

SUMMONS AND COMPLAINT EVICTION

PACKET & INSTRUCTIONS

For use by landlords/landladies representing themselves in GTB Tribal Court

USE THIS FORM IF:

1. You want to start eviction proceedings against a tenant who has:
 - a. For Cause:
 - i. Not Paid Rent, or
 - ii. Not Paid Utilities, or
 - iii. Not Paid Other Monies Due, or
 - iv. Damaged the Property or created a health hazard, or
 - v. Engaged in unlawful activity, or
 - vi. Violated the pet policy/lease, or
 - vii. Violated federal laws or regulations.
 - b. No Cause:
 - i. The tenant has been a model tenant, but you want the tenant to move out.

AND

- c. You have delivered to the tenant a demand for possession or notice to quit.

AND

- d. At least 7 days have passed since the date you delivered the demand for possession or notice to quit.

This packet and instructions do not bind the court and are not to be construed as the law nor do they constitute legal advice, they are: (1) general in nature (2) intended for parties that want to represent themselves; and (3). merely guidance when filing a summons and complaint.

As a party that desires to represent themselves, you are under the affirmative duty to be apprised of any changes in the law and/or court rules. If you have any legal questions, you should consult an attorney or contact a free legal aid. Resources to help you find an attorney or legal aid can be found at the State Bar of Michigan at www.michbar.org. The Tribal Code and Court Rules can be located at the Tribal Courthouse and/or found online at www.gtbindians.org.

COMPLAINT CHECKLIST

1. Fill out all the requested information on the Complaint?
YES___
2. Attach a copy of the demand for possession and proof of service?
YES___
3. Make 2 copies of the form and attachments?
YES___
4. Prepare the top portion of the summons (names, addresses, etc.)
YES___
5. File the Complaint, attachments, filing fee, and summons with the court clerk?
YES___
6. Have the summons and complaint (and attachments) served on the tenant/defendant?
YES___
7. Keep 1 copy of the summons, complaint and attachments for yourself
YES___
8. The filing fee to file a complaint in the Tribal Court for evictions is \$100.00.
YES___

If you cannot answer "YES" to all the above steps, a hearing/trial on your complaint may be delayed and/or your complaint may be dismissed. Any documents filed with the court must be original (when practicable) and must be 1-sided; do not file paperwork that is 2-sided.

By using this packet/form, you are representing yourself in court for an eviction. To receive the action (remedy) you seek, you must follow the instructions in this packet. If you fail to perform any of the required steps, you may not get the result (remedy) you want, and your case may be dismissed.

Dismissal will result in the court keeping the filing fee.

If you have any questions about the steps in this process, refer to pages 3 through 7 of this packet for details.

INSTRUCTIONS FOR USING TRIBAL COURT FORM TO FILE AND SERVE SUMMONS AND COMPLAINT (EVICTION)

Deciding to File a Complaint

If you served the demand for possession/notice to quit and the tenant did not perform (i.e. pay rent, monies owed, repaired damage, etc.) or did not move out/vacate the premise as you required in the notice, you must file a complaint in the Tribal Court to regain possession of your rental property by evicting the tenant and, if applicable, to get a judgment for money damages against the tenant.

Filing A Complaint

1. Tribal Court or County Court? To get an order evicting the tenant from your property, you must file a complaint in the Tribal Court (or in the district court in the county or city where the property is located). If you are filing with the county court, please contact the county court clerk for the appropriate DC 100 form. If you are filing with the Tribal Court, please use the attached forms.
2. Do you need an attorney? You can hire your own attorney, or you can represent yourself. If you follow all the steps outlined in this packet, you may not need an attorney. However, if after reading this packet you think you need an attorney, you should call an attorney. If you are not the owner or sublessor of the property, an attorney must sign the complaint and appear in court. A sublessor is a tenant who has sublet his/her property to another.
3. What is the cost to file a complaint? The filing fee to file a complaint in the Tribal Court for evictions is \$100. You may also incur the costs of service by mail (certified or registered, return receipt requested, restricted) or process server. Other costs may include costs for copies and motion fees.
You can include the costs of filing fees and service by mail/process server in your Complaint. If the judge rules of the plaintiff, these fees may be added to the judgment amount against the defendant.
4. Fill out the top of the Summons and Complaint. Do not use the forms with a water mark, use a blank form (a form without a watermark or highlighted lettering). For guidance on filling out the Summons/Complaint form, follow the instructions on page 8. Any documents filed with the court must be 1-sided.
5. Put your packet together. Each packet will contain a:
 - i. Summons
 - ii. Complaint
 - iii. Proof of Service (will be blank at the time of filing)
 - iv. A demand for possession/notice to quit
 - v. A copy of the lease
 - vi. Copies of any bills or other written statements in support of your complaint
 - vii. An addendum. The addendum is not required but is recommended if you are representing yourself because it is your written statement about why the defendant should be evicted and describes what you want the court to do.
6. Print out 2 copies. After compiling your packet, make at least 2 copies. The original will be filed with the court; court copies must be 1 sided. Print 1 copy will be for you (the plaintiff), 1 copy will be for the defendant. If there is more than 1 named defendant, print out additional copies for each additional defendant.
The court can make copies for you, but copies are charged at \$0.25/pg.
7. File the Summons/Complaint with the Court. Generally, it's a good idea to file your complaint packet with the court in person so you can ensure the complaint is received and all the documents are properly filled out (and required items (lease, if any) are attached. You must be prepared to pay the filing fee at the time of filing the complaint. The court does not accept any filings by email or other electronic means.

8. **To file in person, follow instructions at 8.a. To file by mail, follow the instructions at 8.b.**

- a. Filing In Person. Take the summons/complaint packets to the court clerk and bring the filing fee with you. Once filing is complete, the Court will return the summons/complaint packets to you to serve upon the defendant(s). See Step 9 for methods of service.
- b. Filing by Mail. If filing by mail, you should consider that if the filing paperwork is incomplete then additional time will be spent by you to mail out additional items. Once filing is complete, the Court will then mail you the summons/complaint packets for you to serve upon the defendant(s). Pursuant to GTBCR, service may be by 1 of 4 methods:
 - (1) by an officer (sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for party).
 - (2) by
 - (4) U.S. Mail (via Certified/Restricted Delivery, Return Receipt Requested).

9. Serving the Summons and Complaint Service of a summons/complaint is governed by Tribal Court Rules, GTBCR 4.103 - 4.105. Everyone who files a court paper must serve it on all other parties, on interested persons when required, and on any attorneys, who have filed an appearance in the case. The term "serve" means to provide notice; in other words, everyone has the right to "due process" under the law. It is critical that everyone involved in a case is provided with proper notice of every paper filed in that case. Without this "due process," a case can be dismissed for lack of service.

- a. Who Can Serve? GTBCR 4.103 provides that "process in civil actions may be served by any legally competent adult who is not a party or officer of a corporate party." This means if you are the named plaintiff that you cannot serve the defendant. You must find another person, who is not named in the complaint, to serve the defendant. In plain language, you (the plaintiff) are not allowed to serve the packet yourself. Examples of who can serve are generally:
 - A friend or another layperson over the age of 18 as long as he/she is legally competent.
 - A process server. The court cannot advocate for and recommend process servers. Local process servers can be found on-line or in the yellow pages.
 - Local law enforcement. Note: Not all law enforcement agencies serve summons and complaints for the general public; each law enforcement agency has its own rules on whether they serve or not and establishes their own rates to effect service (if they serve).
 - U.S. Mail Carrier, if serving via mail.

The court will not serve defendants on behalf of private parties.

- b. How to Serve? GTBCR 4.105 allows 2 methods of service: (1) personal service; or (2) U.S. mail. If you are unable to (and can prove) the first 2 methods of service failed, with the permission of the court you may affect service by publication and/or posting.
 - i. Personal Service. Personal service means delivering the summons and complaint to the named defendant(s).
 - ii. US Mail. For U.S. mail, two methods are permissible: (1) sending a summons and copy of the complaint by registered mail, return receipt requested and delivery restricted to the named defendant; or (2) sending a summons and copy of the complaint by certified mail, return receipt requested and delivery restricted to the named defendant. When filling out the forms, verify that you have selected restricted delivery. The Court may have registered and/or certified mail cards/forms for your use; if not, the U.S. Post Office will have the cards/forms.
 - iii. Publication or posting. If your attempts at personal service or service via U.S. mail fail and you can prove that your valid attempts failed, notify the Court and the Court may allow you to serve via publication.

9. Filling out the Proof of Service. Do not use the forms with a water mark, use a blank form (a form without a watermark or highlighted lettering). Fill out the blank proof of service after you have served the Defendant. For guidance on completing the proof of service, follow the instructions on page 9. Do not use the form that has EXAMPLE written across the page.

10. File the Proof of Service with the Court. After the defendant has been served with the summons/complaint, file the proof of service with the court. Failure to file proof of service with the court does not affect the validity of service nor does it affect the fact that a complaint has been filed. However, failing to file a proof of service stalls the eviction process and delays the show cause/eviction hearing because a filed proof of service notifies the court that: (1) the defendant has been served with the summons/complaint; (2) the defendant is now on the clock to file an answer (if any); and, most importantly, (3) the next step to be taken is ready, which is scheduling a show cause/eviction hearing.

a. Standard Proof of Service Form. This form is attached to the summons and complaint on page 5/5 and must be completed for every summons/complaint and the form must be notarized. Be advised that the defendant may refuse to sign the proof of service (acknowledgement of service portion), if this is the case, fill out as much of the affidavit portion as practicable and proceed to get the proof of service notarized.

b. U.S. Mail Return Receipt Requested. If the defendant was served by certified or registered mail, the mailman/lady will have the defendant sign the green postcard and the mailman will then mail the postcard back to you. To file the proof of service, fill out the standard proof of service form (referenced above in 10a) and turn in the standard proof of service form with the green postcard.

11. Appearance and/or Answer from Defendant. The defendant is not required to but usually files an answer to the complaint. An answer is the defendant's response to the allegations. An answer may be by either (1) a written answer that is filed with the court and served to you or (2) orally answering the allegations in open court at the show cause/eviction hearing.

If you receive a written answer from the defendant, read it before you attend the show cause/eviction hearing.

12. Prepare for the Show Cause/Eviction Hearing. To prepare for the hearing, gather the evidence you need to prove your case. Evidence might include a receipt, guarantee, lease, contract, government inspection report, invoices, bills, or accident reports. If a damaged article is too big to bring to court, photographs can be presented as evidence.

Letters or affidavits from a witness are generally not admissible unless the witness is physically present to describe his/her letter or affidavit. It is strongly recommended that you have witnesses appear with you at the hearing. If a witness is not willing to appear, you issue a subpoena to the witness; the court clerk, judge, or your attorney can sign the subpoena, but you will be responsible for serving the subpoena on the witness. Any orders to appear must be served to the witness (along with the witness fee) no later than 2 days before the hearing.

INFORMATION ABOUT ATTENDING THE HEARING

1. Items to bring to the Trial. Remember to bring copies of all the papers, pleadings and evidence. If you have documents or papers that have not already been filed with the court (and served on the defendant) you should print enough copies for the judge, defendant(s) and yourself. If you forget your copies or did not bring enough copies for distribution, the court will make copies for you, and you will be charged the copy fee of \$0.25/pg. Items to bring include:

- a. Your copy of the summons and complaint.
- b. Your copy of the answer (if a written answer was filed).
- c. Any other documentary evidence you want admitted or considered.

2. If you are representing yourself, you are expected to conduct yourself in a professional manner and to follow the same general rules as an attorney.
3. Make a list of information you think is important for the judge to know. You can use this list as a reminder to bring up the points you think are important.
4. If you need someone to attend this hearing who is unwilling to attend, follow the procedure in GTBCR 4.506 to get an order to appear (subpoena) or consult an attorney.
5. Go to the court on the scheduled date and time. A notice of hearing will be issued that specifies the date and time of the hearing. Arrive 10-15 minutes early. Bring witnesses with you and your evidence.
6. At the hearing you will have an opportunity to explain your case to the judge and to prove (1) the tenant failed to take some action (i.e. pay rent); (2) the tenant was served with a demand for possession, notice to quit or notice to take some action (i.e.) pay rent within a stated timeframe; (3) the tenant did not take the action required (i.e. pay rent) or move out within the stated timeframe. Any evidence you present is subject to the GTB Tribal Court Rules of Evidence. Witnesses will be allowed to tell the court about facts they know firsthand that support your claim.
7. When your case is called, go to the tables in the courtroom and follow the directions of the court clerk, bailiff or judge. The hearing will be conducted following the procedures in GTBCR 4.507. Make sure you read GTBCR 4.507 before the hearing trial. You may want to ask the judge to consider awarding a money judgment for costs (filing fees, process servers, copy fees, mailing, etc.) pursuant to Tribal law at 10 GTBC § 1010.
8. After the judge makes a decision, in most cases the judge will prepare the order/judgment. If you are required to provide additional materials so the judgment can be prepared (i.e. updated bills, invoices), listen to the timelines the judge gives you and follow the timelines. If you fail to provide the additional material in the requisite timeframe, you may lose your right to money damages for this item.

EVICTING THE TENANT

If the judge enters a judgment in your favor and orders the tenant to move out by a certain date and the defendant does not move out as ordered, you can file a motion for a forcible eviction to have law enforcement remove the defendants from the premises. For Tribal laws on forcible eviction please see 10 GTBC § 1018.

You cannot force any person to leave or vacate a premise without a court order. Tribal laws specifically prohibit self-help eviction, 10 GTBC § 1019 (No Self-Help Eviction) provides that "No landlord may compel a tenant to vacate any premises in a forceful fashion or way which would cause a breach of the peace. All landlords shall give notice to quit and obtain a court order as provided in this ordinance." This means, you will have to file a motion for a forcible eviction.

COLLECTING A MONEY JUDGMENT

If a money judgment is awarded and it is not paid when ordered, additional pleadings must be filed with the court to collect on the judgment by having wages or a bank account garnished, or property seized, or by capture of a Tribal Members bi-annual per capita. Filing for enforcement of a money judgment cannot occur until 21 days after the judgment is entered. The court may ask that information be provided for these collection efforts.

INSTRUCTIONS FOR COMPLETING SUMMONS AND COMPLAINT

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Please print clearly on the form that does not have a watermark or lettering on the left-hand side. The form attached to these instructions on the following pages has a watermark labeled "EXAMPLE ONLY."

A

Fill in the plaintiff and defendant(s) name, mailing address and phone number. You, the landlord/landlady, are the plaintiff. The tenant you want to evict is the defendant; if there is more than one tenant to evict, list their names as well.

B

You must check 1 of the boxes. Check the box that is true for you. If another civil case was filed that involved you and the tenant for the same problem stated in this complaint, write the name of the court where the case was filed, the case number and the name of the judge assigned to the case; then select the box as to if the case is or is not still pending.

C

You must check 1 of the boxes. If you are living in Tribal housing or on a Tribal lot/lease assignment, the land is likely in trust (reservation); check the first box. In rare circumstances, the Tribe will own the land, but the land is not yet in trust, so the Tribe pays State of Michigan taxes; check the second box. If you live on land where the property is not regulated by the Tribe and the owner (who may be you) pays the State of Michigan taxes on the land/property; check the third box.

D

Write in the name of the person who is entitled to possession of the property. In most cases this is the owner, but it can be another person, such as a person who is leasing the property or a person that is subleasing the property.

E

Write in the physical address of where the premises are located. Also describe the part of the property to which the defendant has possession (the entire house or are you subleasing a room to tenant).

F

A demand for possession/notice to quit must be served on the tenant prior to filing a summons and complaint for eviction.

For:

A: complete the information regarding the date served.

B: you must check a box as to how the demand for possession/notice to quit was served.

C: check the box and attach a copy of the demand for possession/notice to quit and proof of service to the complaint.

G

You must check 1 of the boxes. Check the box that is true for you.

H

You must check 1 of the 2 boxes: "No Cause" or "For Cause"

No cause generally means the tenant was a model tenant and complied with the lease (or followed all the household rules). Landlords/landladies sometimes want to stop renting out their house or they may just want the home to themselves. Do not check the "No Cause" box if the tenant has failed to pay a bill or failed to pay rent; this failure would be "For Cause."

For Cause generally means the tenant has violated some lease terms (or household rules). If you have selected for cause, then check all the boxes that apply below. If you have bills, invoices that are unpaid, attach copies to the complaint.

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I Check this box only if you live in Tribal or government operated housing. Government regulated housing generally includes but is not limited to HUD, NAHASDA, Rural Development, or Tax Credit.

☐

J This is optional. It is strongly recommended that you complete an Addendum as part of the complaint because (1) this is your opportunity to describe in your own words the basis for the complaint and the relief requested; (2) the process to file an amended complaint will require you to follow the processes outlined in the GTBCR 4.118, which is sometimes difficult even for seasoned attorneys; and (3) an amended complaint will delay the entire process.

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K Check all the boxes that apply. Relief or remedy is what you want the court to do. If you want a money judgment, the tenant to move out, etc., check the relevant box.

INSTRUCTIONS FOR FILLING OUT THE PROOF OF SERVICE

This packet and instructions do not bind the court and are not to be construed as the law nor do they constitute legal advice, they are: (1) general in nature (2) intended for parties that want to represent themselves; and (3). merely guidance when filing a proof of service. As a party that desires to represent themselves, you are under the affirmative duty to be apprised of any changes in the law and/or court rules. If you have any legal questions, you should consult an attorney or contact free legal aid. Resources to help you find an attorney or legal aid can be found at the State Bar of Michigan at www.michbar.org. The Tribal Code and Court Rules can be located at the Tribal Courthouse and/or found online at www.gtbindians.org.

Please print clearly on the form that does not have a watermark or lettering on the left-hand side. The form attached to these instructions on the following pages has a watermark labeled "EXAMPLES ONLY."

- 1) Check the "affidavit of service" box if you have another person who is not a party (named plaintiff) serving the summons and complaint on the defendant.

If you have coordinated with a law enforcement agency or hired a process server, they will be familiar with the proof of service and will know how to complete the form. The instructions below are, generally, for people representing themselves. This is labelled box ☐ 1 on the Proof of Service.

- 2) You must check 1 of the 2 boxes below. B1 or B2.

1. If you checked B1, "I served a copy of the summons and complaint..." write in the attachments you served with the summons and complaint.

- a. Then check one of the 3 boxes listed below. If you are named plaintiff and you are serving, your only option is certified /restricted or registered/restricted.

1. Personal Service. If you are the plaintiff, you cannot personally serve the defendant.
2. Certified/Restricted, return receipt requested. Remember to include the green postcard with the proof of service when filing with the court.
3. Registered /Restricted. Remember to include the green postcard with the proof of service when filing with the court.

2. If you checked B2, "I have personally attempted to serve" write in the method of attempt after the word "by": Then list out the name, address of attempted service and dates times. If you attempted

service by US Mail (certified ore registered), then include the returned green postcard; generally, the post office carrier will affix a stamp stating the dates/times and number of attempts made.

3. This section highlighted in **YELLOW** is only used by Officers or Process Servers. Fees must be reasonable. This section cannot be used by a "friend" that is serving the defendant.
 - i. Officers include sheriff, deputy sheriff, bailiff, appointed court officer or attorney. Process servers are, generally, a private business that has a structured fee schedule.
- 3) The section highlighted in **GREEN** can be used by any person, including the plaintiff if you are serving the defendant by U.S. Mail or an officer/process server that is adding up the total costs for service. If you are representing yourself and have used the U.S. Mail for service, write in the costs that you incurred for certified/registered and restricted mail. This amount will be the amount that is on your receipt from the U.S. Postal Service; keep a copy of the receipt from the U.S. Mail and provide it to the court.
- 4) This section is highlighted in **BLUE** and should be completed by the person who is affecting service. Do not sign the area until you are in the presence of a notary.
- 5) This section is for the Defendant to sign but he/she is not required to sign. The Defendant's refusal to sign is to be expected.