

TITLE 2. CIVIL PROCEDURE

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- 2.1 Jurisdiction and Applicable Law**
- 2.2 Commencement of Actions**
- 2.3 Pretrial Procedure and Motions**
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Chapter 2.1 JURISDICTION AND APPLICABLE LAW

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- 2.1.1 Limitation on Filing of Complaint.
- 2.1.2 Applicable Law.
- 2.1.3 Customs.
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2.1.1. Limitation on Filing of Complaint. No complaint shall be filed in a civil action unless the events shall have occurred within a three-year period prior to the date of the complaint.

2.1.2. Applicable Law. In all civil cases the court shall be governed by Hoh Tribal law, regulations, resolutions, ordinances, or tribal customs, where applicable.

2.1.3. Customs. Where any doubt arises as to the customs and usages of the tribe, the court may request the advice of counselors familiar with these customs and usages.

2.1.4. Other Law. Where no Hoh laws, regulations, resolutions, ordinances or tribal customs apply, the court may refer to any other lawful authority of other tribes, federal and state statutory and common laws.

2.1.5. (Reserved).

2.1.6. Other Rules. The court shall have the power to promulgate any other rules deemed necessary for the purpose of expediting trial.

Chapter 2.2 COMMENCEMENT OF ACTIONS

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- 2.2.1 Complaints.
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- 2.2.3 Notice and Service, Answer.
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2.2.1. Complaints.

(a) An action is commenced by filing a complaint with the clerk of the court and by service of the complaint and summons upon the respondent.

(b) No complaint shall be filed nor be valid unless it shall bear the signature of the petitioner or the petitioner's attorney or legal representative.

2.2.2. Filing Fees. In all civil suits the petitioner shall be required to pay to the court a filing fee of fifty dollars. Such fee may be waived by the court upon a showing of good cause. No fee shall be required in cases where the tribe is the petitioner.

2.2.3 Notice and Service, Answer. (a) Except as otherwise provided in any ordinance of the Tribe, service in civil actions shall be either by voluntary appearance and agreement of the parties on the record, or by service upon the respondent of a true copy of the filed complaint and summons. The summons shall be attached to the copy of the complaint and shall inform the respondent of the nature of the action filed against him/her and instruct the respondent that s/he may respond to the complaint by filing and serving an answer within twenty days of the date of service, or by notifying the court, within said twenty days, that s/he requests that a hearing be set by the court to hear respondent's response. The summons shall further inform the respondent that failure to file an answer or request a hearing in the required time may result in entry of a default judgment without further notice. Any hearing for the purpose of entry of an oral answer shall be held at least twenty but no more than forty days after the date of service. Once the respondent has been served with the complaint and summons, the petitioner shall file with the court a proof of service which will set forth the date and manner in which the respondent was served.

(b) Service of process upon any person who is subject to the jurisdiction of the courts of the Hoh Tribe, as provided in Hoh Tribal Code Section 1.2.2 may be made by personally serving the respondent within or outside the reservation, by leaving the complaint and summons at the respondent's residence with someone over the age of fourteen, by leaving the complaint and summons at the respondent's place of employment with someone over the age of fourteen, or by causing a copy of the complaint and summons to be mailed to the respondent certified mail, return receipt requested. Such service by mail shall be valid only if there is attached to the Proof of Service a return receipt, signed by respondent, or if the summons and complaint are mailed to an address which is the current address of respondent on file with any tribal, federal or state agency

with which respondent is required by law to maintain a record of his current mailing address.

(c) Service of process on a corporation, partnership, unincorporated association, government or other entity, other than an individual person may be made upon any officer, managing agent, or partner thereof, or any agent authorized by the entity or by law to accept service.

(d) Service of process on a government may be made in any manner in which service could be made upon the government under the laws of that government.

(e) Only causes of action arising from acts enumerated in Section 1.2.2 may be asserted against a respondent in an action in which jurisdiction over him is based upon service outside of the reservation.

(f) Nothing in this section shall limit or affect the right to serve process in any other manner now or hereafter provided by law.

(g) Any paper, other than the complaint and summons, may be served upon any person subject to the jurisdiction of the Hoh Tribe, within or without the Hoh Indian Reservation. Such service may be made in any manner permitted for the service of process, or by first class mail, addressed to the recipient's address of record, or by facsimile transmittal to the recipient's facsimile number of record, provided, such service by facsimile shall be followed by service by mail, or in person.

2.2.4. Publication. Upon a showing by the petitioner to the court that diligent efforts were made to serve the complaint and summons on the respondent pursuant to Section 2.2.3 and that service could not be made for sufficient reasons, the judge may allow service to be made by posting copies of the summons and complaint in two public places on the reservation for three weeks and by publication of a copy of the summons once a week for three consecutive weeks in the Forks Forum, or in any newspaper of general circulation on or adjacent to the Hoh Indian Reservation, or in a newspaper of general circulation in the town closest to where respondent is known to have last resided.

2.2.5. Default. Judgment by default may be given if respondent fails to appear or answer within the time required after service of process. Default judgment may be given upon a verified complaint or upon affidavit, without further proof, if the claim is for damages in a certain sum. For any other claim, petitioner must present proof of claim before a default judgment will be entered. Proof of a claim may be attached to the Complaint as an Exhibit at the time of filing the Complaint, or be presented by subsequent affidavit or in open court at a hearing of the matter.

2.2.6. Trial Setting; Want of Prosecution. The court may set a case for trial on its own motion, or trial may be set on the motion of petitioner. If the case is not set for trial within one year from the filing of the complaint, the court shall notify the petitioner that the court will dismiss the complaint without prejudice for want of prosecution, if

petitioner does within thirty days of such notice by the court, either set the matter for trial or show good cause why the matter should be continued.

Chapter 2.3 PRETRIAL PROCEDURE AND MOTIONS

Sections:

- 2.3.1 Pretrial Conference.
- 2.3.2 Trial Setting.
- 2.3.3 Pretrial Statement.
- 2.3.4 Discovery.
- 2.3.5 Motions.

2.3.1. Pretrial Conference.

(a) In any civil action, the court shall, prior to setting a trial date, direct the parties to appear before it for at least one pretrial conference to consider;

(1) Simplification of the issues;

(2) Those facts which are uncontested and those documents which will not need additional proof;

(3) Such other matters as may aid in the disposition or settlement of the action; and

(4) Scheduling of further proceedings, including the time limits which will be placed upon the conduct of discovery. After such discovery cut-off date, further discovery can only take place on motion for further discovery and a showing of good cause and substantial need.

(b) A pretrial conference may be consolidated with a hearing held to enter an oral answer to a complaint.

2.3.2. Trial Setting. A trial date will be set not more than 90 days from the first pretrial conference, unless the parties agree or the court orders a longer period.

2.3.3. Pretrial Statement. The court, in its discretion, may require each party to prepare and file, or all parties to file jointly, at least 30 days prior to trial, a pretrial statement containing the following information:

(a) A statement of facts;

(b) Admitted facts;

(c) All claims for relief and all defenses advanced by the party submitting the pretrial statement and the type of evidence expected to be offered in support of each claim and defense;

(d) The names, addresses, categories (i.e., lay, eye, investigative), and type (i.e., liability, damages) of all non-expert witnesses reasonably expected to be called by each party and a general statement concerning the nature of the testimony expected; and

(e) The name, address and field of expertise of each expert witness expected to testify and a general statement concerning the nature of the testimony expected.

The statement shall also state that discovery is substantially completed, or there has been reasonable time to complete discovery.

2.3.4. Discovery. A party may conduct discovery by any of the methods allowed in the Federal Rules of Civil Procedures. Limitations on discovery, other than those provided under the Federal Rules, may be ordered in the court's discretion where needed to prevent undue harassment or oppression and to promote substantial justice.

2.3.5. Motions. (a) All motions, except when made during a hearing or trial, shall be in writing, shall state the grounds therefore, shall set forth the relief or order sought, and if involving questions of law shall be accompanied by a memorandum in support of the motion. Every motion except one entitled to be heard *ex parte*, shall be set for hearing by the clerk of the court and notice of the hearing given to all parties at least five days prior to said hearing, not counting weekends or holidays, unless otherwise ordered by the court, or unless a different period of notification is required by another section of this code. If the motion requires the consideration of facts not appearing of record, it shall be supported by affidavit.

(b) An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon, which shall be served and filed not later than 48 hours preceding the time set for the hearing, except as otherwise ordered by the court.

(c) A party who does not oppose or who intends to support a motion, or who desires a continuance, shall immediately notify the court and opposing counsel or representative, or opposing party if s/he is not represented by counsel or representative. Failure to appear at the hearing may be deemed a waiver of objection to the granting of the motion.

(d) Motions to dismiss the lawsuit because the court lacks jurisdiction or because the petitioner has not stated a legal basis for relief may be made at any time.

Chapter 2.4 TRIAL

Sections:

- 2.4.1 Standard of Proof.
- 2.4.2 Manner of Trial.
- 2.4.3 Swearing in Witnesses.
- 2.4.4 Conduct of Trial.
- 2.4.5 Evidence (Refer to Section 1.8.12).
- 2.4.6 Final Argument.
- 2.4.7 Entry of Judgment.
- 2.4.8 Judgments.

2.4.1. Standard of Proof. The petitioner in a civil case shall have the burden of proving his case by the greater weight of the evidence.

2.4.2. Manner of Trial. All civil actions shall be heard before the presiding judge. There is no right to a jury in civil actions.

2.4.3. Swearing in Witnesses. All witnesses shall be administered an oath by the court as follows: "Do you swear (or affirm), on your honor and your family name, to tell the truth in the matter now before you?"

2.4.4. Conduct of Trial. Petitioner shall make the opening statement setting out the claims against the respondent. The respondent shall have an opportunity to make a statement of his position. Upon the conclusion of such statement, the petitioner shall call such witnesses and produce such exhibits as he may see fit. The respondent shall then have an opportunity to call such witnesses and produce such evidence as he may see fit. The petitioner shall thereafter, in rebuttal, have an opportunity to call such witnesses and produce such evidence as he may see fit to rebut the evidence produced by the respondent. Both the petitioner and respondent shall have the right to cross-examine witnesses produced by the other side.

2.4.5. Evidence. For evidence rules, See HTC 1.8.12.

2.4.6. Final Argument. Upon the conclusion of the evidence, the petitioner shall be given an opportunity to argue his case. The respondent shall then be given an opportunity to argue his case, and the petitioner shall be given an opportunity to make a closing argument. Further argument may be allowed at the court's discretion.

2.4.7. Entry of Judgment. After final arguments are presented, the judge shall decide the case and render a judgment within a reasonable time.

2.4.8. Judgments. In all civil cases, judgment shall consist of an order of the court awarding money damages to be paid to the prevailing party or directing the surrender of certain property to the prevailing party or directing the performance of some other act for the benefit of the prevailing party, or any other remedy available under any ordinance or regulation of the tribe.

Chapter 2.5 POST-TRIAL PROCEDURES

Sections:

- 2.5.1 Costs in Civil Actions.
- 2.5.2 Writ of Execution on IIM Account.
- 2.5.3 Judgments and Decedent's Estates.
- 2.5.4 Execution of Judgment.
- 2.5.5 Judgment and Renewal of Judgment.
- 2.5.6 Writ of Execution.
- 2.5.7 Return of Writ.
- 2.5.8 Appraisal.
- 2.5.9 Posting of Notice.
- 2.5.10 Time of Sale.
- 2.5.11 Sale of Property.
- 2.5.12 Expenses and Costs.
- 2.5.13 Bill of Sale.
- 2.5.14 Failure to Sell at Public Sale.
- 2.5.15 Delivery of Property if No Sale.
- 2.5.16 Return of Property.
- 2.5.17 Nonexempt Property.
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- 2.5.19 Retention of Property by Judgment Debtor—On Bond or Approval of Judgment Creditor.
- 2.5.20 Homestead Exemption—Definition.
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- 2.5.24 Challenge to Homestead Exemption, How to Claim.
- 2.5.25 Interest on Judgment.
- 2.5.26 Satisfaction of Judgment.

2.5.1. Costs in Civil Actions. The court may assess the costs of the case against the party or parties against whom judgment was given. Such costs shall consist of the expenses of voluntary witnesses for which either party may be responsible, and any further incidental expenses or fees connected with the proceedings before the court, as the court may direct. Costs may also include reasonable attorney's fees to the prevailing party; however, no attorney's fees shall be payable by the Tribe for any matters in which the Tribe, its officers or employees (acting within scope of employment and/or authority), are the losing party.

2.5.2. Writ of Execution on IIM Account. Whenever the court shall have ordered payment of money damages to a prevailing party and the judgment debtor refuses to make such payment within the time set for payment by the court, and at such time as the judgment debtor has sufficient funds to his credit in excess of those specified in HTC

§2.5.18, at the agency office to pay all or part of such judgment, and if the judgment debtor has filed an affidavit of exemption as required under HTC §2.5.18, the Superintendent, pursuant to federal law, upon service of judgment by the court, shall certify to the Secretary of the Interior the record of the case and the amount of the available funds. If the Secretary shall so direct, the disbursing agent shall pay over to the prevailing party the amount of the judgment, or such lesser amount as may be specified by the Secretary, from the account of the delinquent party.

2.5.3. Judgments and Decedent's Estates. A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the court to distribute a decedent's estate.

2.5.4. Execution of Judgment. Any judgment of the court requiring the payment of money or the delivery of real or personal property may be enforced by execution. When a judgment of the court requires the performance or forbearance of any other act, a certified copy of the judgment may be served upon the liable party or upon the person or officer who is required by the judgment or by law to obey the same, and a writ may be issued commanding the person or officer to obey or enforce the judgment. Refusal to do so may be punished by the court as contempt. A judgment may be executed against any per capita to which the liable party is entitled.

2.5.5. Judgment and Renewal of Judgment. The party in whose favor a money judgment is given by the Hoh Tribal Court may at any time within six years from the entry of judgment apply for a writ of execution to enforce judgment. Prior to the expiration of the six-year period, the judgment creditor, upon motion and for good cause, may renew the judgment for an additional period up to six years. The judgment creditor may obtain as many writs of execution as are necessary to effect collection of the entire amount of the judgment. The application for writ shall specify which property is to be levied upon.

2.5.6. Writ of Execution. (a) A writ of execution shall be issued in the name of the Hoh Tribe, sealed with the seal of the court, and subscribed by the clerk of the court and directed to the Tribal or Bureau of Indian Affairs Police, or to the party seeking execution. The writ shall direct the party to whom it is addressed to levy upon sufficient unrestricted and nonexempt property of the judgment debtor to pay the judgment and costs of sale. The writ of execution shall refer to the judgment, including the names of the parties, the amount of the judgment and if it be for money, the amount actually due thereon and list the particular property to be levied upon. If the judgment has been recorded, the writ shall so indicate and shall state the time and place of docketing or recording and the recording number.

(b) Before an execution is delivered on a judgment of the court, the amount of the judgment, including court costs, shall be entered in the docket and upon the back of the execution, and reasonable costs and reasonable attorneys' fees incurred by the judgment creditor in seeking enforcement of the judgment.

(c) A writ shall require substantially as follows:

(1) If the execution is against the property of the judgment debtor, it shall require the officer or other person executing the writ to satisfy the judgment out of the personal property of the debtor first, unless an affidavit of exemption has been filed with the court pursuant to Code Section §2.5.21, and there is not sufficient non-exempt personal property to satisfy the judgment, the writ shall require that the unsatisfied portion of the judgment be satisfied out of the real property of the debtor.

(2) If the execution is against real or personal property in the hands of a personal representative, heir, devisee, legatee, tenant of real property, or trustee, it shall require that the judgment be satisfied out of such property.

(3) If the execution is for the delivery of real or personal property it shall describe the property and state its value and require the officer or other person executing the writ to deliver possession of it to the party entitled thereto, and may, at the same time, require the satisfaction of any charges, damages, or rents and profits recovered by the same judgment out of the personal property of the party against whom it was rendered. If the property described in the execution cannot be delivered, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(4) If the execution is to enforce obedience to an order, it shall particularly command what is required to be done or to be omitted.

(5) If the nature of the case requires it, the execution may embrace two or more of the requirements of this section.

(6) In all cases the execution shall require the collection of all interest, costs and increased costs thereon.

2.5.7. Return of Writ. Within thirty days of receipt of the writ of execution, the police or the party seeking execution shall return the writ to the clerk of the court with an inventory of the property levied upon, or with a written explanation of why the property has not been levied upon as specified in the writ.

2.5.8. Appraisal. The following property shall require appraisal: vehicles, real property and personal property which the officer or person levying reasonably believes to be of the value of five hundred dollars or more. Within ten days after levy upon property under a writ of execution, any property required by this code shall be appraised by a disinterested party, selected by the chief of police, or absent such selection, by the judgment creditor. Appraisal by such disinterested party must be made within five days of receipt of appointment. Such appraisal shall be made under oath to make a just and true appraisal, and shall be returned to the chief of police, the judgment creditor, the judgment debtor, and the person in control of the property at the time of levy, if different than the judgment debtor.

2.5.9. Posting of Notice. Within seven days after the property levied upon by a writ of execution, or within seven days of the return of the appraisal, the chief of police shall post at the Hoh Tribal Center, or at least one prominent and public place on the Hoh Indian Reservation, and cause to be published once a week for two consecutive weeks, in the Forks Forum, or in a newspaper of local circulation, notices of sale containing a description of the property to be sold, together with the appraised value of each item of a value of five hundred dollars or more, and the time and place of sale. A copy of the notice shall be served upon the judgment debtor and the person who was in control of the property at the time of levy, in the manner of a civil summons. The notice shall inform the judgment debtor that s/he may have rights to claim exemptions, and shall attach a form for such claim.

2.5.10. Time of Sale. The sale shall be held not less than ten, nor more than twenty days after the posting and service of notice pursuant to Code Section 2.5.9. The sale shall be conducted at a convenient time and location described in the notice.

2.5.11. Sale of Property. The chief of police, his agent, or the judgment creditor, shall sell the property publicly to the highest bidder for cash, but appraised property shall not be sold for less than eighty percent of the appraised price. The property may be sold, item by item or in bulk, at his discretion, provided, it shall not be commingled with non-appraised property in a bulk sale.

2.5.12. Expenses and Costs. All proceeds of sale shall be paid into the court within ten days of the sale. The court shall then reimburse costs of sale to the seller, the party levying, or their agent, with the balance paid to the creditor up to the amount of the judgment. Any excess proceeds remaining shall be paid to the judgment debtor.

2.5.13. Bill of Sale. The seller shall deliver a bill of sale to the buyer.

2.5.14. Failure to Sell at Public Sale. If the property has not been sold at public sale in accordance with STC §2.5.11, the property not appraised shall be returned to the judgment debtor or person in whose hands it was prior to levy. The chief of police may hold the appraised property for fourteen days after the date of the attempted sale, during which time he shall sell it to the first person offering eighty percent of the appraised value in cash.

2.5.15. Delivery of Property in Event of No Sale. The chief of police, at any time within the fourteen-day period following an unsuccessful sale, upon request of the judgment creditor and payment of all costs, may deliver appraised property to the judgment creditor and credit the appraised value thereof against the judgment debt. If the appraised value is greater than the debt, the property shall not be delivered to the judgment creditor until the judgment creditor pays the judgment debtor in cash for the excess value.

2.5.16. Return of Property. At the end of fourteen days, if the property remains unsold and unclaimed by the judgment creditor, the property shall be returned to the judgment debtor.

2.5.17. Non-Exempt Property. Except as provided in Section 2.5.18, all real and personal property of the judgment debtor, not including land held in trust by the United States, or subject to restriction against alienation under federal law, shall be subject to execution, including any property transferred by the judgment debtor for the purpose of defrauding the judgment creditor, where the transferee knew, or should have known, of such purpose at the time of the transfer.

2.5.18. Exempt Property. (a) The judgment debtor may claim as exempt from levy and execution, property within the following categories: tools, equipment, or materials used in a business, up to five thousand dollars; clothing, keepsakes, mementoes and library up to one thousand five hundred dollars; up to two vehicles, not to exceed a combined maximum value of five thousand dollars; one cooking stove, one refrigerator, one wood stove, one telephone, and necessary medical equipment or supplies of any value; casualty insurance proceeds on exempt property for up to ninety days after the claim is paid; disability benefits of any amount; and other personal property with a combined maximum value of one thousand five hundred dollars, of which not more than two hundred fifty dollars shall be cash, deposits in a checking account, demand instruments, or other cash equivalents;

(b) Levy or execution upon an individual judgment debtor may only be upon the separate property of the judgment debtor spouse or, if married, only upon the judgment debtor's interest in any community property and not on the spouse's separate property; provided, where the judgment is for the purchase price or rents due upon the property levied upon, there is no exemption;

(c) Intangibles, such as, but not limited to, stock certificates, damage claims and accounts receivable, may be levied upon by serving a copy of the writ on, the judgment debtor, together with a description of the property. If the property is a claim on which suit has been commenced, a copy of the writ and of the description shall also be filed with the clerk of the court in which the suit is pending;

(d) In addition to the personal property exemption above, there is exempted from levy and execution any materials, equipment, supplies or clothing used for the enjoyment of, and/or, in the exercise of the judgment debtor's rights guaranteed by treaty. The exemptions in this section shall not apply to property which is subject to lien or security interest which has been perfected as required by the laws of the State of Washington or of the state or Indian Nation wherein the debt was contracted;

(e) All traditional, cultural, and religious items, including regalia, are further exempted from execution of judgment and may not be attached for any debt;

(f) Homestead, as defined in Section 2.5.20.

2.5.19. Retention of Property by Judgment Debtor—On Bond or Approval of Judgment Creditor. After levy of execution on personal property, the police or judgment creditor may permit the judgment debtor to retain possession of the property or any part of it until the day of sale, if the debtor executes a written bond to the police with sufficient surety, in double the value of such property, to the effect that it shall be delivered to the police with the time and place of sale, and upon non-delivery thereof, an action may be maintained upon such bond by the police or the judgment creditor, for judgment against the surety on the bond for the balance remaining due, upon motion supported by affidavit, that the property has not been delivered and the judgment remains unpaid and stating the amount unpaid.

2.5.20. Homestead Exemption—Definition. A homestead may consist of real or personal property of which the judgment debtor is the owner and which s/he uses as a residence.

(a) A mobile home and any dwelling house located on leased land, may be exempted as a homestead under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for its owner and will include appurtenant buildings and the land on which the same are situated and surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon.

(b) An “owner” shall include a purchaser under a deed of trust, mortgage, or real estate contract.

(c) “Net value” means market value, less liens and encumbrances.

(d) A homestead may consist of community or jointly owned property of spouses or the separate property of either spouse or any of the property of an unmarried person.

(e) The homestead may consist of property with a net value not exceeding thirty thousand dollars if it includes real property, or fifteen thousand dollars in the case of mobile homes or other personal property intended for and used as the owner’s principal home.

2.5.21. Automatic Homestead Exemptions.

(a) Property described in Section §2.5.20 constitutes a homestead and is automatically protected by the exemption described in Section §2.5.18 from and after the time the real property is occupied as a principal residence by the owner.

(b) Any property not qualifying for an automatic exemption shall qualify as a homestead only if the owner executes a declaration of homestead and files the same for record in the office of the court clerk or some other office designated by this code.

(c) The declaration of homestead must contain:

- (1) a statement of declaration, and
- (2) a legal description of the property, and
- (3) an estimate of the actual cash value.

(d) If a homestead has been abandoned a declaration of abandonment shall be filed with the court clerk. A declaration of abandonment must contain:

- (1) a statement that the premises occupied as a residence or claimed as a homestead, no longer constitutes the residence or homestead;
- (2) a legal description of the premises;
- (3) a statement of the date of abandonment.

(e) The declaration must be acknowledged in the same manner as a grant of real property is acknowledged.

2.5.22. Homestead Presumed Abandoned. There is a presumption of abandonment of homestead if the owner vacates the property as to which a declaration of homestead has been filed for a continuous period of one year, unless the owner files a declaration of non-abandonment, which must contain:

- (a) a statement that the owner claims the property as a homestead, and
- (b) that the owner intends to occupy the property in the future, and
- (c) that the owner has no other homestead, and
- (d) where the owner will be residing during the absence, and
- (e) the estimated duration of the absence and the reason therefore, and

(f) a legal description of the property which must be filed as required in Section §2.5.21(5).

2.5.23. Homestead Exemption, When Not Available. A homestead exemption other than an automatic exemption is not available:

(a) unless any declaration thereof is executed and acknowledged by both husband and wife;

(b) to the extent that the claimed exemption exceeds the value of the exemption allowed;

(c) with regard to debts secured by a mechanic, laborer, construction, maritime, automobile repair, Material Men or vendor lien arising out of and against the particular property claimed as a homestead;

(d) for debts secured by security agreement, mortgages, or deed of trust, describing the property claimed that has been executed and acknowledged by the husband and wife or any unmarried claimant;

(e) debts arising from a lawful tribal court order for child support;

(f) debts secured by a condominium or homeowner's lien.

2.5.24. Challenge to Homestead Exemption, How to Claim.

(a) In the event a judgment creditor believes a claim is incorrect as to any property, the creditor may request an appraisal of such property, and the excess, if any, will be paid to the creditor after sale;

(b) Such request must be made within five days of receipt of a copy of the claim for exemption made by the judgment debtor and be filed with the clerk of the court with a copy to the judgment debtor and the chief of police. The clerk will schedule a hearing within five days of the request with notice to both parties.

2.5.25. Interest on Judgment. A judgment shall earn interest at the prime rate from the date of entry of judgment until paid.

2.5.26. Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, by the owner thereof or his attorney or representative, executing under oath and filing an acknowledgment of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A judge may order the entry of partial or full satisfaction of judgment upon proof of payment and failure of the judgment creditor to file a satisfaction.

Chapter 2.6 APPEALS

Sections:

- 2.6.1 Notice of Appeal.
- 2.6.2 Limitations.
- 2.6.3 Stay of Execution.
- 2.6.4 Notice for Posting of Bond.
- 2.6.5 Tax Appeals.
- 2.6.6 (Reserved)
- 2.6.7 Decision.

2.6.1. Notice of Appeal. Any person aggrieved by the judgment of the court shall have the right to appeal such decision by filing a written notice of appeal with the court within ten (10) days from the day of filing of the written judgment; provided, that the case to be appealed meets the requirements established here or by rules of the court.

2.6.2. Limitations. There may be established by rules of court the limitations, if any, to be placed upon the right of appeal as to the type of cases which may be appealed, as to the grounds of appeal, and as to the manner in which appeals may be granted, according to the needs of the jurisdiction.

2.6.3. Stay of Execution. Upon giving proper assurance to the court through the posting of a bond or any other way that will satisfy the judgment if affirmed, the appealing party may be granted a stay of execution of any final judgment, order, or writ of the court pending an appeal, and the judgment shall not be carried out unless and until affirmed by the court of appeals. The amount of the bond shall be set by the court, but in no case shall it exceed: in a civil case the equivalent of the amount of the judgment, including costs, or the value of the property, including costs, if the judgment is for the return of the property.

2.6.4 Notice for Posting of Bond. The clerk of the court must serve notice of stay of execution pending appeal, upon the appellee within ten days of the posting of the bond. If a notice of appeal is not filed with the court clerk within the time required by law, the bond shall be forfeited and may be executed upon according to judgment. The clerk of the court shall enter the forfeiture on the docket and notify the court of the default.

2.6.5. Tax Appeals. (a) Any party contesting the assessment of any taxes owed to the tribe or any party appealing judgment for taxes owed or a judgment for any other remedy provided under any tax ordinance of the tribe must pay the assessed tax or judgment before he may appeal under this chapter. Upon the payment of such taxes and upon the posting of a one hundred dollar bond for costs, the appealing party may be granted a stay of execution as to the part of the judgment other than the taxes found to be owing, and that part of the judgment shall not be carried out unless and until affirmed by the court of appeals.

(b) Any forfeiture of seized goods shall be stayed pending the appeal, and the tribe shall hold the goods seized in a safe place until the final resolution of the case. If the goods are perishable or threaten to decline speedily in value, the tribe may sell such goods in a commercially reasonable manner and hold the amount realized until the final resolution of the case.

2.6.6. (Reserved)

2.6.7. Decision. The court of appeals may either affirm the judgment as entered, modify it, or reverse the judgment by a majority vote, and its decision shall be final.