

San Pasqual Band of Mission Indians
San Pasqual Housing & Community Development
Private Home Ownership Program Policies and Procedures Manual

Collection and Eviction Policy

I. INTRODUCTION

The primary objective of the San Pasqual Department of Housing and Community Development (SPH&CD) collection policy including the remedy of eviction is to adopt a policy and procedure to enable it to enforce payment obligations of residents, as well as, enforce compliance with all non-payment obligations. Therefore, the following procedures shall be adopted to ensure prompt required monthly payments and ensure compliance with the PHOP.

II. PURPOSE AND APPLICABILITY

- A. The purpose of this “PHOP Collection and Eviction Policy” (“Policy”) is to inform residents of established guidelines for collection of rents, house payments, housing services and payment of work orders and other charges and to provide the resident with a process to be followed when terminating his/her tenancy and evicting him/her for his/her unit.
- B. The goal of this Policy is to collect the amounts owed to the SPH&CD, to ensure the compliance with homeowners association services, while providing for the safety and well being of residents, and promoting fairness and due process. This Policy shall apply to residents that have a lease or Contract of Sales Agreement (CSA) with the SPH&CD.

III. DEFINITIONS

- A. **RESIDENT:** the person who has signed the lease/CSA and who, with their immediate family, resides in the unit/home
- B. **Payment/Rent:** the monthly amount owed by the resident to the SPH&CD as determined through the resident’s lease/CSA . The term “Rent” shall be synonymous with home ownership house payments.
- C. **ABANDONMENT:** refers to the resident not making a payment as outlined in the lease/CSA for more than sixty (60) days.

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- D. LEASE/CONTRACT OF SALES AGREEMENT (lease/CSA): refers to the agreement executed by a resident and the SPH&CD allowing the resident to reside in a PHOP unit and which states the responsibilities and obligations of both parties.
- E. NOTICE OF TERMINATION: refers to the notice stating a resident has breached his/her lease/CSA , and the SPH&CD is terminating his/her tenancy and that the resident has a right to a hearing before the SPH&CD.
- F. HEARING: refers to the meeting between a resident and the SPH&CD in which the resident or his/her representative presents evidence and/or testimony on the issue of whether or not the resident's tenancy should be terminated.
- G. PAYMENT OBLIGATIONS: refers to any money owed to the SPH&CD by the resident such as monthly rent, security deposit or money owed through reasonable charges for resident damage or necessary repairs due to resident's negligence.
- H. NON-PAYMENT OBLIGATION: refers to any obligations set forth in adopted policies of the SPH&CD that residents must abide by for continued occupancy in the SPH&CD unit.

IV. REQUIREMENTS AND PROCEDURES

A. AMOUNT OF REQUIRED PAYMENTS

The amount of required monthly payment will be determined at the initial admission and occupancy as stipulated in the residents' lease/CSA .

B. FAILURE TO MEET FINANCIAL OBLIGATIONS

If a resident fails to meet financial obligations including payment of required rent or monthly payment, the account will be handled in accordance with the outlined procedures on delinquent accounts. The ability to meet financial obligations is a requirement of admissions and continued occupancy.

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C. INABILITY TO MAKE FULL PAYMENT DUE TO HARDSHIP

If the resident informs the SPH&CD and presents the evidence of inability to make full payment due to hardship, the SPH&CD will consider an extension and negotiate a settlement. The resident should contact the SPH&CD prior to the due date to receive an extension. The extension deadline will become the new due date.

Delinquency payment options may be available if the resident contacts the SPH&CD prior to default.

The SPH&CD shall consider extreme circumstances in approving an extension of the due date. Such conditions may include a death in the immediate family or other disaster that affects the financial state of the family.

D. VEPA/EQUITY USE OF AMOUNTS OWED (HOMEOWNERSHIP UNITS ONLY)

The delinquent resident may apply for use of Voluntary Equity Personal Account (VEPA) to cover the delinquent amount if there is a sufficient amount in the equity account. Application for VEPA use shall be limited to one (1) time per year to clear delinquent amounts owed.

V. COLLECTION OF DELINQUENCIES

A. PAYMENT OBLIGATIONS

1. Payment is to be made as in accordance with the "PHOP Homebuyer Payments Policy"

B. BREACH OF THE LEASE/CSA

1. **1. GROUNDS FOR TERMINATING A LEASE/CSA** : A resident's lease/CSA may be terminated for the any of the following reasons:

- a. Breach of any non-payment terms of lease/CSA ;
- b. Delinquent in payment/rent;
- c. Nuisance, property damage, or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property;
- d. Harassment of SPH&CD employees or board members

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- e. Serious or repeated violations of resident's lease/CSA , any reasonable rules or policies adopted by the SPH&CD including CC&Rs, or any applicable tribal codes;
- f. Occupation of the unit without permission or agreement, following any reasonable demand by the SPH&CD to leave;
- g. Threatening the health or safety of, or right to peaceful enjoyment of the premises by, other residents of the SPH&CD residing in the immediate vicinity of the unit;
- h. Engaging in any criminal activity (including drug-related criminal activity) in and/or around the unit.

2. NOTICE OF TERMINATION

- a. If a delinquent account is not settled, , or the resident is in violation of his/her lease/CSA , the SPH&CD shall issue a three (3) day Notice of Termination to the resident by either posting on the front door of the resident's unit, by hand delivering a copy of the notice to resident or by mailing by CERTIFIED MAIL, RETURN RECEIPT REQUEST. This Notice to Termination shall also serve as a Notice to Quit, should the SPH&CD proceed with an eviction action against the resident.
- b. The three (3) day Notice of Termination will demand payment of the debt within three (3) or in the case of a violation of the lease/CSA that the violation be cured within three (3) days or eviction or other legal action will be initiated.

3. NOTICE OF HEARING

The Notice of Termination shall inform the resident that s/he may request a hearing before the SPH&CD. The request for a hearing must be submitted to the SPH&CD within three days of the resident's receipt of the Notice of Termination. Upon receipt of a request for hearing, the SPH&CD shall issue the resident a "Notice of Hearing". The Notice of Hearing shall state the time and date for the hearing, that the resident must be prepared to respond to the SPH&CD's reasons for termination

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and that s/her may be represented or accompanied by a person of his/her choice, including a representative of his/her tribal government. The resident must notify the SPH&CD Executive Director of his/her designee, no later than 24 hours of the stated time and date of the hearing, if s/he cannot attend. The hearing shall be set no earlier than seven days but no later than ten days from the receipt of the resident 's request for a hearing.

If a termination hearing is held, the SPH&CD shall decide on the basis of the evidence produced whether to:

- a. Rescind the Notice of Termination
- b. Extend the Termination. The Extension of the Termination process for corrective action by the resident is only a stay of the process. Failure to comply with the extension agreement shall lift the stay and termination shall proceed to the eviction process.
- c. Re-affirm its decision to terminate lease/CSA

C. IF THE RESIDENT FAILS TO ATTEND THE HEARING WITHOUT NOTIFYING THE SPH&CD, THE RESIDENT'S LEASE/CSA SHALL BE TERMINATED AND EVICTION PROCEEDINGS SHALL COMMENCE.

- D. The SPH&CD shall notify the resident in writing, within five (5) days of the hearing of its final decision. Such decision shall be served by Certified Mail, Return Receipt Requested or by personal service. If the SPH&CD'S final decision is to terminate the lease/CSA , the decision shall include a demand for vacating the unit.
- E. If the resident remains in the unit after receipt of the SPH&CD final decision, the SPH&CD may commence an eviction action against the resident if s/he does not voluntarily vacate his/her unit. Eviction proceedings shall commence in the appropriate Court or tribal forum, which shall have jurisdiction to hear and determine any action for eviction of a resident.

VI. PROBATION

- A. If a resident, after being served with a three (3) day notice under this part, makes full payment or cures the lease/CSA violation within the three (3)

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days given in the Notice of Termination, the SPH&CD shall not proceed with termination of the resident's tenancy but may place the resident on probation. If the SPH&CD decides to place the resident on probation, it shall:

1. Notify the resident that s/he is being placed on probation within five (5) days of the decision:
 - a. The probationary period shall be for a period of six (6) months in which time the resident must demonstrate satisfactory compliance of the payment and non-payment obligations.
 - b. If, during the probationary period, the resident breaches any payment or non-payment obligations and/or is in breach of the PHOP CC&Rs or policy and procedures, the SPH&CD will initiate the termination of the tenancy.

In the event a resident has established a pattern of repeated breaches and cures the SPH&CD may place the resident on probation under this section.

VII. EVICTION

Prior to taking action to evict a resident, the SPH&CD must comply with the procedures as set forth in this Policy.

A. COURT PROCEEDINGS

If the resident fails to vacate a unit after proper notice to terminate and a hearing or where no hearing was requested, SPH&CD or its legal counsel may file a civil complaint with the appropriate court or tribal forum as provided for under this Section seeking eviction and/or full payment of any delinquent amount owed in rent.

B. TRIBAL COURT/COURT OF JURISDICTION ACTION: EVICTION

All eviction actions shall be filed with the San Pasqual Tribal Court (SPTC) or court of jurisdiction. In pursuing an eviction the SPH&CD shall follow the eviction procedures and process as set forth below:

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1. Self Help Remedies Forbidden. Except in the case where a resident in possession voluntarily surrenders such possession to another claiming a greater right to such possession, all self help remedies to recover possession of a resident's unit are forbidden except as otherwise provided herein.
2. Negotiated Settlement or Alternative Dispute Resolution. At any time during the eviction process, the SPH&CD and the resident may engage in settlement discussions or other established tribal alternate dispute resolution process in order to avoid a court proceeding and to settle the dispute between the parties. The agreement to enter into discussion will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.
3. Summons and Complaint. If, after the decision to terminate the resident's tenancy has been served on the resident and demand has been made to vacate the unit, and the resident has not vacated, the SPH&CD may file a summons and complaint in the SPTC or court of jurisdiction for eviction and such other relief as may be deemed just and proper.

The complaint shall state:

- a. The names of the lease/CSA resident(s) against whom the suit is brought;
- b. The address or reasonable description of the location of the premises;
- c. The grounds for eviction;
- d. A statement showing that the resident was served with a Notice of Termination and a written decision terminating the resident's tenancy which demanded the resident vacate the unit (attached Notice of Termination and SPH&CD decision will meet this requirement);
- e. A statement of the relief demanded, including any claim(s) for possession of the unit, damages, fees, costs, or other special relief; and

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- f. A statement that the SPH&CD has complied with all required regulatory processes prior to filing the eviction action.
 - g. A copy of the lease/CSA shall be attached to the Complaint.
- 4. Summons. A Summons must be attached to the front of the Complaint and state:
 - a. The name and address of the SPTC or court of jurisdiction;
 - b. A brief description of what the Complaint filed against the resident is about;
 - c. A description of what the resident must do to protect his/her rights. This description shall include, but not be limited to, stating that the resident has five (5) days from the date s/he is served with the Complaint to file a written Answer with the SPTC or court of jurisdiction. If the resident fails to file a timely Answer, the SPH&CD may be awarded the relief it is requesting in the Complaint. The Summons shall also inform the resident that s/he should contact the SPTC or court of jurisdiction regarding any filing fees s/he may be required to pay in order to file an Answer to the SPH&CD'S Complaint.
- 5. Answer to the Complaint. A resident served with a Summons and Complaint shall file a written Answer with the Tribal Court stating why the resident should not be evicted and his/her defenses to the Complaint within five (5) days of service, excluding weekends and holidays.

The resident shall serve a copy of his/her Answer on the SPH&CD before filing it with the SPTC or court of jurisdiction or within twenty-four (24) hours after filing the Answer with the SPTC. A proof of service that the Answer was served on the SPH&CD shall be filed with the SPTC or court of jurisdiction after such service has been made.
- 6. Commencement of Proceedings
 - a. Hearing Date. If the resident files a timely Answer to the Complaint, the SPTC or court of jurisdiction shall set a hearing date.

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- b. Extensions. Unless stipulated to by the parties, a resident may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the unit between the date on which the Complaint was filed and the date of the hearing, obtain an extension of the hearing date.

The SPTC or court of jurisdiction may refuse to extend the date of hearing where the Complaint is based upon nuisance or injuries provided in Section IV, and shall not extend the date of hearing where the Complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

7. Defenses

- a. The SPTC or court of jurisdiction shall grant the remedies allowed under this Policy, unless it appears by the evidence that:
 - 1. The unit is untenable, uninhabitable, or constitutes a situation where there is a constructive eviction of the resident, in that the unit is in such a condition, due to the fault of the SPH&CD, that the unit constitutes a real and serious hazard to human health and safety and not a mere inconvenience.
 - 2. The SPH&CD has failed or refused, without good cause, to make repairs which are it's responsibility within the first year, after a reasonable demand by a resident to do so, and the repairs are necessary for the reasonable enjoyment of the premises.
- b. There are monies due and owing to the resident because s/he has been required to make repairs which are the obligation of the SPH&CD, and the SPH&CD has failed or refused to make them after a reasonable notice. Such outstanding sums may be a complete or partial defense to a Complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A resident may be evicted after such a period if s/he fails or refuses to pay the reasonable rental value of the premises.
- c. That due to the conduct of the SPH&CD, there is injury to the resident in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches,

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- fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- d. That there are such serious and material breaches of housing applicable law on the part of the SPH&CD that it would be unjust to grant it a remedy.
 - e. The SPH&CD is evicting the resident because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the resident is disabled.
 - f. Any other material or relevant fact the resident might present that may explain why his/her eviction is unjust or unfair.
8. Discovery and Pre-hearing Proceedings. Extensive, prolonged, or time-consuming discovery and pre-hearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The SPTC or court of jurisdiction may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.
9. Evidence. Evidence in eviction proceedings shall be informal, and may include relevant and reliable hearsay evidence if such evidence is not the basis for a final decision. The books and records of the parties as to the payment or nonpayment of monies owed will be received in evidence and the files and business records of the SPH&CD with respect to the agreement of the parties will be received in evidence upon their presentation to the SPTC or court of jurisdiction; provided, however, that a resident may examine the custodian of such records as to their contents. All hearings will be informal and designed to receive evidence in a fair and just manner.
10. Burden of Proof. The burden of proof in all eviction proceedings shall be preponderance of the evidence.
11. Judgment. SPTC or court of jurisdiction shall immediately after, or no later than within five (5) calendar days of the date of the hearing, the

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hearing grant and enter judgment and the judgment shall grant all relief that the parties are entitled. The judgment may:

- a. Order the immediate eviction of a resident and delivery of the unit to the SPH&CD;
- b. Grant actual damages as provided in the lease/CSA of the parties or under this Policy, including interest;
- c. Order the parties to carry out an obligation required by tribal law;
- d. Establish a payment plan for the resident;
- e. Order rent payments out of the resident's per capita payments or through garnishment;
- f. Order the payment of attorneys fees and, where allowed by law or agreement, costs and expenses for the hearing;
- g. Order the parties into negotiations or alternate dispute resolution as provided in Section ____ of this Policy; or
- h. Grant any relief provided in this Policy or allowed in law or equity.
- i. If a resident fails to appear in person or in writing at the hearing, the SPTC or court of jurisdiction shall enter judgment on behalf of the SPH&CD.

12. Form of Judgment. The judgment shall state the relief granted by the SPTC or court of jurisdiction to any party, but need not state findings of fact or conclusions of law in support of the judgment. All decisions of the SPTC or court of jurisdiction are final unless and until such time the Tribe adopts a Tribal appeals process.

13. Execution of Judgment. Upon request, any judgment may be immediately executed, and the judgments and orders of the SPTC or court of jurisdiction shall be enforced by a duly-authorized law enforcement officer. Any law enforcement officer shall, upon receipt of a judgment of the SPTC or court of jurisdiction, execute the judgment or other orders within five (5) calendar days of the date of the judgment or order and make a report to the SPTC or court of jurisdiction on what actions were taken to enforce the judgment or order. Any law enforcement officer to whom a judgment or order is given for

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enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgments and/or suspension from employment.

14. Forcible Eviction and Resident's Unclaimed Property

- a. Where the SPTC or court of jurisdiction orders an eviction, and the resident or any other occupant of the unit refuses to vacate voluntarily by the effective date of that judgment, the resident or other occupants may be forcibly removed from the premises by a tribal law enforcement officer. At the hearing where the eviction is ordered, the SPTC or court of jurisdiction shall inform the resident that if s/he does not vacate the premises voluntarily by the effective date, s/he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (c) below.
- b. Following eviction, the SPTC or court of jurisdiction may allow the SPH&CD access to the property for purposes of preserving and securing it.
- c. Following forcible eviction of the resident and/or other occupants, the former resident's and other occupants' personal property shall be stored by the SPH&CD for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former resident and other occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the SPH&CD is authorized to sell the property in order to recover these costs. The SPH&CD shall place a Public Notice of Sale in the local newspaper for one day prior to the sell of property. Upon request by the former resident or other occupants, the SPH&CD shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the SPH&CD for any outstanding balance. Nothing in this section shall be construed to prevent the former resident or other occupants from reclaiming property

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remaining after the sale if they can arrange to do in a manner satisfactory to the SPH&CD.