

TITLE 3

CIVIL ACTIONS

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TITLE 3

CIVIL ACTIONS

Chapter 3.01 General Provisions

3.01.01 Scope

This title shall apply to all civil actions in the Port Gamble S'Klallam Community Court unless otherwise specifically provided in other sections of the Law and Order Code or in other tribal laws. The term "civil action" shall include those court actions which do not have imposition of a criminal penalty as their object.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.01.02 Parties

The party initiating the civil action will be known as the petitioner. The party against whom the action is brought will be known as the respondent. Additional persons, claims or remedies may be joined in the action in the interest of justice.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.01.03 Time Limit

No complaint shall be filed in a civil action unless the event occurred within three (3) years of filing.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.01.04 Survival of Action

Civil actions commenced in the Community Court shall survive to the personal representatives of the petitioner if he or she dies or becomes unable to pursue the action before its completion.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.02 Filing Complaints

3.02.01 Complaints - Generally

Civil actions shall be initiated by filing a complaint in the Community Court unless otherwise specified in the Code.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.02 Complaint- Contents

All complaints filed in the Community Court shall be typed and contain the following:

- a) The names of the parties;
- b) A brief statement of the facts which justify granting the relief asked for;
- c) A statement of the relief asked for;
- d) A brief statement of the facts that show that the Court has jurisdiction over the parties and the subject matter of the action;
- e) The signature of the petitioner or his spokesperson; and
- f) A statement, signed by the petitioner before a notary public or judge, swearing or affirming that the petitioner has read the complaint and believes the contents to be true and correct.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.03 Filing Fee

The petitioner shall pay to the Court a filing fee of twenty-five dollars (\$25.00) at the time that the complaint is filed. The filing fee may be waived by the Court, in its discretion, upon good cause shown.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.04 Service of Notice

After the complaint is filed the petitioner shall cause the respondent to be served with a copy of the complaint and a summons in the form maintained by the Clerk of the Court. The Respondent may be served by any person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family. Personal service may be effected by personally delivering a copy of the summons and complaint to the party or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. If the respondent cannot be found within the boundaries of the Port Gamble S'Klallam Reservation service may be accomplished by certified mail return receipt requested.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.05 Service by Publication

When the respondent cannot be found within the Reservation and attempts to serve the respondent by certified mail under section 3.02.04 have failed, the petitioner may ask the judicial officer or judge to allow service by

publication. If the request is granted, the petitioner shall 1) post copies of the summons and complaint in two (2) public places on the reservation for three (3) weeks, 2) publish the summons once a week for three (3) consecutive weeks in a newspaper of general circulation in Kitsap County, and 3) publish the summons in the next issue of the Port Gamble S'Klallam newsletter which is circulated, after the request to serve by publication is granted.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.06 Summons - Content

The summons shall notify the respondent that if he does not appear or answer the complaint within twenty (20) days from the date of service, the Court may grant the judgment in favor of the plaintiff.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.02.07 Summons Proof of Service

The person serving the summons and complaint shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on the person other than the respondent as provided in Section 3.02.04, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall constitute the proof of service. In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.03 Respondent's Answer

3.03.01 Answer, Counterclaims, Default

Within twenty (20) days after the respondent is served with a copy of the civil complaint, he must contact the Court Clerk and state whether he will appear in Court to respond to the complaint. A written answer stating the nature of the defense may be filed with the Court within twenty (20) days, and if filed, a copy shall be sent to the plaintiff. In addition to any defenses the respondent may raise, the respondent may raise any claims he may have against the petitioner

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.03.02 Service of Answer and Other Pleadings

The respondent's answer and all further pleadings made by either party may be served by regular mail, with the original filed with the Court with

an affidavit of mailing. The affidavit shall be signed by the person mailing the pleading and shall state the name and address of the party the pleading was mailed to and the date of mailing.

[HIST: Resolution No. 84 A 03, passed 2/14/84.]

3.03.03 Default

When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that fact is demonstrated to the Court by appropriate motion and affidavit or testimony, a default judgment may be entered by the Court, and notice of the default judgment shall be sent to the defaulting party.

The moving party may obtain a default judgment upon satisfactory proof to the Court of the following:

- a) Proper service of the Summons and Complaint;
- b) A complaint alleging facts to support a cause of action;
- c) Evidence supporting the granting of the requested relief;
- d) Jurisdiction of the Court over the persons and subject matter of the action.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.03.04 Default Set Aside

For good cause shown the Court may set aside a default judgment.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.04 Discovery

3.04.01 Discovery - Generally

Parties may request information and evidence, which can reasonably be expected to lead to admissible evidence, from any person having such information in his or her possession, knowledge or control.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. This section is intended to make information available to parties prior to trial to assist in reaching settlement, ascertaining the truth and ultimately to expedite the judicial process.]

3.04.02 Privileges

A person may refuse to make available the information requested if its release would cause undue hardship, or would violate a confidence which it is Tribal policy to protect. If the parties disagree about whether the

responding party is required to release the information, the Court shall decide the dispute. The Court may place conditions on a release of information in order to protect confidential material, prevent unreasonable burden or expense to a party and shall otherwise insure fairness to all parties.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.04.03 Methods of Discovery

Methods of discovering and exchanging information may include but need not be limited to written questions or oral examination, requests for names of witnesses, requests for admissions, physical inspection for property, requests to perform scientific or physical tests, requests for permission to enter upon land of other property, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing what he wants.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.04.04 Responding to a Request for Discovery

A person who receives a request for information under this chapter shall either, 1) provide the information, 2) respond that he or she does not have the information in his or her possession, knowledge or control, or 3) object in writing to the request, stating the specific grounds for the objection. One of the three (3) responses must be made to the requesting party within twenty (20) days of receiving the request. If the person from whom discovery is sought fails to respond, the discovering party may move for a court order requiring a response. An evasive or incomplete response shall be considered a failure to respond.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.05 Motions

3.05.01 Motions

All motions in a case pending before the Court shall be made upon five (5) days notice to the opposing party or in open court during the course of proceedings. On motions made in open court the Court may allow the opposing party such time as the Court feels necessary to respond to the motion. The Court may also shorten or extend the time for responding to any motion if justice so requires.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.05.02 Modifications of Existing Orders

In any case where the Court has continuing jurisdiction, a party may move for the Court to modify a previously entered order, judgment or decree.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.06 Trial Procedure

3.06.01 Trial Process

All trials in civil actions shall proceed in the following order:

- a) Jury selection in those cases to be tried before a jury;
- b) An opening statement by the petitioner summarizing what he or she intends to prove and stating the burden of proof;
- c) An opening statement by the respondent summarizing what he or she intends to prove;
- d) The petitioner shall call witnesses and present other evidence to the court. The witnesses shall be subject to cross-examination by the other parties in the case. Following cross-examination the petitioner shall have a second opportunity to question the witnesses. When the petitioner has presented all his witnesses and evidence he shall inform the court that his case is complete;
- e) Following the completion of the petitioner's case the respondent may move to dismiss the case. If in the opinion of the Judge, after resolving all the disputed pieces of evidence and testimony in favor of the petitioner and drawing all reasonable inferences in favor of the petitioner there is insufficient evidence to support the case, the case shall be dismissed;
- f) If the case is not dismissed, the respondent may call witnesses and present evidence. The witnesses shall be subject to cross-examination by all of the parties. The respondent shall then have a second opportunity to question the witnesses followed by a second opportunity for cross-examination by all other parties. Following the testimony of all witnesses and the introduction of all evidence by the respondent, the respondent shall inform the Court that his case is complete;
- g) The petitioner shall then have an opportunity to introduce additional evidence to rebut the evidence produced by the respondent;
- h) The respondent shall then have an opportunity to present additional evidence to rebut that presented by the petitioner;

- i) In the case of a jury trial the Court shall then instruct the jury about the law governing the case;
- j) The petitioner shall then make a closing argument to the jury or the judge, as the case may be. The respondent shall then have an opportunity to make his closing argument. The petitioner shall have an opportunity to rebut the arguments made by the defendant;
- k) The jury or the judge shall then deliberate upon the case and announce it's verdict;
- l) Judgment shall be entered on the verdict in accordance with this Code.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.06.02 Juries

A party may request that the case be tried before a jury. The request must be filed at least fourteen (14) days before the trial date and must be accompanied by a fee or other security in an amount reasonably calculated to cover the costs incurred by having a jury. Any excess shall be reimbursed at the conclusion of trial. The fee may be waived by the Court upon a showing of good cause.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.06.03 Standard of Proof

The party asking for judgment shall have the burden of proving all elements of his or her case by the greater weight of the evidence.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.06.04 Evidence

All relevant evidence shall be admissible in civil proceedings, except when the Court finds that its prejudicial value outweighs its probative value or when inadmissible under Port Gamble S'Klallam law

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.06.05 Applicable Law

In deciding civil actions, the Community Court shall first look at the written laws, codes, ordinances and resolutions of the Port Gamble S'Klallam Tribe, which apply to the case. The Court may then look to Tribal custom and usage and in doing so, the Court may request the advice of persons familiar with Tribal custom and usage. The Court may then look to any other laws which may be applicable and may be guided by the law developed by other jurisdictions including other tribes.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.07 Judgment

3.07.01 Judgment

Following the announcement of the verdict, the judge shall announce the judgment in the case. Where there is no jury, the verdict and the judgment may be combined in the same announcement. The judgment shall be reduced to writing. A copy shall be delivered to each of the parties or their spokesperson.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.07.02 Judgment - Contents

The judgment shall contain a statement of all relief granted to the prevailing party including, where appropriate, the declaration of rights and responsibilities of the parties, an assessment of damages including a provision for interest until the judgment is paid, an order directing that certain actions be taken or not taken, and an assessment of the costs of the action.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

[Cross Reference. Section 8.01.06 Parental Responsibility applies to judgments against juveniles.]

3.07.03 Preparation of the Judgment

Where desired by one or more of the parties or where directed by the Court, the parties shall prepare a proposed written judgment incorporating the verdict of the Court. In addition, the parties may prepare and present to the judge proposed findings of fact and conclusions of law. No such proposed findings, conclusions or judgment shall be signed by the judge until the other parties have been given seven (7) days notice of their presentation to the judge, or such notice has been waived in writing.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.07.04 Reconsideration of Judgment

No later than seven (7) days after a judgment is final, a party may ask for the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment. The judge may grant a new hearing or reconsider and change the judgment if he finds one of the following to be true:

- a) The original judgment was based on or reached as a result of fraud or mistake;

- b) There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case, or
- c) The Court did not have the jurisdiction over a party or over the subject matter.

[HIST: Resolution No. 84 A 03, passed 2/14/84.]

3.07.05 Costs

The Court may assess the costs of the case against the party or parties against whom judgment was given. The costs shall consist of witness fees and expenses, jury fees and any other expenses connected with the procedure under this Code as the Court may direct.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.08 Injunctions

3.08.01 Definitions

The meaning of the terms used in this Chapter is:

- a) “Unlawful harassment” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the complaining party, or, when the course of conduct would cause a reasonable person to fear for the well-being of her or his family.
- b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, but is not limited to, the use of electronic communication as a means of conducting harassment.
- c) “Electronic communication” means any form of expression or exchange of information using electronic means. Electronic communication includes, but is not limited to, communication by telephone, internet, or text message.
- d) “Emergency restraining order” means a court order restricting a person from contacting, approaching, harassing, or threatening another specified person for a period of time not longer than thirty-five (35) days.

- e) "Protection order" means a court order restricting a person from contacting, approaching, harassing, or threatening another specified person for a period of time.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.02 Emergency Restraining Order

When the complaining party demonstrates to the Court by affidavit or verified complaint that immediate and irreparable damage, injury or loss will occur unless restrained by the court, the Court may issue an emergency restraining order without notice to the adverse party; provided that the applicant provides the Court with written reasons supporting the applicant's claim that notice should not be required and certifying the applicant's efforts, if any, to notify the adverse party.

Any emergency restraining orders shall contain a statement of the injury, why it is irreparable, and why the order was granted without notice. No restraining order shall be issued unless a complaint in writing shall have been filed with the Court. An emergency restraining order shall expire by its own terms not more than thirty-five (35) days from the date of its issuance and this fact shall be shown on the face of the order. Such an order may be renewed for a like period of time not more than once. Such renewal must be requested before the expiration of the initial order and shall be granted only upon notice to the opposing party. An emergency restraining order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.08.03 Preliminary Injunction

Following opportunity for hearing either on affidavits or on testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party and after notice and opportunity to be heard by the opposing party or parties.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.08.04 Bond

The Court may, in its discretion, require a bond of the party seeking an emergency restraining order or preliminary injunction to protect the party to be restrained in the event that such relief ultimately is determined to be unjustified; provided, however, that no such bond shall be required of the Port Gamble S'Klallam Tribe.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.08.05 Hearing – Protection Order

A complaining party, hereafter petitioner, may file a petition with the Court to enforce a protection order after demonstrating to the Court by affidavit or verified complaint that unlawful harassment exists or that irreparable harm, substantial emotional harm, damage, injury, or loss will occur unless the adverse party, hereafter respondent, is restrained by the Court. The Court may issue a protection order once the respondent has received notice and the Court has conducted a hearing.

The Court shall schedule a full hearing on the first court date after a petitioner has filed a petition for a protection order. A petition for a protection order may be filed regardless of whether other court proceedings between the parties have been filed or criminal charges have been filed against the respondent.

A petitioner shall file for and serve notice of a protection order under the provisions of Chapter 3.02. The respondent must receive notice not less than five (5) days before the hearing. If timely service cannot be made, the Court shall set a new hearing date and shall require either additional attempts at obtaining personal service or permit service by publication or by mail as provided in Section 3.02.04 or 3.02.05 of this Title. If the Court permits service by publication or mail, the Court shall set the new hearing date not later than thirty (30) days from the original hearing date. If the order expires because timely service cannot be made, the Court shall grant an emergency restraining order as provided under this Chapter.

In the event that a respondent fails to appear for a new hearing date under this Section and the petitioner cannot demonstrate service upon the respondent, the Court may grant a second emergency restraining order as provided under this Chapter. After two consecutive emergency restraining orders have been issued, and notice still cannot be effected, the Court may issue a protection order. When a law enforcement officer investigates a report of an alleged violation of a protection order issued without notice under this section, the officer shall issue notice of the order to the respondent during the investigation.

If the respondent fails to appear after receiving notice, the hearing shall go forward. If, after the hearing, the Court finds by a preponderance of the evidence that unlawful harassment exists or that the petitioner is in danger of irreparable harm, substantial emotional harm, damage, injury, or loss unless the respondent is restrained by the Court, the Court shall issue a protection order. The protection order may include any relief granted in an emergency restraining order and any other additional relief that the Court deems necessary.

A protection order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13. This section was added to allow the Court to put a protection order in place for a longer time period than the maximum seventy (70) days allowed by two consecutive emergency restraining orders. This section also ensures that the Court will enforce an emergency protection order when a protection order is delayed due to problems with notice, and this section places the burden of proof in lifting a protection order on the respondent.]

3.08.06 Hearing – Protection Order Renewal

An initial protection order shall expire by its own terms not more than one year from the date of issuance, and this fact shall be shown on the face of the order. The petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order.

Upon receipt of the petition for renewal of a protection order, the Court shall order a hearing on the first court date after the party has filed the petition or as soon thereafter as possible. The petitioner shall file for and serve notice of renewal of the protection order under the provisions of Chapter 3.02. The respondent must receive notice not less than five (5) days before the hearing. If timely service cannot be made, the Court shall set a new hearing date and shall require either additional attempts at obtaining personal service or permit service by publication or by mail as provided in Section 3.02.04 or 3.02.05 of this Title. If the Court permits service by publication or mail, the Court shall set the new hearing date not later than thirty (30) days from the original hearing date. If the order expires because timely service cannot be made, the Court shall grant an emergency restraining order as provided under this Chapter.

The Court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that he or she will not resume harassment of the petitioner when the order expires. If the Court grants renewal, the Court may set the protection order for a fixed time exceeding one year. If the Court declines to renew a protection order, the Court shall state in writing on the order the particular reasons for the court's denial.

After renewal, a protection order may be modified, vacated, or set aside by motion of either party upon notice and the opportunity for a hearing.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.07 Available Relief from a Protection Order

In any proceeding in which a petition for a protection order is filed, once the petitioner has met the burden of proof, the Court shall grant any relief necessary to prevent further harm. Available relief for a protection order may include, but is not limited to, the following:

- a) No further abuse. The court may order the respondent to refrain from further threatening, harassing, or harming the petitioner or from committing any act of harassment, abuse, or violence;
- b) Stay away. The court may order the respondent:
 - 1) To stay away from the petitioner;
 - 2) Not to enter or linger outside of petitioner's or any family or friend's residence, place of work, or school;
 - 3) To leave and remain away from any reasonably-defined geographic area;
 - 4) To have no contact. The Court may order the respondent not to initiate contact or communicate with the petitioner in any way, including but not limited to, in person, in writing, electronically, by phone, by text, or through others unless otherwise specified by the Court;
- c) Assess costs against the respondent, including filing fees, court costs, and costs of service.

Each protection order shall state in bold the following:

WARNINGS TO THE RESPONDENT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under the Port Gamble S'Klallam Tribe Law and Order Code and will subject a violator to arrest. Any assault that is a violation of this order and that does not amount to assault under the Port Gamble S'Klallam Tribe Law and Order Code is a criminal offense. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious risk of death or serious physical injury to another person is a criminal offense.

YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITES OR ALLOWS YOU TO VIOLATE THE ORDER'S PROHIBITIONS. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the Court can change the order upon written application. Violation of an order of protection by a non-tribal member shall be grounds for exclusion from the jurisdiction of the Port Gamble S'Klallam Tribe and penalties for civil contempt of court as set forth in Chapter 1.06.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.08 Petition – Contents

A petition for a protection order shall include the name and address where the petitioner would like to receive notices from the Court; the allegation that unlawful harassment exists or that irreparable harm, substantial emotional harm, damage, injury, or loss will occur or has occurred; the

names and ages of all persons known by the petitioner to be in need of protection; the name and address, if known, of the respondent and his or her relationship, if any, to each person in need of protection; and the existence of any other restraining, protection, or no-contact orders between the parties. The petitioner shall file an affidavit or declaration under penalty of perjury with the petition stating, in the petitioner's own words, the specific facts and circumstances of the alleged incident(s) that created the petitioner's need to file for a protection order.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.09 Immunity of Officers

No law enforcement officer may be held criminally or civilly liable for making an arrest under this Chapter if the officer acts in good faith and without malice.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.10 Violation of Protection Order – Penalties

A person who violates the restraint provisions of a protection order, knowing that the order has been issued against him or her, shall be guilty of a Class C offense under Section 5.04.10 of this code. This offense may be charged in addition to any offense committed in violating the order.

A violation of a protection order shall also constitute criminal contempt of court and may be dealt with under Chapter 1.06 of this Code.

Violation of an order of protection by a non-tribal member shall be grounds for exclusion from the jurisdiction of the Port Gamble S'Klallam Tribe and penalties for civil contempt of court as set forth in Chapter 1.06.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.11 Violation of Protection Order – Arrest

A law enforcement officer shall arrest without a warrant and take into custody a person whom the officer has probable cause to believe has violated a protection order issued under this Chapter that restrains the person or excludes the person from a residence. An officer may not arrest a person under this section if the person does not have knowledge of the order.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.12 Protection Order – Modification and Transmittal

Upon application with notice to all parties and after a hearing, the Court may modify the terms of an existing protection order. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

3.08.13 Protection Order – Familial Relationship

If a familial relationship exists between the petitioner and the respondent, the petitioner may file for a protection order under Title 15 Domestic Violence.

[HIST: Source - Resolution No. 13 A 138, passed 12/10/13.]

Chapter 3.09 – Enforcement of Judgments

3.09.01 Title

This Chapter shall be known as the “Port Gamble S’Klallam Tribe Enforcement of Judgments Code”.

3.09.02 Authority

This Chapter is enacted pursuant to authority provided to the Tribal Council by Article IV, Section 3.A of the Port Gamble S’Klallam Tribe’s Constitution.

3.09.03 Definitions

The meaning of the terms used in this Chapter is:

- a) “Chapter” means this Chapter 9 of Title 3 the Port Gamble S’Klallam Tribal Code.
- b) “Enforcement Officer” means an officer of the Port Gamble S’Klallam Tribal Police or other officer designated to act in this capacity by the Tribal Court.
- c) “Foreign Judgment” means any judgment, decree or order of any other tribal, state or federal court.

- d) "Garnishee" or "Garnishee Defendant" means the person served a writ of garnishment, usually a third person indebted to, or in possession of wages or property of, a judgment debtor.
- e) "Immediate Family" means all persons living in the same household, including, but not limited to, husband, wife, children, parents and grandparents.
- f) "Judgment Creditor" means the person in whose favor a judgment has been entered by a court.
- g) "Judgment Debt" means an indebtedness that is the subject of a judgment entered by a court.
- h) "Judgment Debtor" means the person against whom a judgment has been entered by a court.
- i) "Net Wages" or "Wages" or "Salary" means income by way of earnings, interest, or rent after deducting the payment of mandatory taxes and deductions, family insurance premiums, and voluntary retirement deductions up to five percent (5%) of gross wages.
- j) "Person" means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.
- k) "Reservation" means the lands and waters within the exterior boundaries of the Port Gamble S'Klallam Tribe's reservation.
- l) "Council" or "Tribal Council" means the Tribal council of the Port Gamble S'Klallam Tribe.
- m) "Tribe" means the Port Gamble S'Klallam Tribe, a federally recognized Indian Tribe.
- n) "Tribal Court" or "Court" means the Port Gamble S'Klallam Tribal Court.
- o) "Trust Land" or "Trust Property" means property within the exterior boundaries of the Reservation or lands outside the boundaries of the Reservation held in trust by the United States for the Tribe or tribal members.

3.09.04 Purpose and Scope

The Council enacts this Chapter to provide a means for enforcement of the judgments of the Tribal Court. This Chapter also provides the exclusive means by which foreign judgments may be enforced in the Tribal Court.

General Provisions

3.09.05 Jurisdiction

The Tribal Court is vested with the fullest personal, subject matter and territorial jurisdiction permissible under the Constitution of the Port Gamble S'Klallam Tribe and to the extent consistent with federal law.

3.09.06 Enforcement of Judgments

If, after the time for appeal has run, a judgment debtor fails to pay or otherwise comply with the terms or conditions of the judgment, the judgment creditor may seek to enforce the judgment, or the Tribal Court may order enforcement on its own motion, in the manner provided for in this Chapter.

3.09.07 Timing

Unless the judgment has been renewed by the Court before its expiration and except as may be specifically provided elsewhere by the law of the Tribe, no judgment of the Tribal Court shall be enforceable after ten (10) years from the date it is entered.

3.09.08 Renewal of Judgments

At the request of a judgment creditor the Court shall order the judgment renewed and extended for an additional ten (10) years if the request is made to the Court prior to the expiration of ten (10) years after the date of entry of the judgment,.

3.09.09 Effect upon Estate

A judgment of the Tribal Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding a deceased person's estate.

3.09.10 Service of Notice

Any required notice required by this Chapter shall be in writing and shall be served in compliance with Sections 3.02.04 or 3.02.05 of this Title.

3.09.11 Sovereign Immunity

Nothing in this Chapter shall affect the right of the Tribe to assert immunity from suit by virtue of its status as a sovereign entity, except that the Tribe may not assert sovereign immunity when named and served as a garnishee in a garnishment order issued by the Tribal Court pursuant to this Chapter. Nothing in this Chapter shall be construed as a waiver of immunity for any administrative order or order from any other court.

3.09.12 Supplemental Proceedings

After an order of execution has been issued, or upon the motion of a judgment creditor, the Court may require the judgment debtor to submit a list of the location and nature of his or her assets which may be used to pay the judgment, and those assets that he or she wishes to claim as exempt. The list may be provided by written or oral response and shall be made under oath.

A request by the Court to receive this list shall be answered and returned to the court within ten (10) days and the request shall carry instructions to that effect. If the judgment debtor fails to respond in either oral or written form, the judgment creditor may apply to the Court for and serve the judgment debtor with an Order to Show Cause why he or she should not be held in contempt of court.

Exemptions

3.09.13 Exemptions – Generally

The Tribal Court shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his or her immediate family.

Only property owned by the judgment debtor may be subject to execution, and not property owned by the judgment debtor's immediate family.

All trust property, income from trust property, or property subject to a restriction on alienation is exempt from execution under this Chapter, except for foreclosure against such property as may be allowed elsewhere by the law of the Tribe.

3.09.14 Personal Exemptions

The following items of personal property are exempt from execution or garnishment:

- a) All wearing apparel of every person and their immediate family, but not to exceed one thousand dollars (\$1,000) in value in furs, jewelry and personal ornaments for any person;
- b) All private libraries of every individual, but not to exceed fifteen hundred dollars (\$1,500) in value;
- c) All family pictures and keepsakes;
- d) "Tools of the Trade" necessary for any person to carry on the trade, occupation, or profession by which that person habitually earns his or her living not to exceed fifteen thousand dollars (\$15,000), provided that,

the Court may allow up to \$100,000 to be exempted where the “tools of the trade” are to be used in exercising a Treaty-protected right;

- e) A reasonable motor vehicle(s) exemption may be allowed at the discretion of the Court, provided that no more than two (2) vehicles shall be exempted per person, and that the total aggregate value shall not exceed twelve thousand, five hundred dollars (\$12,500);
- f) Insurance proceeds for exempt items that have been lost, stolen, or destroyed;
- g) Proceeds of life and disability insurance and annuities;
- h) Any items which have cultural or religious significance; and
- i) Any property, wages or income that is otherwise protected under this Chapter.

3.09.15 Residence Exemption

Except as provided in this Chapter, the residence of the judgment debtor is exempt from attachment, execution or forced sale for the payment of any judgment up to the amount specified in subsection (g) of this section.

The residence consists of the dwelling house or mobile home in which the judgment debtor resides or intends to reside. Residence also includes those buildings or structures necessarily connected with the use and enjoyment of the dwelling house or mobile home, or buildings or structures when they are used with the land for its benefit, and the land on which the residence is located.

If the judgment debtor is married, the residence may consist of the jointly owned property of the spouses, or the separate property of either spouse.

If the judgment debtor is not married, the residence may consist of any of his or her real property and the improvements thereon which are used for the judgment debtor’s primary residence.

The same premises and personal property may not be claimed separately by both husband and wife for the purpose of increasing the amount of the residence exemption.

The “net value” of a residence is the market value minus all liens and encumbrances.

The total amount of the residence exemption shall not exceed the lesser of:

- a) The total net value of the lands, residence and improvements, as described in this Section; or

- b) The sum of one hundred thousand dollars (\$100,000).

3.09.16 Exemption on Wages

Except as provided in paragraph (b) of this Section, if a garnishee is an employer owing the judgment debtor wages, then for each week of such wages, an amount shall be exempt from garnishment that is the greater of the following:

- a) Thirty (30) times the federal minimum hourly wage prescribed by federal law in effect at the time the earnings are payable; or
- b) Fifty percent (50%) of the net wages or salary of the judgment debtor.

In the case of a garnishment based on a judgment or other court order for child support or court order for spousal maintenance the exemption shall be up to fifty percent (50%) of the net wages or salary of the judgment debtor if the individual is supporting a spouse or dependant child other than a spouse or child on whose behalf the garnishment is brought, or up to forty percent (40%) of the net wages or salary of the judgment debtor if the individual is not supporting such a spouse or dependant child.

If the wages of a judgment debtor are derived from self-employment treaty income, fifty percent (50%) of such wages shall be exempt.

The exemptions stated in this section shall apply whether such wages are paid, or are to be paid, weekly, monthly, or at other intervals, and whether wages are due the judgment debtor for one week, a portion of a week, or for a longer period.

Unless directed otherwise by the Court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and shall pay these amounts to the judgment debtor.

3.09.17 Limitations on Exemptions

The residence exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

- a) On debts secured by a mechanic's, laborer's, material men's or vendor's lien upon the residence; and
- b) On debts secured by either a security agreement describing as collateral a mobile home that is being claimed as a homestead, or by a mortgage or deed of trust on the residence that has been executed and acknowledged by the husband and wife or by an unmarried claimant.

3.09.18 Property Owned with Another

If the judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the judgment debtor's interest, provided the property is not otherwise exempt. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at a sale, and thereby obtain the judgment debtor's interest.

3.09.19 Review of Consumer Transactions

In considering any action to enforce a judgment or repossess personal property located within the Reservation in connection with a consumer transaction, the Tribal Court may review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or practice by the seller of the consumer goods or the creditor for the transaction.

In determining whether an act or practice by the seller or creditor is unconscionable, the Tribal Court shall consider the following circumstances when it is shown that the supplier or creditor knew or had reason to know that:

- a) The seller or creditor took advantage of the inability of the consumer reasonably to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors;
- b) When the consumer transaction was entered into, the price or credit terms grossly exceeded the price at which similar property, services or credit were readily obtainable in similar transactions by like consumers in the geographic area;
- c) When the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer; or
- d) The seller or creditor made a misleading statement of opinion on which the consumer was likely to rely to his or her detriment.

If the Tribal Court determines that an act or practice in a consumer transaction was unconscionable, the Court may deny the relief requested or may enforce only such part of a judgment as was not affected by the unconscionable act or practice.

Writ of Execution

3.09.20 Petition for Writ of Execution

A judgment creditor may petition the Tribal Court for a Writ of Execution upon any non-exempt personal property belonging to the judgment debtor when such property is in the possession of the judgment debtor and is found within the jurisdiction of the Court. The petition shall state the following facts:

- a) That the judgment creditor has a judgment wholly or partially unsatisfied in the Tribal Court;
- b) The amount alleged to be due under that judgment;
- c) That the judgment creditor has reason to believe and does believe that the judgment debtor has non-exempt property on which the judgment could be executed; and
- d) A list of the specific non-exempt property on which the judgment creditor is seeking execution and the estimated value of each item of property.

3.09.21 Hearing on Petition for Writ of Execution

Upon receipt of a petition for a Writ of Execution, the Court shall schedule a hearing date within twenty (20) days. At the hearing the judgment debtor may show that the judgment has been satisfied or that any or all of the property mentioned in the petition is exempt from execution. The Court shall not reconsider the merits of the original action, except as provided for in Section 3.09.19.

3.09.22 Notice of Hearing

The judgment debtor shall be provided with a notice of the hearing and a copy of the petition no less than ten (10) days prior to the date of the hearing.

The notice shall inform the judgment debtor that the hearing is the judgment debtor's opportunity to show that the judgment has been paid or that any or all of the property mentioned in the petition for Writ of Execution is exempt from execution.

3.09.23 Service of Petition and Notice of Hearing

The Petition for Writ of Execution and the Notice of Hearing shall be delivered to the judgment debtor in the manner provided for in Section 3.02.04 of this Title.

3.09.24 Answer to Petition for Writ of Execution

The judgment debtor may file with the Clerk of the Court a written answer or response to the creditor's petition for a Writ of Execution.

The answer is due at least two (2) days before the hearing on the petition.

A copy of the answer or response must also be delivered to the judgment creditor in the manner provided in Section 3.02.04 of this Title at least two (2) days before the hearing on the petition.

3.09.25 Power of the Court – Issuance of a Writ of Execution

The Court may issue a Writ of Execution when it finds that:

- a) the judgment creditor has a valid judgment that has not been paid;
- b) the time for appeal of the judgment has run; and
- c) there exists non-exempt personal property upon which to execute the judgment.

The Court may issue a Writ of Execution solely on the affidavit of the judgment creditor if sufficient evidence is present to show that the property in fact belongs to the judgment debtor.

The Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at a sale. If the property is not able to be sold for the minimum reasonable value assigned, the Court may re-evaluate the minimum reasonable value.

The Tribal Court may amend the Writ of Execution on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures for the issuance of the original Writ.

The Tribal Court may initiate proceedings for a Writ of Execution on its own motion, consistent with the provisions of this Chapter in order to ensure the enforcement of judgments entered by the court or the payment of any civil fines or penalties imposed by the Court.

Any party who fails to comply with a Writ of Execution issued pursuant to this Chapter, shall be subject to the civil contempt powers of the Tribal Court, following notice to show cause and a hearing before the Court.

3.09.26 Writ of Execution – Contents

The Writ of Execution shall:

- a) State the amount owing to the judgment creditor;

- b) Describe the property that is to be seized by the authorized enforcement officers;
- c) Direct the enforcement officers to sell as much of the seized property as is necessary to satisfy the judgment;
- d) State the date, time, and place of the sale and listing the items to be sold; and
- e) State that the judgment debtor has the right to pay the judgment and obtain the return of the property.

A copy of the Writ of Execution must be mailed to the judgment debtor at his or her last known address and posted at two public places within the Reservation for ten (10) days prior to the sale.

3.09.27 Service of Writ of Execution

The Writ shall be served on the judgment debtor as provided in Section 3.02.04 or 3.02.05 of this Title.

3.09.28 Substitution or Surrender of Property

A judgment debtor who owns property that is not exempt from execution may substitute other property of equal or greater value that is exempt from execution. This substitution will allow execution against exempt property. The result is that the non-exempt property shall become exempt from execution and the previously exempt property shall be removed from exemption.

A judgment debtor may voluntarily surrender, by written consent, secured personal property to a judgment creditor.

The written consent of the judgment debtor must be obtained at the time of the surrender, must clearly state the agreed upon value of the surrendered property and must be signed by both the judgment debtor and the judgment creditor.

Contract provisions for the voluntary surrender of property, executed in advance of the judgment debtor's voluntary surrender, are not valid or enforceable.

3.09.29 Execution Sale

An Execution Sale shall be conducted by the enforcement officer who shall issue a bill of sale or invoice for the property to the highest bidder in return for a cash amount.

No item of property shall be sold for less than the minimum value assigned by the Court. If the minimum assigned value is not offered, the property

shall be held and notice of another sale shall be given. The Court may re-evaluate the minimum reasonable value upon request or on its own motion.

Proceeds of the Execution Sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, and third to pay any portion of the judgment still owing.

Any remaining funds shall be held for the benefit of the judgment debtor for a period of one (1) year from the date of the Execution Sale.

If no claim is made by the judgment debtor for recovery of the remaining funds during the one year period following the Execution Sale, the funds shall be deposited in the General Fund of the Tribe and shall become the property of the Tribe to be expended for the benefit of the Tribe.

Writ of Garnishment

3.09.30 Petition for Writ of Garnishment

A judgment creditor may petition the Tribal Court for a Writ of Garnishment upon any specific wages owed by another to the judgment debtor or personal property that is in the possession of a third party and is found within the jurisdiction of the Court.

The petition shall state the following facts:

- a) That the judgment creditor has a tribal court judgment that is wholly or partially unpaid;
- b) The amount alleged to be due under that judgment;
- c) That the judgment creditor has reason to believe and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the judgment debtor in an amount exceeding those exempted under this Chapter, or that garnishee has possession or control of personal property or effects belonging to the judgment debtor which are not exempted from garnishment under Section 3.09.16 of this Chapter; and
- d) Whether the garnishee is the employer of the judgment debtor.

3.09.31 Issuance of Writ of Garnishment

When a Petition for a Writ of Garnishment is made by a judgment creditor and the notice requirements of Section 3.02.04 or 3.02.05 of this Title have been complied with, the Tribal Court Clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor, directed to

the garnishee, commanding the garnishee to answer said writ within twenty (20) days after the service of the Writ of Garnishment on the garnishee.

3.09.32 Writ of Garnishment-Contents

The Writ of Garnishment shall:

- a) Specify the amount owed to the judgment creditor;
- b) Specify the name and address of the garnishee in possession of the wages or personal property;
- c) Order the garnishee not to pay or deliver to the debtor any non-exempt wages or Property owing to the debtor;
- d) Order the garnishee to pay or deliver any non-exempt wages or property owing to the judgment debtor over to the judgment creditor until otherwise ordered by the Court or until the amount owed the creditor has been satisfied, whichever is sooner;
- e) Require the garnishee to file a return with the Court containing the amount and a description of the wages or property of the judgment debtor which is in the garnishee's possession and such return shall be filed with the Court within twenty (20) days from the date the garnishee was served with notice of the garnishment; and
- f) Notify the garnishee that, if the garnishee relinquishes non-exempt wages or personal property to the judgment debtor after receipt of the notice, the garnishee may be found liable to the judgment creditor for the amount of the wages or the value of the property or wrongfully released to the judgment debtor.

The Writ of Garnishment shall state the garnishee's processing fee as follows:

- a) The garnishee of a Writ of Garnishment for a continuing lien on wages may deduct a processing fee from the remainder of the judgment debtor's wages after withholding the required amount under the writ. The processing fee may not exceed twenty dollars (\$20.00) for the first answer and ten dollars (\$10.00) at the time the garnishee submits a subsequent answer.
- b) For all other Writs of Garnishment, the garnishee is entitled to a check or money order payable to the garnishee in the amount of twenty dollars (\$20.00) at the time the Writ of Garnishment is served on the garnishee pursuant to Section 3.09.31.

3.09.33 Notice of Garnishment to the Judgment Debtor

When a Writ of Garnishment is issued as provided in Section 3.09.31, the court clerk shall at the same time issue and deliver to the judgment debtor a Notice of Garnishment. . The notice shall inform the judgment debtor that a Writ of Garnishment has been issued. It shall also inform the judgment debtor that a hearing may be requested if the judgment debtor believes he or she is entitled to exemptions from garnishment other than those specified in the Writ.

3.09.34 Service of Writ and Notice of Garnishment

The Writ of Garnishment shall be served on the garnishee and the Notice of Garnishment shall be served on the judgment debtor as specified in Section 3.02.04 of this Title. A copy of the Writ of Garnishment shall be attached to the Notice of Garnishment served on the judgment debtor.

3.09.35 Hearing on Writ of Garnishment

Upon proper request by the judgment debtor, judgment creditor, or garnishee and after the time for filing of the answer by the garnishee defendant has passed, the Court shall schedule a hearing on the matter.

The request for hearing must specify the reason the party is requesting the hearing.

If the judgment debtor is requesting the hearing he or she must specify any exemptions he or she is claiming and specify any payments made on the judgment

The court clerk shall issue a Notice of Hearing, a copy of which shall be served, along with a copy of the request for hearing, on all parties no later than seven (7) days prior to the date of the hearing.

3.09.36 Notice of Hearing

The Notice of Hearing on the Writ of Garnishment shall inform the parties:

- a) the matters set for hearing as specified in the Request for Hearing;
- b) the date, time, and place of the hearing; and
- c) that the parties shall have an opportunity to contest the claims made by the party requesting the hearing.

If more than one party requests a hearing, the hearings shall be consolidated.

3.09.37 Answer to Request for Hearing

Any party may file with the clerk a written answer or response to a Request for Hearing.

This answer is due at least two (2) days before the scheduled hearing. A copy of the answer or response must also be delivered to the other parties in the manner provided in Section 3.02.04 of this Title at least two (2) days before the scheduled hearing.

3.09.38 Power of the Court – Garnishment

The Tribal Court may amend the Writ of Garnishment on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures for the issuance of the original Writ.

The Tribal Court may initiate garnishment proceedings on its own motion, consistent with the provisions of this Chapter in order to ensure the enforcement of judgments entered by the court or the payment of any civil fines or penalties imposed by the Court.

Any party who fails to comply with a Writ of Garnishment issued pursuant to this Chapter, shall be subject to the civil contempt powers of the Tribal Court, following notice to show cause and a hearing before the Court.

3.09.39 Tribe as Garnishee

It shall be proper for the Tribal Court to issue a Writ of Garnishment against the Tribe upon a Tribal Court judgment when it is determined that the Tribe qualifies as a garnishee, and for this limited purpose the Tribe shall not assert its immunity from suit.

3.09.40 Payment of Judgments from Individual Indian Monies

In cases where the judgment creditor is either the Tribe or a member of a federally recognized Indian tribe, the Tribal Court may order payment of a judgment debt from an Individual Indian Money Account under the provisions stated in this Section.

Whenever the Tribal Court has ordered payment of money damages to a judgment creditor and payment is not made within the time specified therein and when the judgment debtor has sufficient funds to his or her credit in an Individual Indian Money account with the Bureau of Indian Affairs to satisfy all or part of the judgment, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the agency where such funds are on deposit. The Superintendent shall send this record and a statement as to the amount of funds available in the individual's account to the Secretary of the Interior. The Secretary of the Interior, or his or her designee, may direct the disbursing agent to pay over from the judgment debtor's account to the judgment creditor the amount of the judgment, or

such amount as may be specified by the Secretary of the Interior not to exceed the amount of the judgment.

Writ of Repossession

3.09.41 Personal Property Within the Reservation or held by Tribal Members

The Tribe possesses exclusive jurisdiction over the repossession of any personal property held by or belonging to a tribal member, and located within the exterior boundaries of the Reservation or upon tribal or allotted Indian lands outside the exterior boundaries of the reservation. Such personal property shall not be taken to satisfy a judgment except pursuant to this Chapter.

3.09.42 Self-Help Repossession Prohibited

Self-help repossession is prohibited. Creditors shall not use “self-help repossession” but must repossess property only in conformity with this Chapter.

3.09.43 Consent to Repossession

A creditor may contact a debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the jurisdiction of the Tribe, unless the debtor has notified the creditor in writing to cease such contact.

A debtor may give written consent to the creditor permitting a repossession of personal property without formal court proceedings. The written consent of the debtor must be obtained at the time of the repossession of the property. Contract provisions for the voluntary surrender of personal property that are executed in advance of the repossession are not valid or enforceable.

A creditor may enter on to the Reservation for the purpose of repossessing personal property pursuant to the debtor’s written consent. The creditor must abide by any restrictions concerning time or manner of repossession stated in the written consent.

3.09.44 Court Order Absent Written Consent

If a debtor does not sign a written consent allowing repossession, the property may be removed from the Reservation by the creditor only pursuant to a Writ of Repossession issued by the Tribal Court.

3.09.45 Petition for Writ of Repossession

A creditor may petition the Tribal Court for a Writ of Repossession when the creditor desires to repossess the personal property of a debtor and such property is located within the jurisdiction of the Court.

The petition shall be accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the debtor.

The petition shall be served in the manner provided for in Section 3.02.04 or 3.02.05 of this Title.

3.09.46 Hearing on Petition for Writ of Repossession

Upon receipt of a petition for a Writ or Repossession, the Court shall schedule a hearing date within twenty (20) days.

The timing of the hearing may be accelerated by the Court if:

- a) The petition contains verified, specific facts showing reasonable cause to believe that the personal property involved may be lost, damaged or removed from the Reservation prior to a regularly scheduled hearing; and
- b) An accelerated hearing can be held without substantially prejudicing the ability of the debtor to present any good faith defenses to the petition for the Writ of Repossession.

3.09.47 Notice of Hearing on Petition for Writ of Repossession

The debtor shall be provided with a notice of the hearing and a copy of the petition no later than ten (10) days prior to the date of the hearing.

The notice shall inform the debtor that the hearing is the debtor's opportunity to contest the creditor's claim to a right of repossession.

The notice shall also inform the debtor that if he or she fails to appear, a Writ of Repossession may be issued and he or she will have lost his or her opportunity to contest the repossession of the property mentioned in the petition.

3.09.48 Answer to Petition for Writ of Repossession

The debtor may file with the Clerk a written answer or response to the creditor's petition.

The answer must be filed at least two (2) days before the hearing on the petition.

A copy of the answer or response must be delivered to the creditor at least two (2) days before the hearing on the petition in the manner provided in Section 3.02.04 of this Title.

3.09.49 Power of the Court – Issuance of the Writ of Repossession

If after a hearing, the Court determines that repossession is justified, the Court shall issue a Writ of Repossession authorizing the creditor to repossess the personal property involved in the proceeding.

If it appears to the Court that the return of the property to the creditor would be unjust because of the amount of equity the debtor has in the property, the Court may award money damages to the creditor in the amount owed by the debtor on the property.

The Court may enter a Writ of Repossession in the absence of the debtor if the debtor fails to appear at the hearing despite proper notice.

3.09.50 Writ of Repossession – Contents

The Writ of Repossession shall provide that:

- a) The property which has been specified is to be seized by the authorized enforcement officers and turned over to the judgment creditor; and
- b) The enforcement officers are authorized to use reasonable force to enforce the Writ of Repossession.

3.09.51 Remedies for Violation of this Section

Any non-member of the Tribe, except persons authorized by federal law to be present on the Reservation, may be excluded from the Reservation in accordance with the laws of the Tribe, if such non-member is found by the Tribal Court to be in deliberate or willful violation of the provisions of this Chapter governing repossession.

Any creditor and any agents or employees of any creditor who are found by the Tribal Court to be in deliberate or willful violation of the provisions of this Chapter governing repossession may be denied the privilege of doing business within the Reservation. The Court shall afford any creditor fair notice and an opportunity for hearing prior to the denial of any business privilege on the Reservation.

Any person who violates this Chapter and any creditor whose agents or employees violate this Chapter shall be deemed to have breached the peace of the Reservation and they shall be liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this Chapter.

Recognition and Enforcement of Foreign Judgments

3.09.52 Foreign Judgments – When Recognized

The Tribal Court shall not recognize or enforce any foreign judgment unless the proponent of the foreign judgment:

- a) Complies with the procedure set forth in this Section;
- b) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Tribal Court;
- c) Submits proof that the foreign judgment is based on valid subject matter and personal jurisdiction;
- d) Submits proof that an attempt was made to enforce the judgment in the jurisdiction in which the foreign judgment was rendered and that such attempt was unsuccessful; or good cause is shown why an attempt at enforcement of the foreign judgment in that jurisdiction would be futile; and
- e) Submits proof that the foreign judgment is final and that no appeal therefrom is allowed.

The Tribal Court shall not recognize or enforce a foreign judgment when to do so would require the Tribe to waive its immunity from suit except when the Tribe is to be served as a garnishee for the wages or property of a judgment debtor, in which case the requirements for garnishment that are set out in this Chapter shall be followed.

The Tribal Court need not recognize a foreign judgment if:

- a) The defendant in the proceedings in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
- b) The foreign judgment decree or order violated the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 -1341, or any state or federal constitution;
- c) The foreign judgment was obtained by fraud;
- d) The foreign judgment would serve to violate any federal law, tribal law, custom or tradition, or the Treaty between the Port Gamble S'Klallam Tribe and the federal government;
- e) The cause of action on which the judgment is based is contrary to the general welfare of the Tribe or its members; or

- f) The government from which the foreign judgment is issued does not provide reciprocal full faith and credit or comity to the orders, decrees and judgments of the Tribal Court.

3.09.53 Procedure for Recognition and Enforcement of Foreign Judgments

In order for a foreign judgment to be recognized and enforced, such judgment shall be filed by its proponent with the Tribal Court within ten (10) years from the date of its issuance or renewal.

The proponent of a foreign judgment shall file in the Tribal Court:

- a) a certified copy of the foreign judgment, identifying the date of its entry;
- b) the record of any subsequent entries affecting the judgment, such as levies of execution and payments in partial satisfaction;
- c) a motion requesting that the Tribal Court recognize and enforce the foreign judgment; and
- d) submission of proof required by Section 3.09.52(A) of this Chapter.

A properly filed foreign judgment shall be docketed and recorded in the Tribal Court in the same manner as other cases.

Upon proper filing of a foreign judgment with the Tribal Court, the Court shall issue a summons directing the defendant to appear on a date not more than sixty (60) days or less than fourteen (14) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign judgment. Such a summons shall be served on the defendant in a manner consistent with Section 3.02.04 or 3.02.05 of this Title.

Failure of the defendant to appear as directed by the summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.

After reviewing all the relevant evidence concerning the foreign judgment the Court shall issue an order granting or denying the motion to recognize and enforce the foreign judgment if doing so would be consistent with the provisions of this Chapter. Such an order shall be a final judgment of the Tribal Court in favor of either the plaintiff or defendant to the foreign judgment and shall be enforceable as such.

Repeal and Severability

3.09.54 No Effect on Foreclosure of Leasehold Mortgages

Nothing in the Enforcement of Judgment Code is intended to amend or repeal the provisions of 10.03 relating to the foreclosure of leasehold mortgage interests.

3.09.55 Repeal

All prior enactments of the Tribal Council relating to the enforcement of judgments are repealed and Title 3, Chapter 9 of the Tribal Code is amended to incorporate this Enforcement of Judgments Code.

3.09.56 Severability

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application to other persons or other circumstances shall remain in effect.

[Legislative history: Chapter 3.09 was amended by Resolution 09-A-128 on December 8, 2009, to ensure timely notice to the Tribe that would require the Tribe to take actions on enforcement of judgments, to clarify exemptions from enforcement of judgments, to authorize the Tribal Court to inquire into the propriety of credit terms to ensure tribal predatory lending did not occur, and to avoid self help repossessions].

Chapter 3.10 Civil Forfeiture Procedures

3.10.01 Property Which May be Forfeited

The Community Court may order forfeiture of the following kinds of property located within its jurisdiction:

- a) Property which is made contraband by Tribal law;
- b) Property being used to violate or in violation of a Port Gamble S'Klallam Tribal ordinance;
- c) Property otherwise subject to forfeiture by specific Tribal law.

If a specific Tribal law sets forth its own forfeiture proceedings they shall be controlling and the Community Court may rely on such additional provisions in this chapter as justice may require.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.02 Nature of Forfeiture

Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.03 How to Begin A Forfeiture Proceeding

In order to begin a forfeiture proceeding, the Tribe shall file a Petition for Forfeiture in the Community Court and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.04 Order for Seizure of Property

Any time after a Petition for Forfeiture is filed, if the Tribe demonstrates that there is probable cause to believe the property named is subject to forfeiture under Tribal law, the judge may issue an order which directs Tribal law enforcement officers to seize and hold the property pending resolution of the forfeiture suit.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.05 Seizure of Property Before Petition is Filed

In the following circumstances the Tribe, through its law enforcement officers, may seize any property which is subject to forfeiture before a Petition for Forfeiture is filed or before an order of seizure has been obtained:

- a) When a Tribal law or regulation allows immediate seizure;
- b) When the property presents an urgent danger to persons, property, or wildlife within the Tribe's jurisdiction;
- c) When the Tribe has probable cause to believe that the property is subject to forfeiture and is likely to be removed from the Tribe's jurisdiction if it is not seized immediately.

Whenever the Tribe seizes property before it has filed and served a Petition for Forfeiture, it must file and serve the petition no later than five (5) days after the seizure has taken place. At the time of filing or as soon after that as the judge can schedule a hearing, the Tribe shall request an order of seizure as provided in section 3.10.04.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.06 Inventory of Property and Notice of Seizure

The Tribal officer who seizes property pursuant to these provisions shall prepare a complete list to a notice which states the time and place of seizure, the name and address of the owner, if known, and the authority for seizure. The officer shall promptly deliver a copy of the notice and list to the Court, to the owner of the property, and to the person in whose possession

the property was found. If the owner of the property cannot be identified or located, the officer shall post the notice and list at the place where the property was found and at two (2) other public places on the reservation.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.07 Release of Property Pending Forfeiture Trial

Pending the forfeiture trial, a person who presents satisfactory proof that he or she owns the property which has been seized may gain possession of the property by posting a bond or cash deposit with the Tribe. The bond or deposit shall be in the amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the Tribal court. The Court shall order the Bond or cash forfeited if it is shown by a preponderance of the evidence that the owner used the property in violation of Tribal law after posing the bond. If the Court ultimately rules in the Tribe's favor on the Petition for Forfeiture the court shall order either the bond or the property itself forfeited.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.08 Procedures and Burdens of Proof

Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except that in cases where the property owner does not post bond and regain possession of the property, trial of the principle issue in the case must be held no later than thirty (30) days after the petition for forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

3.10.09 Disposition of the Property

If the Court rules in favor of the property owner, all property seized or bonds or cash deposited shall promptly be returned to the owner. If the Court rules in favor of the Tribe, and orders the property forfeited, the Court's order shall transfer title of the property to the Port Gamble S'Klallam Tribe. The Tribe may then dispose of the property as it sees fit.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Chapter 3.11 Abandonment of Property

3.11.01 Scope

This chapter sets forth the procedure for the Port Gamble S'Klallam Tribe to seek a declaration of abandonment from the Community Court and for disposal of property abandoned on the Port Gamble S'Klallam Reservation.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Abandonment is distinguished from forfeiture in that abandonment is voluntary in nature while forfeiture is generally an enforced, involuntary loss.]

3.11.02 Notice

Unless otherwise specified under this Code, the Port Gamble S'Klallam Tribe shall notify the last known owner of any property apparently abandoned on the reservation that it is seeking a declaration of abandonment for the purpose of disposing of the property. The notice shall include the location and description of the property, the date it was apparently abandoned, the address and telephone number where additional information is available and a statement that if the property is not claimed within forty-five (45) days the Tribe will request the Community Court to declare it to be abandoned and will dispose of the property. The notice shall be sent by certified mail, return receipt requested, to the person's last known address.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84.]

Cross Reference - Section 9.5.06 provides for notice to be attached to apparently abandoned motor vehicles.

3.11.03 Declaration of Abandonment

If the last known owner makes no attempt to claim the property within the time specified in the notice, the Tribe may file an action in the Community Court for a declaration of abandonment. The procedure shall conform to the rules for civil actions under this Code. If the Court finds that the property has been abandoned, it shall issue a declaration to that effect and shall authorize the Port Gamble S'Klallam Tribal Council to dispose of the property as it sees fit. The Tribe shall be entitled to recover from the last known owner the costs of bringing the action, including attorney's fees and the cost of disposing of the abandoned property.

[HIST: Source - Resolution No. 84 A 03, passed 2/14/84. Resolution 00 A 045, passed 6/12/00 amended this section to allow the Tribe to recover costs of bringing the action and of disposing of the property.]

Chapter 3.12 Emergency Exclusion

[HIST: Repealed Resolution No. 02 A 065, passed 5/14/02 which adopted a comprehensive exclusion code. Resolution No. 88 A 30, passed 8/9/88.]