorize the action.

4.303 Trial and Issue; Postponement of Trial.

- A. On the trial of an action of forcible entry or forcible detainer, the only issue shall be the right of actual possession and the merits of title shall not be inquired into. An action for forcible entry or forcible detainer may not be brought in connection with any other action, nor may it be made the subject of any setoff or counterclaim.
- B. The action shall be tried by the Court.
- C. For good cause shown, supported by affidavit, the trial may be postponed for a time not to exceed three days.

4.304 Judgment; Writ of Restitution; Limitation on Issuance.

- A. If defendant is found guilty, the Court shall give judgment for plaintiff for restitution of the premises and for costs and, at plaintiff's option, for all rent found to be due and unpaid at the date of judgment, and shall grant a writ of restitution putting plaintiff in possession of the premises, and a warrant of removal shall issue accordingly which shall command the appropriate law enforcement authorities to immediately remove the defendant, to use such force as is necessary to effect removal if the defendant resists, and which shall further command such authorities to levy damages and costs as fixed by the court. Any defendant who fails to comply with the judgment or order of the Saginaw Chippewa Tribal Court shall be charged with a violation of Title I, Section 1.2026 of the Saginaw Chippewa Tribal Code.
- B. If defendant is found not guilty, judgment shall be given for defendant against plaintiff for costs, and if it appears that plaintiff has acquired

possession of the premises since commencement of the action, a writ of restitution shall issue in favor of the defendant.

- C. No writ of restitution or warrant shall issue until the expiration of ten days after the rendition of judgment.

4.305 Proceedings no bar to certain actions. The proceedings under a forcible entry or forcible detainer shall not bar an action for trespass, waste, rent or mesne profits, or any other action at law or equity.

4.306 Immediate delivery of personal property before judgment. The Plaintiff, in an action to recover the possession of personal property, at the time of issuing the summons or at any time before an answer is filed, may claim the immediate delivery of such property as provided by this chapter.

4.307 Affidavit of claim and delivery required: contents; endorsements for immediate delivery. When an immediate delivery is claimed, an affidavit must be made by the Plaintiff or by someone on his behalf stating:

- A. That the Plaintiff is the owner of the property claimed, is lawfully entitled to its possession, or that he had a lawful lien against such property, payment of which is in default. The facts of such ownership or right to possession must be set forth along with a detailed description of the property;
- B. That the property is wrongfully detained by the defendant;
- C. The alleged cause of the detention of the property, according to the best of his knowledge, information and belief;
- D. That the property has not been taken for a tax, assessment, or fine, pursuant to an applicable law, or seized under an execution or attachment against the property of the Plaintiff, or, if so seized, that it is by law exempt from such seizure;
- E. The actual value of the property. The Plaintiff, after completing and endorsing such affidavit, shall file the same with the Tribal Court. If the Court shall find good cause for seizure shown by the said affidavit he shall, by appropriate order, direct any Tribal Federal officer to seize the described property from the Defendant and transmit the same to the plaintiff upon plaintiff's compliance with the requirements of the following Sections in this Chapter.

- 4.308 Security required before delivery. Before possession of any property may be taken by the Plaintiff, he shall furnish to the Court sufficient security in the form of cash or sureties. The same shall be at least double in amount the value of the property as sated in the affidavit. If the Defendant shall be entitled to possession of the property, the security provided by the Plaintiff shall be used in any recovery by the Defendant against the Plaintiff.
- 4.309 Notice of papers received. Upon receipt of the affidavit, endorsement, and order by the police officer, the officer shall take the property described in the affidavit, if it be in the possession of the defendant or his agent, and retain it in his custody. He shall keep it in a safe place and deliver it to the party entitled thereto upon receiving his lawful fees and necessary expenses associated with his seizure and storage of the property. If the property or any part thereof be concealed in a building or enclosure, the officer shall publicly demand its delivery. If it is not delivered upon demand the police officer shall obtain a search warrant from the Tribal Court prior to entering or removing the property.
- The police officer, at the time of taking any property, shall serve on the defendant a copy of the affidavit, endorsement, order and proof of security or cash bond and notice of levy showing the property taken by delivering the same to the defendant personally, if he can be conveniently found, or to his agent from whose possession the property is taken; or if neither can be found, by leaving the papers at the usual place of abode of either, with some person of suitable age and discretion.
- 4.310 Property claimed by third person; method; security required. If the property taken be claimed by any other person than the defendant or his agent, and such person shall make an affidavit of his title and right to possession thereto, stating such right and title, and serve the same upon the police officer, the officer shall not be bound to keep the property or deliver it to the plaintiff unless the plaintiff shall indemnify the officer against such claim by deposit with the Clerk of the Tribal Court of security in amount and sufficiency as required in the original affidavit for the delivery. No claim to such property by any other person than the Defendant or his agent shall be valid against the officer, unless made as above provided; and notwithstanding such claim when so made, the officer may retain the property a reasonable time to demand such indemnity. Where a claim to the property arises on behalf of a third party and is known to the plaintiff or is made known to the Court, notice of these proceedings shall be given to such third party and he shall be allowed to intervene if he may desire.
- 4.311 Return of the property. The defendant may retain or require the return of the property by giving the Clerk of the Tribal Court, within three (3) days after the taking, sufficient security or cash deposit of an amount not less than was required by the plaintiff for the delivery.

If the Defendant or a third party does not require a return of the property within three (3) days after the taking and service of pleadings on the defendant, the property shall be delivered to the plaintiff.

4.312 Security, cash deposits, sureties. Sureties may be provided by any person or company acceptable to the Tribal Court. Security may be given in the form of a cash deposit. A receipt shall be given by the Clerk of Court and the deposit shall remain in the custody of the Court until the Court shall make an order disposing thereof. The defendant or plaintiff may require the surety of the other to prove the validity of their sureties. The plaintiff and defendant shall be given seven (7) days from date of service of a copy of the affidavit to question the validity of the surety. If it is not questioned within seven (7) days, it shall be deemed waived and cannot later be questioned by either party.

4.313 Police report of proceedings. Within twenty (20) days after taking the property, the police officer shall be notified by the Clerk of Court in writing to make a verified report of his proceedings in taking and disposing of the property, and file the same together with the original affidavit, endorsement, or security and a notice of his copy of levy, with the Clerk of the Tribal Court.

The failure or neglect of the police officer to made such verified report of his proceedings shall not, however, void these proceedings under the affidavit and endorsement but shall render him liable for contempt of Court.

Chapter 4.4 Evictions

4.401 Jurisdiction. The Saginaw Chippewa Tribal Court shall have jurisdiction over all proceedings to recover possession of premises within the Reservation under the Tribal Code and Ordinances.

4.402 Definitions. As used in this chapter:

- A. "Summary proceedings" means a civil action to recover possession of premises and to obtain certain ancillary relief as provided by this Chapter and by court rules adopted in connection therewith.
- B. "Premises" includes lands, tenements, condominium property, cooperative apartments, air rights and all manner of real property. It includes structures fixed or mobile, temporary or permanent, vessels, mobile trailer homes and vehicles which are used or intended for use primarily as a dwelling or as a place for commercial or industrial operations or storage.

- C. "Lease" includes a written or verbal lease or license agreement for use of possession of premises.

4.403

Commencement of Eviction.

A. **Applicable Rules; Forms.** Except as otherwise proved, a summary proceedings to recover possession of premises from a person in possession as described herein shall be governed by the Saginaw Chippewa Tribal Code and any applicable Tribal Ordinance. Forms available for public distribution at the court clerk's office may be used in the proceeding.

B. **Complaint.**

1. **In General.** The complaint must

- a. Comply with the general pleading requirements as set forth in Title III of the Tribal Code;
- b. Have attached to it a copy of any written instrument on which occupancy was or is based;
- c. Have attached to it copies of any notice to quit and any demand for possession (the copies must show when and how they were served);
- d. Describe the premises or the defendants holding if it is less than the entire premises;
- e. Show the plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized; and

2. **Specific Requirements.**

- a. If rent or other money is due and unpaid, the complaint must show
 - i. The rental period and rate;
 - ii. The amount due and unpaid when the complaint was filed; and
 - iii. The date or dates the payments became due.

- b. If the tenancy involves housing operated by or under the rules of the Saginaw Chippewa Housing Authority, the complaint must contain specific reference to the rules or law establishing the basis for ending the tenancy.
- c. If the tenancy is of residential premises, the complaint must allege that the lessor has performed his or her covenants to keep the premises fit for the use intended and in reasonable repair during the term of the lease or license, unless the parties to the lease or license have modified those obligations.
- d. If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises the complaint must
 - i. the nature and the seriousness or extent of the condition on which the complaint is based, and
 - ii. State the period of time for which the property owner has been aware of the condition.
- e. If possession is sought for trespass the complaint must describe, when known by the plaintiff, the conditions under which possession was unlawfully taken or is unlawfully held and allege that no lawful tenancy of the premises has existed between the parties since defendant took possession.

C. Summons.

- 1. The summons must comply with Title III, except that it must command the defendant to appear for trial.
- 2. The summons must also include the following advice to the defendant:
 - a. The defendant has the right to employ an attorney to assist in answering the complaint and in preparing defenses.
 - b. If the defendant does not have an attorney but does have money to retain one, he or she might locate an attorney through the State Bar of Michigan or a local lawyer referral

service.

- D. Service of Process. A copy of the summons and complaint and all attachments must be served on the defendant by mail. Unless the court does the mailing and keeps a record, the plaintiff must perfect the mail service by attaching a postal receipt to the proof of service. In addition to mailing, the defendant must be served in one of the following ways:
1. By personal service pursuant to Title III:
 2. By delivering the papers at the premises to a member of the defendant's household who is:
 - a. Of suitable age;
 - b. Informed of the contents; and
 - c. Asked to deliver the papers to the defendant; or
 3. After diligent attempts at personal service have been made, by securely attaching the papers to the main entrance of the tenant's dwelling unit. A return of service made under this Subsection must list the attempts at personal service. Service under subsection D(3) is effective only if a return of service is filed showing that, after diligent attempts, personal service could not be made. An officer who files proof that service was made under subsection D(3) is entitled to the regular personal service fee.
- E. Recording. All landlord-tenant summary proceedings conducted in open court must be recorded by stenographic or mechanical means.
- F. Appearance and Answer; Default.
1. Appearance and Answer. The defendant or the defendant's attorney must appear and answer the complaint by the date on the summons. Appearance and answer may be made as follows:
 - a. By filing a written answer or a motion under Title III of the Tribal Code and serving a copy on the plaintiff or the plaintiff's attorney. If proof of the service is not filed before the hearing, the defendant or the defendant's attorney may attest to service on the record.

- ii. A claim or counterclaim for equitable relief.
 - b. personal jurisdiction over the defendant was not obtained, a money claim must be:
 - i. Dismissed without prejudice if the defendant does not answer or appear, or
 - ii. Adjourned until personal jurisdiction over the defendant is obtained.
 - c. If trial of a money claim or counterclaim:
 - i. Might substantially delay trial of the possession claim, or
 - ii. Requires that the premises be returned before damages can be determined, the court must adjourn the trial of the money claim or counterclaim to a date no later than 28 days after the time expires for issuing a writ of restitution. A party may file and serve supplemental pleadings no later than 7 days before trial, except by leave of the court.
 - d. If adjudication of a money counterclaim will affect the amount the defendant must pay to prevent issuance of a writ of restitution, that counterclaim must be tried at the same time as the claim for possession, subsection (G)(1)(c) notwithstanding, unless it appears to the court that the counterclaim is without merit.
- H. Interim Orders. On motion of either party, or by stipulation, for good cause, a court may issue such interim orders are necessary, including, but not limited to the following:
 - 1. Injunctions. The interim order may award injunctive relief
 - a. To prevent the person in possession from damaging the property; or
 - b. To prevent the person seeking possession from rendering the premises untenable or from suffering the premises to remain untenable.

2. Escrow Orders.

- a. If trial is adjourned more than 7 days and the plaintiff shows a clear need for protection, the court may order the defendant to pay a reasonable rent for the premises from the date the escrow order is entered including a pro rata amount per day between the date of the order and the next date rent ordinarily would be due. In determining a reasonable rent the court should consider evidence offered concerning the condition of the premises or other relevant factors. The order must provide that:
 - i. Payments be made to the court clerk within 7 days of the date of entry of the order, and thereafter within 7 days of the date or dates each month when rent would ordinarily be due, until the right to possession is determined;
 - ii. The plaintiff must not interfere with the obligation of the defendant to comply with the escrow order; and
 - iii. If the defendant does not comply with the order, the defendant waives the right to a jury trial only as to the possession issue, and the plaintiff is entitled to an immediate trial within 14 days which may be by jury if a party requests it and if, in the court's discretion, the court's scheduled permits it. The 14-day limit need not be rigidly adhered to if the plaintiff is responsible for a delay.
- b. Only the court may order the disbursement of money collected under an escrow order. The court must consider the defendant's defenses. If trial was postponed to permit the premises to be repaired, the court may condition disbursement by requiring that the repairs be completed by a certain time. Otherwise, the court may condition disbursement as justice requires.

I. Consent Judgment When Party Is Not Represented. The following procedures apply to consent judgments and orders entered when either party is not represented by an attorney.

1. The judgment or order may not be enforced until 3 regular court business days have elapsed after the court, a proposed consent judgment or order with the parties, and shall notify them of the delay required by this Subsection at the time the terms of the consent judgment or order are placed on the record.
2. A party who was not represented by an attorney at the time of the consent proceedings may move to set aside the consent judgment or order within the 3-day period. Such a motion stays the judgment or order until the court decides the motion or dismisses it after notice to the moving party.
3. The court shall set aside a consent judgment or order on a satisfactory showing that the moving party misunderstood the basis for, or the rights which were being relinquished in, the judgment or order.

J. Trial.

1. Time. When the defendant appears, the court may try the action, or, if good cause is shown, may adjourn trial up to 56 days. If the court adjourns, trial for more than 7 days, an escrow order may be entered pursuant to Subsection (H)(2). The parties may adjourn trial by stipulation in writing or on the record, subject to the approval of the court.
2. Pretrial Action. At trial, the court must first decide pretrial motions and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.
3. Government Report. If the defendant claims that the plaintiff failed to comply with an ordinance or applicable law, the court may admit an authenticated copy of any relevant government employee's report filed with a government agency. Objections to the report affect the weight given it, not its admissibility.
4. Payment or Acceptance of Money. The payment or the acceptance of money by a party before trial does not necessarily prevent or delay the proceedings.

K. Judgment.

1. Requirements. A judgment for the plaintiff must:

- a. State when, and under what conditions, if any, a writ of restitution will issue;
 - b. Separately state possession and money awards; and
 - c. Advise the defendant of the right to appeal or file a post judgment motion within 10 days.
2. Injunctions. The judgment may award injunctive relief
- a. To prevent the person in possession from damaging the property; or
 - b. To prevent the person seeking possession from rendering the premises untenable, or from suffering the premises to remain untenable.
3. Partial Payment. The judgment may provide that acceptance of partial payment of an amount due under the judgment will not prevent issuance of a writ of restitution.
4. Costs. Only those costs may be permitted.
5. Notice. The court must mail or deliver a copy of the judgment to the parties. The time period for applying for the writ of restitution does not begin to run until the judgment is mailed or delivered.

L. Writ of Restitution.

1. Request. When the time stated in the judgment expires, a party awarded possession may apply for a writ of restitution. The application must:
 - a. Be written;
 - b. Be verified by a person having knowledge of the facts stated;
 - c. If any money has been paid after entry of the judgment, show the conditions under which it was accepted; and
 - d. State whether the party awarded judgment has complied with its terms.

2. Issuance Immediately on Judgment. The court may issue a writ immediately on entering judgment if:
 - a. The court is convinced the statutory requirements are satisfied, and
 - b. The defendant was given notice, before the judgment, of a request for immediate issuance of the writ. The court may condition the writ to protect the defendant's interest.
 3. Limitations on Time for Issuance and Execution. Unless a hearing is held after the defendant has been given notice and an opportunity to appear, a writ of restitution may not:
 - a. Be issued later than 56 days after judgment is entered,
 - b. Be executed later than 56 days after it is issued.
 4. Acceptance of Partial Payment. A writ of restitution may not be issued if any part of the amount due under the judgment has been paid, unless:
 - a. A hearing is held after the defendant has been given notice and an opportunity to appear, or
 - b. The judgment provides that acceptance of partial payment of the amount due under the judgment will not prevent issuance of a writ of restitution.
- M. Postjudgment Motions. A postjudgment motion must be filed no later than 10 days after judgment enters. If the motion challenges a judgment for possession, it must be accompanied by an escrow deposit of 1 month's rent to stay the writ of restitution; if the judgment does not include an award of possession, the filing of a motion stays bond to secure the stay. If the initial escrow deposit is believed inadequate, the plaintiff may apply for continuing adequate escrow payments in accord with subsection H(2). The filing of a postjudgment motion together with a bond, bond order, or escrow deposit stays all proceedings, including a writ of restitution issued but not executed.
- N. Appeals From Possessory Judgments.
1. Time. An appeal of right must be filed within 10 days after the

entry of judgment.

2. Stay of Writ of Restitution.

- a. Unless a stay is ordered by the trial court, a writ of restitution must issue as provided in subsection L.
- b. The filing of a claim of appeal together with a bond or escrow order of the court stays all proceedings, including a writ of restitution issued but not executed.

3. Appeal Bond; Escrow.

- a. A plaintiff who appeals must file a bond providing that if the plaintiff loses he or she will pay the appeal costs.
- b. A defendant who appeals must file a bond providing that if the defendant loses, he or she will pay:
 - i. The appeal costs,
 - ii. The amount due stated in the judgment, and
 - iii. Damages from the time of forcible entry, the detainer, the notice to quit, or the demand for possession.
- c. If the plaintiff won a possession judgment, the court shall enter an escrow order under subsection H(2) and require the defendant to make payments while the appeal is pending. This escrow order may not be retroactive as to arrearages preceding the date of the post-trial escrow order unless there was a pretrial escrow order entered under subsection H(2), in which case the total escrow amount may include the amount accrued between the time of the original escrow order and the filing of the appeal.
- d. If it is established that an appellant cannot obtain sureties or make a sufficient cash deposit, the court must permit the appellant to comply with an escrow order.

4.404 Rent. Every person in possession of land, out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold, or for any term

of years, shall be liable for the amount or proportion of rent due from the land in his possession, although it be only a part of what was originally demised.

4.405 Assignment and Sublease. There should be no assignment or subleasing with this jurisdiction without the express written consent of the Landlord. Unauthorized assignment or subleasing may be grounds for eviction.

4.406 Security Deposit.

A. Definitions

1. "Rental Unit" means a structure or part thereof used as a home, residence or sleeping unit by a single person or household unit, or any grounds, or other facilities or area promised for the use of a residential tenant and includes, but without limitation, apartment units, boarding houses, rooming houses, mobile home spaces and single and 2-family dwellings.
2. "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations or any other provisions concerning the use and occupancy of a rental unit.
3. "Landlord" means the owner, lessor or sublessor (Including the Saginaw Chippewa Housing Authority) of the rental unit or the property of which it is a part and, in addition, means a person authorized to exercise any aspect of the management of the premises, including a person who, directly or indirectly, acts as a rental agent, receives rent or any part thereof, other than as a bona fide purchaser, and who has no obligation to deliver the whole of such receipts to another person.
4. "Tenant" means any person who occupies a rental unit for residential purposes with the landlord's consent for an agreed upon consideration.
5. "Security deposit" means a deposit, in any amount, paid by the tenant to the landlord or his agent to be held for the term of the rental agreement, or any part thereof, and includes any required prepayment of rent other than the first full rental period of the lease agreement; any sum required to be paid as rent in any rental period in excess of the average rent for the term; and any other amount of money or property returnable to the tenant on condition of return of the rental unit by the tenant in condition as required by the rental

agreement. Security deposit does not include an amount paid for an agreement. Security deposit does not include an amount paid for an option to purchase, pursuant to a lease with option to purchase, unless it is shown the intent was to evade this act.

- B. Amount. A landlord may require a security deposit for each rental unit. A security deposit shall be required and maintained in accordance with the terms of this act and shall not exceed 1/1/2 months' rent, except for government housing projects and in such cases the prevailing rules shall apply.
- C. Notice; form and contents; failure to provide information, effect. A landlord shall not require a security deposit unless he notifies the tenant no later than 14 days from the date a tenant assumes possession in a written instrument of the landlord's name and address for receipt of communications under this act, the name and address of the financial institution or surety and the tenant's obligation to provide in writing a forwarding mailing address to the landlord within 4 days after termination of occupancy. The notice shall include the following statement in 12 point boldface type which is at least 4 points larger than the body of the notice or lease agreement: "You must notify your landlord in writing within 4 days after you move of a forwarding address where you can be reached and where you will receive mail; otherwise your landlord shall be relieved of sending you an itemized list of damages and the penalties adherent to that failure." Failure to provide the information relieves the tenant of his obligation relative to notification of the landlord of his forwarding mailing address..
- D. Disposition and use of moneys; bond; action for collection. The security deposit shall be deposited in a separate account.
- E. Deposit as property of tenant; use of fund. For the purposes of this section and any litigation arising thereunder, the security deposit is considered the lawful property of the tenant until the landlord establishes a right to the deposit or portions thereof as long as the bond provision is fulfilled, the landlord may use this fund for any purposes he desires.
- F. Waiver of statutory requirements. The requirements of this act may not be waived by the parties to a rental agreement except as specifically provided herein.
- G. Use of security deposit. A security deposit may be used only for the following purposes:

1. Reimburse the landlord for actual damages to the rental unit or any ancillary facility that are the direct result of conduct not reasonable expected in the normal course of habitation of a dwelling.
2. Pay the landlord for all rent in arrearage under the rental agreement, rent due for premature termination of the rental agreement by the tenant and for utility bills not paid by the tenant.

H. Inventory checklists.

1. The landlord shall make use of inventory checklists both at the commencement and termination of occupancy for each rental unit which detail the condition of the rental unit for which a security deposit is required.
2. Furnishing of copies to tenant; cotenants. At the commencement of the lease, the landlord shall furnish the tenant two (2) blank copies of a commencement inventory checklist, which form shall be identical to the form used for the termination inventory checklist. The checklist shall include all items in the rental unit owned by the landlord including, but not limited to, carpeting, draperies, appliances, windows, furniture, walls, closets, shelves, paint, doors, plumbing fixtures and electrical fixtures.
3. Time for return. Unless the landlord and tenant agree to complete their inventory checklist within a shorter period, the tenant shall review the checklist, note the condition of the property and return 1 copy of the checklist to the landlord within 7 days after receiving possession of the premises.
4. Notice; form; contents. The checklist shall contain the following notice in twelve (12) point boldface type at the top of the first page: "You should complete this checklist, noting the condition of the rental property, and return it to the landlord within 7 days after obtaining possession of the rental unit. You are also entitled to request and receive a copy of the last termination inventory checklist which shows what claims were chargeable to the last prior tenants."
5. Termination inventory checklist. At the termination of the occupancy, the landlord shall complete a termination inventory checklist listing all the damages he claims were cause by the tenant.

- I. Damage to rental unit or obligation against deposit; procedure; list; check or money order; notice of damages, form, contents. In case of damage to the rental unit or other obligation against the security deposit, the landlord shall mail to the tenant, within 30 days after the termination of occupancy, an itemized list of damages claimed for which the security deposit may be used, including the estimated cost of repair of each property damaged item and the amounts and bases on which he intends to assess the tenant. The list shall be accompanied by a check or money order for the difference between the damages claimed and the amount of the security deposit held by the landlord and shall not include any damages that were claimed on a previous termination inventory checklist prior to the tenant's occupancy of the rental unit. The notice of damages shall include the following statement in 12 point boldface type which shall be at least 4 points larger than the body of the notice: "You must respond to this notice by mail within 7 days after receipt of same, otherwise you will forfeit the amount claimed for damages."
- J. Noncompliance; effect. Failure by the landlord to comply with the notice of damages requirement within the 30 days after the termination of occupancy, constitutes agreement by the landlord that no damages are due and he shall remit to the tenant immediately the full security deposit.
- K. Tenant's notice to landlord; noncompliance, effect. The tenant shall notify the landlord in writing at the address given under section 4 within 4 days after termination of his occupancy of an address at which communications pursuant to this act may be received. Failure to comply with this requirement relieves the landlord of the requirement of notice of damages but does not prejudice a tenant's subsequent claim for the security deposit.
- L. Response to claim of damages; time. If a landlord claims damages to a rental unit and gives notice of damages as required, the tenant upon receipt of the list of damages shall respond by ordinary mail to the address provided by the landlord within 7 days, indicating in detail his agreement or disagreement to the damage charges listed. For the purposes of this section the date of mailing shall be considered the date of the tenant's response.
- M. Action for damages; time for commencement; necessity for obtaining money judgment.
 - 1. Within 45 days after termination of the occupancy and not thereafter the landlord may commence an action in a court of competent jurisdiction for a money judgment for damages which

he has claimed or in lieu thereof return the balance of the security deposit held by him to the tenant or any amount mutually agreed upon in writing by the parties. A landlord shall not be entitled to retain any portion of a security deposit for damages claimed unless he has first obtained money judgment for the disputed amount or filed with the court satisfactory proof of an inability to obtain service on the tenant or unless:

- a. The tenant has failed to provide a forwarding address as required.
 - b. The tenant has failed to respond to the notice of damages as required.
 - c. The parties claimed is entirely based upon accrued and unpaid rent equal to the actual rent for any full rental period or portion thereof during which the tenant has had actual or constructive possession of the premises.
2. Judgments obtained in other proceedings; noncompliance, effect as waiver. This section does not prejudice a landlord's right to retain any security deposit funds as satisfaction or partial satisfaction of a money judgment obtained pursuant to summary proceedings filed pursuant to Section 4.403 of this Title. Failure of the landlord to comply fully with this section constitutes waiver of all claimed damages and makes him liable to the tenant for double the amount of the security deposit retained.
- N. Termination of landlord's interest in unit; liability. Upon termination of a landlord's interest in a rental unit whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or his agent is liable with respect to the security deposit, until the occurrence of any of the following:
1. Transfer of the deposit to the landlord's successor in interest and written notification to the tenant by ordinary mail of the transfer and of the successor's name and address.
 2. Compliance by a successor in interest.
 3. Return of the deposit to the tenant.
- O. Action for enforcement. The attorney general or any affected individual

may bring an action to enforce this act in a court of competent jurisdiction in the county where the defendant resides or does business.

4.411 Modification of Rental Agreement Reserved.

4.412 Untenantable Building; Surrender, Liability of Lessee for Rent. When any leased or rented building is destroyed, or is so injured by the elements, or in any other way, as to be untenantable or unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the building, and of the land so injured, destroyed, or rendered untenantable or unfit for occupancy; and such lessee or occupant shall not be liable to pay to the lessor or owner rent for the time subsequent to the surrender.

4.413 Hearing Rules Reserved.

4.414 Grievance Procedures Reserved.

Chapter 4.5

Costs, Fees and Fines

4.501 Security for costs. In all civil suits the complainant, at the Court's discretion, may be required to deposit with the Clerk of the Court a cash fee or surety bond in a reasonable amount to cover costs and other disbursements in the case.

4.502 Assessment of costs. The Court may assess the accruing costs of a cause against the party or parties against whom judgment is given. Such costs shall consist of the expenses of witnesses for which either party may be responsible and the fees of jurors in those cases where a jury trial is held. The Court may direct payment of incidental expenses to include attorney's or agent's fees unless specifically provided for elsewhere in this Code.

4.503 Fees of the Tribal Court. Fees to be assessed by the Tribal Court in connection with all actions shall be as are from time to time determined by the Tribal Judge with the approval of the Saginaw Chippewa Tribal Council. Such fees shall be conspicuously posted in the offices of the Tribal Court and shall be made available to any interested person upon request.

Legislative History

Enacted September 13, 1982, Res. No. L&O-13-82 (app'd by BIA September 24, 1982); amended October 5, 1982, Res. No. _____ (app'd by BIA __/__/__); amended July 14, 1992, Res. No. 92-064; Amended Section 4.113 by Resolution 11-078 on June 14, 2011.