

Mille Lacs Band Statutes Annotated

Amendments received through: June 30, 2021

TITLE 21 – REAL AND PERSONAL PROPERTY

<u>Chapter</u>	<u>Section</u>
1. General Provisions	1
2. Land Consolidation	101
3. Easements and Leases	201
4. Forcible Entry and Unlawful Detainer	301
5. Real Estate Mortgages	401
6. Recovery of Possession of Personal Property	501

CHAPTER 1

GENERAL PROVISIONS

Section

1. Findings and Determinations.
2. Reservation of Right of Amendment.
3. Jurisdiction for the Court of Central Jurisdiction.
4. Transfers and Changes of Venue.
5. Fees.
6. Non-Removable Mille Lacs Band of Chippewa Indians may be made Defendant in Certain Cases.

Historical and Statutory Notes

The Preamble to Band Statute 1087-MLC-40 provides: "It is enacted, a code for the provision of legal remedies for the recovery of real and personal property unlawfully held by person subject to the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians when said property is located on territories under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians."

Band Statute 1087-MLC-40, § 64 provides: "Section 64. Severability. If any provisions of this Band Statute, or the application thereof, to any person, business or corporation or circumstance is held invalid, the invalidity shall not affect any other provision or applications of this Band Statute which can be given effect without the invalid provisions, or application and to this end the provisions of this Band Statute are declared severable."

§ 1. Findings and Determinations.

- (a) The Band Assembly hereby finds that enrolled members of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians have entered into contractual arrangements for the provision of securing adequate housing on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians from the Minnesota Chippewa Tribal Home Loan Program; and that said houses were constructed with funds available from the Home Loan Program on lands under this Band's jurisdiction; and, that said Band members subsequently became delinquent on their payments, which created a legal cause of action for the Home Loan Program to recover possession of said houses; and that to the detriment of self-government by the people of the Non-Removable Mille Lacs Band of Chippewa Indians, the Home Loan Program sought relief from an exterior court which infringed upon the sovereign rights of the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) The Band Assembly hereby finds and determines that it is in the best interest of the Non-Removable Mille Lacs Band of Chippewa Indians that such contractual disputes clearly threaten the political integrity, economic security and welfare of the Band if they are not adjudicated in the Court of Central Jurisdiction.
- (c) The Band Assembly hereby finds and determines that the Non-Removable Mille Lacs Band of Chippewa Indians has never waived any sovereign immunities with regard to the provision of housing units on territories under the jurisdiction of the Band to any exterior court of competent jurisdiction and is now and hereafter precluded from such a waiver of the sovereign powers of the peoples of the constituent Bands on housing issues.
- (d) The Band Assembly hereby finds and determines that it is necessary to establish fair and impartial legal remedies in the Court of Central Jurisdiction for persons or corporations to seek the recovery of property, real or otherwise, which is alleged to be in possession of a person subject to the jurisdiction of the Band on territories under the jurisdiction of the Band. To this end, this title shall be liberally construed so as to effectuate the purposes which gave rise to it.
- (e) The Band Assembly hereby finds and determines that residential dwellings, newly constructed or remodeled on or within lands under the jurisdiction of the Band are real property subject to foreclosure actions outlined in this title in the event that default conditions of the loan exist.
- (f) The Band Assembly hereby finds and determines that any interest in allotments located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians which is to escheat should escheat for the benefit of the Non-Removable Mille Lacs Band of Chippewa Indians rather than any other governmental entity, and that such provisions of law protect the political, social, general welfare and economic integrity of this Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § I.

§ 2. Reservation of Right of Amendment.

The Band Assembly hereby fully reserves the right to alter, amend or repeal the provisions of this title, and all rights and privileges granted or extended hereunder, shall be subject to such reserved right.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 65.

§ 3. Jurisdiction for the Court of Central Jurisdiction.

The Court of Central Jurisdiction is hereby conferred exclusive subject matter jurisdiction to resolve disputes over the possession of property, real or otherwise, held by an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, any Indian from any other Band or Tribe or any person, through marriage or otherwise, who resides on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.

Cross References

Subject matter jurisdiction, Court of Central Jurisdiction, *see* 5 MLBS § 111.

§ 4. Magistrate Jurisdiction.

The Associate Justices of the Court of Central Jurisdiction shall have original and exclusive jurisdiction over civil causes of action arising in their Districts pursuant to chapters 1, 2 and 4 to 6 of this title. They shall perform their duties pursuant to chapters 1, 2 and 4 to 6 of this title under the title of Magistrate.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.02.

Cross References

Subject matter jurisdiction, Court of General Jurisdiction, *see* 5 MLBS § 111.

§ 4. Transfers and Changes of Venue.

The Court of Central Jurisdiction shall accept all changes of venue and transfers from any other court of competent jurisdiction in any state on the island of the United States of America, if it involves property located on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.03.

§ 5. Fees.

The Court shall have the power to establish reasonable fees for the costs of services for legal remedies for possession of property. Such fees may be reduced or waived in cases of undue hardships, in which event they shall become a charge to the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 2.01.

§ 6. Non-Removable Mille Lacs Band of Chippewa Indians may be made Defendant in Certain Cases.

In all cases not otherwise provided for, the consent of the Non-Removable Mille Lacs Band of Chippewa Indians is given to be named a party in any suit which is now pending or which may hereafter be brought in the Court of Central Jurisdiction having jurisdiction of the subject matter, to quiet title to or for the foreclosure of a mortgage or other lien upon real estate or personal property, for the purpose of securing an adjudication touching any mortgage, or other lien the Non-Removable Mille Lacs Band of Chippewa Indians may have or claim on the real estate or personal property involved, or to determine the boundary line between any real property of the Band and real property contiguous thereto; provided, that this shall not be deemed to supersede any express provision of law relating to action to which the Band may be made a party, nor to relieve any person from complying with any requirement of such laws.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 59.

Cross References

Liberal construction of this section, *see* 21 MLBS § 404.

CHAPTER 2

LAND CONSOLIDATION

Section

- 101. Non-members and non-Indians Prohibited from Receiving Interests in Trust or Restricted Lands.**
- 102. Life Estate in Spouse or Children.**
- 103. Escheat.**
- 104. Federal Law and Regulations.**

§ 101. Nonmembers and Non-Indians Prohibited from Receiving Interests in Trust or Restricted Lands.

Pursuant to the authority vested in the Non-Removable Mille Lacs Band of Chippewa Indians by the Indians Land Consolidation Act, 25 United States Code, 220 1 , et seq., 1983 , the Commissioner of Natural Resources is hereby authorized and directed to prepare a plan, subject to the approval of the Secretary of Interior and ratified by the Band Assembly, to ensure that nonmembers or non-Indians of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, shall not receive or be entitled to receive by devise or descent any interest of an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians on any lands located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians. Notwithstanding any other provision of any other law, it shall be unlawful for any non-member or non-Indian of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians to receive or be entitled to receive any interest in trust or restricted lands within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.

§ 102. Life Estate in Spouse or Children.

Any enrolled member of the Non-Removable Mille Lacs Band of Chippewa Indians who dies intestate leaving a surviving spouse and/or children who are nonmembers of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians, or who are non-Indians, the

surviving spouse or children shall be entitled to life-time estate on the trust or restricted property of the decedent Band member in lieu of the restriction imposed in 21 MLBS § 101 provided, that any said surviving spouse or children not be excluded or removed from said lands for cause after hearing pursuant to 2 MLBS § 201.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.01.

§ 103. Escheat.

In the event of death of an enrolled member of any constituent member Band of the Non-Removable Mille Lacs Band of Chippewa Indians, with said death be intestate and without a legitimate heir to whom interests in trust or restricted lands may pass, all such interests shall escheat to the Non-Removable Mille Lacs Band of Chippewa Indians subject to:

- (a)
 - (1) Right of proper notice of intent to take and notice of due process hearing in the Court of Central Jurisdiction to determine the legal membership status of the subject heir,
 - (2) A specific finding of the Court that the subject heir is not eligible to receive an interest in the trust or restricted property,
 - (3) A specific finding if the subject heir is entitled to compensation for the legal taking of the interest by the Non-Removable Mille Lacs Band of Chippewa Indians, any said compensation may include any rental fees established for lifetime occupancy,
 - (4) A specific finding of the amount of compensation due to the subject heir and
 - (5) An order for payment of said compensation in an amount reasonable and appropriate not to exceed five hundred dollars by the Non-Removable Mille Lacs Band of Chippewa Indians.
- (b) Right to appeal the decision of the justice to the entire Court of Central Jurisdiction whose decision shall be final.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.02.

§ 104. Federal Law and Regulations.

The provisions of Title II of Public Law 97-459, 96 Stat. 2515 as amended by Public Law 98-608, 98 Stat. 3171, as well as any and all implementing regulations promulgated by the Secretary of Interior and published in the Federal Register shall apply as law of the Non-Removable Mille Lacs Band of Chippewa Indians in the same manner as if such had been enacted into law pursuant to 3 MLBS § 16. The justices of the Court of Central Jurisdiction shall have exclusive jurisdiction in matter related to this chapter and each shall be bound thereby to the applicable provisions of the laws of the United States of America. 125 U.S.C.A. § 2201 et seq.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 67.03.

CHAPTER 3

EASEMENTS AND LEASES

Section

- 201. Validity of Easements.**
- 202. Easements Over Individual Trust Land.**
- 203. Authority of Commissioner of Natural Resources.**
- 204. Application for Easement.**
- 205. Unauthorized Easements; Penalty.**
- 206. Trespass.**
- 207. Seizure of Vehicles, Equipment or Goods used in Trespass.**
- 208. Leases of Restricted Land under the Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.**

Historical and Statutory Notes

The Preamble to 1098-MLC-48 provides: "The Band Assembly hereby creates Chapter 48 of the Statutes of the Non-Removable Mille Lacs Band of Chippewa Indians for the purpose of exercising jurisdiction over the use of all lands owned in fee or trust status and all trust lands to which the Band is designated as a legal beneficiary of a trust relationship between the Band and the United States of America."

§ 201. Validity of Easements.

All easements of records over trust land, on trust land and under trust land within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall have no validity or force of law unless approved upon the recommendation of the Chief Executive, ratified pursuant to formal resolution by the Band Assembly and approved and filed by the U.S. Department of

Interior, Bureau of Indian Affairs. All existing easements are hereby declared null and void unless entered into in compliance with Federal Statute and Regulation.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 1.

§ 202. Easements Over Individual Trust Land.

The provisions of this chapter shall not be construed as applicable for obtaining easements over individual trust land.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 1.01.

§ 203. Authority of Commissioner of Natural Resources.

The Commissioner of Natural Resources is hereby authorized and directed to review each parcel of land under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians to determine the validity of all easements of record. Should he determine any easement to be invalid, he shall notify in writing the holder of the easement of said invalidity and the United States Department of Interior-Bureau of Indians Affairs for appropriate action pursuant to federal law.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.

§ 204. Application for Easement.

All persons who reside on or hold leases to trust or restricted property under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall be authorized to initiate action which will result in the issuance of a valid easement for purposes of obtaining public utility services including electrical service, telephone service, and water and sewer service. Upon obtaining the consent of the lessee, all requests for easements shall be forwarded to the Commissioner of Natural Resources who shall make a determination of the issues and make his recommendation for acceptance or rejection to the Chief Executive. Upon the authorization of the Chief Executive, he shall forward said application for easement to the District Representative of the Band Assembly in which the land is located for formal acceptance or rejection of the easement by the Band Assembly. In the event the Band Assembly consents to grant the

easement, the easement shall be forwarded to the Superintendent of the Minnesota Agency-Bureau of Indian Affairs for proper action pursuant to federal law. In the event that the Band Assembly rejects said easement, the Solicitor General shall notify the lessee of said action and the right of the lessee to a hearing before the Band Assembly to contest the rejection. Any lessee who seeks to appeal the decision of the Band Assembly shall petition the Speaker of the Assembly within ten days after formal action or forfeit all rights to appeal. The decision of the Band Assembly may be appealed to the Court of Central Jurisdiction but any such appeal must be instituted within five days after the decision of the Band Assembly is rendered or the right of appeal to the Court shall be forfeited.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.01.

§ 205. Unauthorized Easements; Penalty.

Any holder of a valid lease of trust or restricted property or any person who resides or intends to reside on trust or restricted property under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians, who shall offer or authorize through signature any easement in violation of 21 MLBS § 204 to any other person or entity shall be deemed guilty of an unauthorized easement on trust land violation and upon conviction thereof, shall be sentenced to pay a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.02.

§ 206. Trespass.

Any person who shall go upon or pass over any trust or restricted lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians in violation of any provisions of this or any other law of the Mille Lacs Band of Chippewa Indians shall be deemed guilty of a trespass violation and upon conviction thereof, shall be subject to exclusion for a period not to exceed 180 days and/or a fine not to exceed five hundred dollars.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 2.03.

Cross References

Exclusion, *see* 2 MLBS, § 201.

§ 207. Seizure of Vehicles, Equipment or Goods Used in Trespass.

The Commissioner of Natural Resources or any law enforcement official of the Band at the time the trespass occurs shall be authorized to seize any motorized vehicles, equipment and material goods, used in connection with the trespass in the name of the Band to be returned at the discretion of the Court at any time during the judicial proceeding.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § .2.04.

Cross References

Unreasonable searches and seizures, *see* 1 MLBS § 2.

§ 208. Leases of Restricted Lands Under the Jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians.

Leases of trust or restricted lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians or from Band member employees of the Mille Lacs Band must be made on sealed bids unless the Chief Executive upon ratification by the Band Assembly waives this requirement on the basis of a full report showing: the need for the transaction, the benefits accruing to both parties and that the consideration for the proposed transaction shall be not less than the appraised value of the lands or leasehold interest unless the Indian employee qualifies and is intending a transaction in accordance with this chapter. An affidavit as follows shall accompany each proposed land transaction:

I, _____(name), _____(title), swear (or affirm) that I have not exercised any undue influence nor used any special knowledge received by reason of my office in obtaining the (grantor's, purchaser's, vendor's) consent to the instant transaction.

Historical and Statutory Notes

Source:

Band Statute 1098-MLC-48, § 3.

Cross References

Water conservation measures, building permits for leased lands, *see* Nat. Res. Comm. Order 112-89.

CHAPTER 4

FORCIBLE ENTRY AND UNLAWFUL DETAINER

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	301
2. Unlawful Removal or Exclusion: Recovery of Possession	341
3. Additional Remedies	371

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 301. Recovery of Premises.
- 302. Limitation of Actions.
- 303. Complaint and Summons.
- 304. Answer and Hearing.
- 305. Adjournment.
- 306. Judgement, Execution, Non-Emergency Writ of Restitution, and Emergency Writ of Restitution.
- 307. Failure to Reach a Verdict.
- 308. Notice of Appeal.
- 309. Appeals.
- 310. Form of Verdict or Finding.
- 311. Form of Summons and Writ of Restitution.
- 312. Execution of Writ of Restitution.

§ 301. Recovery of Premises.

- (a) No person shall make entry into lands or tenements except in cases where his entry is allowed by law and in such cases he shall not enter by force but only in a peaceable manner.
- (b) When any person has made unlawful or forcible entry into lands or tenements and detains the same, or having peaceably entered, unlawfully detains the same, the person entitled to the premises may recover possession thereof in the manner hereinafter provided.
- (c)
 - (1) When any person holds over lands or tenements after a sale thereof on an execution or judgment, or on foreclosure of a mortgage an expiration of the

time for redemption or after termination of contract to convey the same, or after termination of the time for which they are demised or let to him or to the persons under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due according to the terms of such lease or agreement, or when any tenant at will holds over after the determination or any such estate by notice to quit, in all such cases the person entitled to the premises any recover possession thereof, in the manner hereinafter provided.

(2)

(i) It shall be a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:

(A) The alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, or under the laws of the Non-Removable Mille Lacs Band of Chippewa Indians.

(B) The alleged termination was intended in whole or part as a penalty for the defendant's report to a governmental authority of the plaintiff's violation of any health, safety, housing or building codes or ordinances.

(ii) If the notice to quit was served within ninety days of the date of any act of the tenant coming within the terms of clause (A) or (B) of subparagraph (i) the burden of proving that the notice to quit was not served in whole or part for the retaliatory purpose shall rest with the plaintiff.

(3) In any proceeding for the restitution of premises upon the ground of nonpayment of rent, it shall be a defense thereto, if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in § 301 (c)(2)(i)(B), providing that the tenant tender to the Court or to the plaintiff the amount of rent due and payable under his original obligation.

(d) Nothing contained herein shall limit the right of the lessor pursuant to the provisions of § 301 (c)(2)(i)(B), to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under his direction or control.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.

Cross References

Additional remedy for tenants, *see* 21 MLBS § 341.

§ 302. Limitation of Actions.

No restitution shall be made under this chapter of any lands or tenements of which the part complained of, or his ancestor, or those under whom he hold the premises, have been in quiet possession for three years next before the filing of the complaint, after the determination of the leasehold estate that he may have had therein.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.03.

§ 303. Complaint and Summons.

The person complaining shall file a complaint with a Magistrate describing the premises of which possession is claimed, stating the facts which authorize the recovery and praying for restitution thereof. The Magistrate shall thereupon issue a summons, commanding the person against whom such complaint is made to appear before him on a day and at a place in such summons named, which shall not be less than three, nor more than ten days from the day of issuing the same. A copy of the complaint shall be attached to the summons, which shall state that it is so attached and that the original has been filed. All summons shall be served in accordance with 24 MLBS § 2001 et seq.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.04.

§ 304. Answer and Hearing.

After the return of the summons at the time and place appointed therein, if the defendant appeared, he may answer the complaint and all matters in excuse, justification or avoidance of the allegations thereof, shall be set up in the answer and thereupon, the Magistrate shall hear and determine the action, unless he shall adjourn the trial as provided in 21 MLBS § 305, but either

party may demand a trial by jury. The proceedings in such action shall be the same as in other civil actions in a Magistrate's Court, except as in this chapter, otherwise provided.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.05.

§ 305. Adjournment.

The Magistrate, in his discretion, may adjourn the trial, but not beyond six days after the return day, unless by consent of parties; but in all cases mentioned in 21 MLBS § 301, except in an action upon a written lease signed by both parties thereto, if the defendant, his agent or attorney shall make oath that he cannot safely proceed to trial for want of a material witness, naming him and that he has made due exertion to obtain the witness and believes that, if such adjournment be allowed, he will be able to procure the attendance of such witness at the trial or his deposition and shall give bond conditioned to pay to the plaintiff all rent which may accrue during the pendency of the action and all costs and damages consequent upon such adjournment, the Magistrate shall adjourn the trial for such time as may appear necessary, not exceeding three months.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.06.

§ 306. Judgement, Execution, Non-Emergency Writ of Restitution, and Emergency Writ of Restitution.

- (a) **Non-Emergency Writ of Restitution.** If upon the trial, the Magistrate or jury find for the plaintiff, the Magistrate shall immediately thereupon, enter judgment that the plaintiff have restitution of the premises and tax the cost for him or her. The Magistrate shall issue execution in favor of the plaintiff for such costs and also immediately issue a non-emergency writ of restitution. No stay of the non-emergency writ of restitution may be granted except upon a showing by the defendant that the restitution would work a substantial hardship upon the defendant. Upon a proper showing by the defendant of substantial hardship, the Magistrate may stay the non-emergency writ of restitution for a reasonable period not to exceed seven days, except that no stay of the non-emergency writ of restitution shall extend later than three days prior to the date the rent is next due. If the Magistrate or jury shall find for the defendant, he shall enter judgment for the defendant, tax the costs against the plaintiff and issue execution therefore.
- (b) **Personal Property.** No personal property shall be seized after entry of any judgment, by any law enforcement officer of the Band, or any other person, if said seizure

involves a basic life-sustaining item required for the general welfare of any person under the jurisdiction of the Band between November 1-April 15, of any year.

(c) **Emergency Writ of Restitution.**

- (1) An emergency writ of restitution, not available pursuant to the unlawful detainer procedure set forth in 21 MLBS § 301 et. seq., may be issued only in cases involving transitional housing and trespassers occupying Band-owned rental and elder units and used when it is imperative that the Band obtain or reacquire immediate possession (within 24 hours) of a Band-owned transitional, rental or elder unit due to:
 - (i) illegal drug activity;
 - (ii) abandonment; or
 - (iii) conduct that is either violent or harmful to the tribal community.
- (2) Substance abuse of any kind in transitional housing and the prevention of substantial property damage to a Band-owned transitional, rental or elder unit in cases involving trespassers shall also justify the issuance of an emergency writ of restitution.
- (3) If the Band possesses probable cause to believe that an occupant has engaged in any activity justifying the issuance of an emergency writ of restitution as stated in § 306 (c)(1) above, the Band may petition by motion to the Court of Central Jurisdiction for an emergency writ of restitution to be immediately enforced with the full assistance of the Mille Lacs Tribal Police Department. Upon the Band's showing of evidence of activity justifying the issuance of an emergency writ of restitution, the Court shall issue the same without the need of a hearing.
- (4) The Band may also by administrative order issue an emergency writ of restitution if it is signed by three (3) Executive Officers listed in 4 MLBS § 4. The administratively issued emergency writ of restitution shall have the same force and effect as an emergency writ of restitution issued by the Court of Central Jurisdiction and shall describe the factual circumstances creating the need for immediate action. Upon the issuance of an administrative emergency writ of restitution, an Enforcement Officer of Tribal Police will serve a copy of the emergency writ of restitution on the occupant(s) and enforce it without delay. After enforcement, the Band shall file a copy of the administratively issued emergency writ of restitution with the Court of Central Jurisdiction. Upon filing, the Court shall schedule a hearing where the Band must submit evidence justifying the issuance of the administrative emergency writ of restitution consistent with § 306 (c)(1) above.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §§ 6.07, 6.10.
Band Ordinance 48-21, § 1.

Cross References

Petition, unlawful removal or exclusion of tenant, *see* 21 MLBS § 345.

§ 307. Failure to Reach a Verdict.

If the jury cannot agree upon a verdict, the Magistrate may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties or fixed by the justice for the purpose of impaneling a new jury.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.08.

§ 308. Notice of Appeal.

If the party against whom judgment for restitution is rendered or his attorney state to the Magistrate that he intends to take an appeal, a writ of restitution shall not issue for 72 hours after judgment. In an action on a lease, against a tenant holding over after the expiration of the term thereof, or a termination thereof, by a notice to quit, such writ may issue forthwith notwithstanding such notice of appeal, if the plaintiff give a bond conditioned to pay all costs and damages in case on the appeal the judgment of restitution be reversed and a new trial ordered.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.09.

§ 309. Appeals.

If either party feels aggrieved by the judgment he may appeal within ten days as in other cases triable before Magistrates except that if the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of such appeal and abide the order the Court may make therein and pay all rents and other damages justly accruing to the part excluded from possession during the pendency of the appeal. Upon the taking of such appeal all further proceedings in the case shall be stayed, except that in an action on a lease against a tenant holding over after the expiration of the term thereof, or termination thereof, by notice to quit, if

the plaintiff give bond as provided in 21 MLBS § 308, a writ of restitution shall issue as if no appeal had been taken and the appellate court shall thereafter issue all needful writs and processes to carry out any judgment which may be rendered in such court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.10.

§ 310. Form of Verdict or Finding.

The verdict of the jury or the finding of the Court in favor of the Plaintiff in an action under this Chapter shall be substantially in the following form:

At Court held at _____, on the _____ day of _____, 20_____, before _____, a _____ Magistrate in and for the County of _____, in an action between _____ Plaintiff, and _____ Defendant, the jury (or, if the action be tried without a jury, the Court) find that the facts alleged in the complaint are true, and the said Plaintiff ought to have restitution of the premises therein described without delay. If the verdict or finding be for the Defendant, it shall be sufficient to find that the facts alleged in the complaint are not true.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.11.

§ 311. Form of Summons and Writ of Restitution.

The summons and writ of restitution may be substantially in the following form:

FORM OF SUMMONS

Non-Removable Mille Lacs Band of Chippewa Indians

) ss.

District of _____)

Whereas, _____ of _____, hath filed with the undersigned, a Magistrate in and for said District, a complaint against _____, of _____, a copy whereof is hereto attached; Therefore, you are hereby summoned to appear before the undersigned on the _____ day of _____, 20_____, at __ o'clock __m, at _____, then and there to make answer to and defend against the complaint aforesaid, and further to be dealt with according to law.

Dated at _____, this _____ day of _____ 20 _____.

Magistrate

FORM OF WRIT OF RESTITUTION

Non-Removable Mille Lacs Band of Chippewa Indians
) ss.

District of _____

The Non-Removable Mille Lacs Band of Chippewa Indians to any law enforcement officer of the Band aforesaid:

Whereas, _____, Plaintiff, of _____, in an action for an unlawful or forcible entry and detainer (or for an unlawful detainer, as the case may be) at a Court held at _____, in the District aforesaid, on the _____ day of _____, 20 _____, before _____, a Magistrate in and for said District, by the consideration of the Court recovered a judgment against _____, of _____, to have restitution of (here described the premises as in the complaint).

Therefore, you are hereby commanded that, taking with you the force of the District, if necessary, you cause the said _____ to be immediately removed from the aforesaid premises and the said _____ to have peaceable restitution of the same. You are also hereby commanded that of the goods and chattel of the said _____ with said District you cause to be levied, and the same being disposed of according to law, to be paid to the said _____ the sum of _____ dollars, being the costs taxed against the said _____ for the said _____ at the Court aforesaid together with \$1.00 for this writ; and thereof, together with this writ, make due return within thirty days from the date hereof, according to law.

Dated at _____, this _____ day of _____ 20 _____.

Magistrate

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §§ 6.12, 6.13.

§ 312. Execution of Writ of Restitution.

The officer holding the writ of restitution shall execute the same by making a demand upon defendant if he can be found in the District or any adult member of his family holding possession of the premises, or other person in charge thereof, for the possession of the same and that the defendant remove himself, his family and all of his personal property from such premises within 24 hours after such demand. If defendant fail to comply with the demand, then the officer shall

take with him necessary, the force of the District and whatever assistance may be necessary, at the cost of the complainant, remove the said defendant, his family and all his personal property from said premises detained, immediately and place the plaintiff in the possession thereof. In case defendant cannot be found in the District, and there is no person in charge of the premises detained, so that no demand can be made upon the defendant, then the officer shall enter into the possession of the premises, breaking in if necessary and remove all property of the defendant at the expense of the plaintiff. The plaintiff shall have a lien upon all of the goods upon the premises for the reasonable costs and expenses incurred for removing the personal property and for the proper caring and storing the same and the costs of transportation of the same to some suitable place of storage, in case defendant shall fail or refuse to make immediate payment for all the expenses of such removal from the premises and plaintiff shall have the right to enforce such lien by detaining the same until paid, and in case of non-payment for 60 days after the execution of the writ, shall have the right to enforce his lien and foreclose the same by public sale as provided for in case of sales.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 6.14.

Cross References

Additional remedy for tenants, *see* 21 MLBS § 341.

Petition, unlawful removal or exclusion of tenant, *see* 21 MLBS § 345.

SUBCHAPTER 2

UNLAWFUL REMOVAL OR EXCLUSION: RECOVERY OF POSSESSION

Section

- 341. Additional Remedy for Tenants.**
- 342. Application to Tenants Restricted.**
- 343. Public Policy of the Band.**
- 344. Manner of Recovering Possession.**
- 345. Petition.**
- 346. Order.**
- 347. Security for Costs and Damages.**
- 348. Execution of Order.**
- 349. Dissolution or Modification of Order.**
- 350. Appeal of Order for Recovery.**

§ 341. Additional Remedy for Tenants.

The purpose of this subchapter is to provide an additional and summary remedy for tenants unlawfully removed or excluded from rental property and except as where expressly provided in this subchapter 21 MLBS §301 or 312 shall not apply to proceedings under this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 11.

§ 342. Application to Tenants Restricted.

The provisions of this subchapter shall apply only to tenants as that term is defined in 21 MLBS § 372(e) and buildings as that terms is defined in 21 MLBS § 372(a).

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 12.

§ 343. Public Policy of the Band.

Any provision, whether oral or written, of any lease or other agreement whereby any provision of this subchapter is waived by a tenant is contrary to public policy and void.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 10.

§ 344. Manner of Recovering Possession.

Any tenant who is unlawfully removed or excluded from lands or tenements which are demised or let to him may recover possession of the premises in the manner described in this subchapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.

§ 345. Petition.

The tenant shall present a verified petition to the Court of Central Jurisdiction in which the premises are located, which petition shall:

- (a) Describe the premises of which possession is claimed and the owner as defined in 21 MLBS § 372(c), of the premises.
- (b) Specifically state the facts and grounds that demonstrate that the removal or exclusion was unlawful including a statement that no judgment and writ of restitution have been issued under 21 MLBS § 306 in favor of the owner and against petitioner as to the premises and executed in accordance with 21 MLBS § 312.
- (c) Ask for possession thereof.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §7.01.

§ 346. Order.

If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of petitioner or his counsel or agent that the removal or exclusion was unlawful, the Court shall immediately order that petitioner have possession of the premises.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.02.

§ 347. Security for Costs and Damages.

The petitioner shall furnish monetary or other security if any as the Court deems appropriate under the circumstances for payment of all costs and damages the defendant may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of any security the Court shall consider petitioner's ability to afford monetary security.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.03.

§ 348. Execution of Order.

The Court shall direct the order to the chief law enforcement officer in which the premises is located and the chief law enforcement officer shall execute the order immediately by making a demand upon the defendant, if he can be found, or his agent or other person in charge of the premises, for possession of premises. If the defendant fails to comply with the demand, the officer shall take with him whatever assistance may be necessary and immediately place the petitioner in possession of the premises. If the defendant or his agent or other person in control of the premises cannot be found and if there is no person in charge of the premises detained so that no demand can be made, the officer shall immediately enter into possession of the premises and place the petitioner in possession of the premises. The officer shall also serve the order and verified petition or affidavit without delay upon the defendant or upon his agent, in the same manner as a summons is required to be served in a civil action in the Court of Central Jurisdiction.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 7.04.

§ 349. Dissolution or Modification of Order.

The defendant by written motion and notice served by mail or personally upon petitioner or his attorney at least two days prior to the hearing date on the motion may obtain dissolution or modification of the order for possession, issued pursuant to 21 MLBS § 346 unless the petitioner proves the facts and grounds upon which the writ is issued. A defendant bringing a motion pursuant to this section may recover possession of the premises only in accordance with 21 MLBS § 301 or otherwise provided by law. Upon the dissolution of the order, the Court shall tax costs to petitioner, subject to the provisions of 21 MLBS § 306 and may allow damages and reasonable attorney's fees for the wrongful granting of the order for possession. If the order is affirmed the Court shall tax costs against defendant and may allow petitioner reasonable attorney's fees.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 8.

§ 350. Appeal of Order for Recovery.

An order issued under 21 MLBS § 346 or affirmed, modified or dissolved under 21 MLBS § 349 is a final order for purposes of appeal and either party aggrieved by the order may appeal within ten days after the entry of the order. If the party appealing remains in possession of the premises, his bond shall be conditioned to pay all costs of the appeal, to abide by the order the Court may

make and to pay all rent and other damages justly accruing to the party excluded from possession during the pendency of the appeal.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, §9.

SUBCHAPTER 3

ADDITIONAL REMEDIES

Section

371. Purpose to Provide Additional Remedies.

372. Definitions.

373. Proceedings by Owner Limited.

374. Owner's Right to Collect Rent Suspended.

§ 371. Purpose to Provide Additional Remedies.

The purpose of this section and 21 MLBS §§ 372 and 373 is to provide additional remedies and nothing herein contained shall alter the ultimate financial liability of the owner or tenant for repairs or maintenance of any building located on lands under the jurisdiction of the Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 15.

§ 372. Definitions.

As used in this section and 21 MLBS §§ 371 and 373, the terms in this section shall have the meanings assigned to them:

- (a) **"Building"** means any building used in whole or in part as a dwelling, including single family homes, multiple family units, such as apartments or structures containing both dwelling units and units used for non-dwelling purposes.
- (b) **"Commercial Tenant"** means any person paying rent in a building who is not a tenant.
- (c) **"Owner"** means the owner or owners of the freehold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent or any other person,

firm or corporation directly or indirectly in control of a building subject to the provisions of 21 MLBS §§ 371 to 373.

- (d) **"Person"** means a natural Indian person, corporation, partnership or unincorporated association.
- (e) **"Tenant"** means any person who is occupying a dwelling in a building under any agreement, lease or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys as rent for the use of the dwelling unit, and all other regular occupants of such dwelling unit.
- (f) **"Violation"** means:
 - (1) A violation of any state, county or city health, safety, housing building, fire prevention or housing maintenance code applicable to the building.
 - (2) A violation that the premises and all common areas are fit for the use intended by the parties or to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious or irresponsible conduct of the lessee or licensee or a person under his direction or control.
 - (3) A violation of an oral or written agreement, lease or contract for the rental of a dwelling in a building.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 16.

§ 373. Proceedings by Owner Limited.

A tenant may not be evicted nor may his obligations under his rental agreement be increased nor the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the tenant's complaint of a violation. The burden of proving otherwise shall be on the owner if said eviction or increase of obligations or decrease of services occurs within ninety days after the filing of the complaint, unless it is found that the complaint was not made in good faith. After ninety days the burden of proof shall be on the tenant.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 14.

§ 374. Owner's Right to Collect Rent Suspended.

When the Court appoints the Secretary of Treasury as an administrator, any right of the owner to rent moneys from the time of judgment or service of judgment shall be void and unenforceable until the administration is terminated by the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 13.

CHAPTER 5

REAL ESTATE MORTGAGES

<u>Subchapter</u>	<u>Section</u>
1. General Provisions	401
2. Foreclosure by Action	431
3. Foreclosure by Advertisement	461

SUBCHAPTER 1

GENERAL PROVISIONS

Section

- 401. Pledge of Allotted Lands as Collateral.
- 402. Relinquishment of Title to Residence.
- 403. Minnesota Chippewa Tribal Housing Corporation Contracts; Validity of Mortgages.
- 404. Construction.
- 405. Presumption of Identity.
- 406. Limitation on Foreclosure.
- 407. Holder of Junior Mortgage May Pay Default in Prior Mortgage.
- 408. Reinstatement of Mortgage.
- 409. Purchaser at Foreclosure, Execution, Or Judicial Sale May Pay Taxes, Assessments, Insurance Premiums or Interest.
- 410. Attorney's Fees.

§ 401. Pledge of Allotted Lands as Collateral.

- (a) Any enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians who shall be an allottee of lands held in trust by the United States of America, which said lands are located within the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians shall not be required to pledge the entire acreage of the allotment as collateral to obtain financial assistance for the construction or renovation of any residential or commercial dwelling located on said allotment from any mortgage creditor of financial institution.
- (b) Notwithstanding the provisions of subsection (a), any pledge of an allotment as collateral for the construction or renovation of any residential dwelling shall not exceed two acres of the total allotment when the total exceeds two acres of land.
- (c) The provisions of this section shall apply to all allotments held by an enrolled member of any constituent Band of the Non-Removable Mille Lacs Band of Chippewa Indians in trust by the United States of America on January 1, 1975. Any such pledge of an entire acreage of an allotment to secure credit for the construction or renovation of any residential dwelling shall be of no force and effect in the event such pledge exceeds the standard amount of acreage granted by the government of the Non-Removable Mille Lacs Band of Chippewa Indians for the construction or renovation of residential dwelling on trust lands by the individual members of the Band.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 66.

§ 402. Relinquishment of Title to Residence.

Any person who shall enter into a contractual arrangement for the provision of a residence on lands under the jurisdiction of the Non-Removable Mille Lacs Band of Chippewa Indians who shall become delinquent in their housing payments for more than two months shall have no authority to relinquish title to their residence in favor of any creditor by entering into any rental option agreement without first having his mortgage foreclosed pursuant to 21 MLBS §§ 431 and 461. The redemption period found in 21 MLBS § 484 shall be utilized for an opportunity for the home-buyer to recover his residence lost to foreclosure. Any holder of said title to a foreclosed mortgage shall show cause as to why said home-buyer should not have first option to redeem through a six month rent with option to buy contract. Any rents collected pursuant to said agreement shall be utilized to apply to any original principal and interest balance, with attorney fees awarded by the Court, provided the original home-buyer is granted a rent with option contract. In such an event, home-repairs shall be the responsibility of the person who possessed title to the house prior to foreclosure action.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 63.

§ 403. Minnesota Chippewa Tribal Housing Corporation Contracts; Validity of Mortgages.

Any person who shall enter into a contractual arrangement with the Minnesota Chippewa Tribal Housing Corporation for the provisions of a residence to which a mortgage was issued within the previous fifteen years, it is hereby declared by the Band Assembly that all such mortgage documents shall be deemed valid mortgages by the Court of Central Jurisdiction, but subject to provisions found in this chapter.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-44, § 63.01.

§ 404. Construction.

21 MLBS §§ 7 and 404 to 406 shall be liberally construed for the purpose of ascertaining marketability of title as between vendor and purchaser.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 62.

§ 405. Presumption of Identity.

The presumption of identity arising from identity or substantial identity of names of a grantee and of a succeeding grantor in a chain of title, shall extend to those cases where in one instrument the party is designated by initials which correspond with the name appearing in another instrument with the exception of the use of Indian names.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 61.

§ 406. Limitation on Foreclosure.

No action or proceeding to foreclosure a real estate mortgage executed prior to January 31, 1975, shall be maintained after May 31, 1985, unless prior to said date the owner of said mortgage

shall have filed in the office of the Clerk of Court, in which is located the real estate covered thereby, a notice setting forth the name of the claimant, and description of said real estate and of said mortgage including the volume and page at which it is of record and a statement of the amount claimed to be due thereon. Such notices may be discharged in the same manner as notices of lis pendens, and so discharged, shall together with all information included therein, cease to constitute either actual or constructive notice.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 60.

§ 407. Holder of Junior Mortgage May Pay Default in Prior Mortgage.

Any person who has a mortgage lien upon any land against which there exists a prior mortgage may pay any taxes or assessments on which any penalty would otherwise accrue, and may pay the premium upon any policy of insurance procured in renewal of any expiring policy upon mortgaged premises, and may in case any interest upon any prior or superior lien is in default, or any part of the principal shall become due, or amortized installment which may be in default upon any such prior lien, pay the same, and all such sums so paid shall become due upon such payment and be a part of the debt secured by such junior mortgage, shall bear interest from date of payment at the same rate as the indebtedness secured by such prior lien, and shall be collectible with, as a part of, and in the same manner as the amount secured by such junior mortgage. Such payments shall be proved by the affidavit of the junior mortgagee, his agent or attorney, stating the items and describing the premises, and a copy must be filed for record with the clerk of court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 55.

§ 408. Reinstatement of Mortgage.

In any proceedings for the foreclosure of a real estate mortgage, whether by action or by advertisement, if at any time before the sale of the premises under such foreclosure the mortgagor, the owner, or any holder of any subsequent encumbrance or lien, or any one of them, shall pay or cause to be paid to the holder of the mortgage so being foreclosed, or to the attorney foreclosing the same, or to the chief law enforcement officer, the amount actually due thereon and constituting the default actually existing in the conditions of the mortgage at the time of the commencement of the foreclosure proceedings, including insurance, delinquent taxes, if any, upon the premises, interest to date of payment, cost of publication and services of process or notices, attorney's fees not exceeding one hundred fifty dollars or one-half of the attorney's fees authorized by 21 MLBS § 410, whichever is greater, together with other lawful disbursement necessarily incurred in connection with the proceedings by the party foreclosing, then and in the

event the mortgage shall be fully reinstated and further proceedings in such foreclosure shall be thereupon abandoned.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 56.

§ 409. Purchaser at Foreclosure, Execution, or Judicial Sale May Pay Taxes, Assessments, Insurance Premiums or Interest.

The purchaser at any sale, upon foreclosure of mortgage or execution or at any judicial sale during the year of redemption, may in case any interest or installment of principal upon any prior or superior mortgage is in default or shall become due during such year of redemption, pay the same, and in all such cases, the sum so paid with interest, shall be a part of the sum required to be paid to redeem from such sale. Such payments shall be proved by the affidavit of the purchaser, his agent or attorney, stating the items and describing the premises, which must be filed for record with the clerk of court and a copy thereof shall be furnished to the chief law enforcement officer at least ten days before the expiration of the year of redemption.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 58.

§ 410. Attorney's Fees.

- (a) The mortgagor may, in the mortgage, covenant to pay or authorize the mortgagee to retain an attorney's fees in case of foreclosure; but such fees in case of foreclosure by advertisement shall not exceed the following amounts, and any provisions for fees in excess thereof, shall be void to the extent of the excess:

The original principal amount secured by the mortgage:

less than \$500.00:	\$150.00
\$550.00-\$1,000.00:	\$160.00
\$1,000.00-\$5,000.00:	\$170.00
\$5,000.00-\$10,000.00:	\$225.00
exceeding \$10,000.00:	\$275.00 plus \$35.00 for each additional \$5,000.00 or major fraction thereof

- (b) The Court shall establish the amount of the attorney's fees in case of foreclosure by action. If at the time of the commencement of the foreclosure proceedings, all of the items, constituting said default were less than thirty days past due, then upon redemption the mortgagor shall not be required to pay the attorney's fees authorized in this section. This section shall apply only to mortgages executed after May 31, 1971.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-43, § 57.

SUBCHAPTER 2

FORECLOSURE BY ACTION

Section

- 431. Rules Governing Foreclosure Actions.**
- 432. Foreclosure for Installment: Dismissal, Stay.**
- 433. Judgment.**
- 434. Strict Foreclosure.**
- 435. Purchase by Mortgagee.**
- 436. Surplus.**
- 437. Report, Confirmation, Resale.**
- 438. Satisfaction of Judgment, Execution for Deficiency.**
- 439. Redemption by Mortgagor or Creditor.**
- 440. Delivery of Possession.**

§ 431. Rules Governing Foreclosure Actions.

Actions for the foreclosure of mortgages on any residential property and land, shall be governed by the same rules and provisions of Band Statute as civil action, except as in this subchapter otherwise provides.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 17.

§ 432. Foreclosure for Installment: Dismissal, Stay.

When an action is brought for the foreclosure of the mortgage on which there is due any interest, or any portion of the principal and there are other portions to become due subsequently the action shall be dismissed, upon the defendant bringing into Court, at any time before the judgment of sale, the principal and interest due, with costs. If, after such judgment of sale, the defendant brings into Court the principal and interest due, with costs, the action shall be stayed; but the Court shall enter judgment of foreclosure and sale, to be enforced by a further order upon a subsequent default in the payment of any portion of the principal or of interest thereafter to become due.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 21.

§ 433. Judgment.

Judgment shall be entered, under the direction of the Court, adjudging the amount due, with costs and disbursements, and the sale of the mortgaged premises, or some part thereof, to satisfy such amount, and directing the Chief Law Enforcement Officer to proceed to sell the same according to the provisions of law relating to the sale of real estate on execution, and to make report to the Court. A certified transcript of the judgment shall be delivered to the Chief Law Enforcement Officer and shall be his authority for making a sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 18.

§ 434. Strict Foreclosure.

Judgment for the strict foreclosure of a mortgage may be given when such remedy is just or appropriate, but in such case no final decree or foreclosure shall be rendered until the lapse of one year after the judgment adjudging the amount due on such mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 26.

§ 435. Purchase by Mortgagee.

The mortgagee, or any one claiming under him, may fairly and in good faith bid off the premises at such sale; and in such case the statement of such fact in the report of sale shall have the same effect as a receipt for money paid upon a sale for cash.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 19.

§ 436. Surplus.

When the sale is for cash, if after satisfying the mortgage debt, with costs and expenses, there is a surplus, it shall be brought into Court for the benefit of the mortgagor or the person entitled thereto, subject to the order of the Court. If such surplus remains in Court for three months without being applied for, the Judge may direct it to be put out at interest, subject to the order of the Court, for the benefit of the person entitled thereto, to be paid to them upon order of the Court.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 20.

§ 437. Report, Confirmation, Resale.

Upon the coming in of the report of sale, the Court shall grant an order confirming the sale, or if it appears upon due examination that justice has not been done, it may order a resale on such terms as are just. If the sale is confirmed, the Chief Law Enforcement Officer shall forthwith execute the proper certificate of sale, which shall be recorded with thirty days after such confirmation.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 22.

§ 438. Satisfaction of Judgment, Execution for Deficiency.

Upon confirmation of the report of sale, the Clerk shall enter satisfaction of the judgment to the extent of the sum bid for the premises, less expenses and Costs, and for any balance of such judgment, execution may issue as in other cases; but no such execution shall issue on the judgment until after a sale of the mortgaged premises, and the application of the amount realized as aforesaid.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 23.

§ 439. Redemption by Mortgagor or Creditor.

The mortgagor, or those claiming under him, within the time specified in 21 MLBS § 484, after the date of the order of confirmation, may redeem the premises sold, or any separate portion thereof, by paying the amount bid therefore, with interest thereon from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed four percent per annum, and, if no rate to be provided in the mortgage, at the rate of four percent, together with any further sum which may be payable pursuant to 21 MLBS § 462. Creditors having a lien may redeem in the order and manner specified in 21 MLBS § 485 but no creditor shall be entitled to redeem unless within such specified redemption period he files with the Clerk notice of his intent to redeem.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 24.

§ 440. Delivery of Possession.

When possession of a residence is wrongfully withheld after expiration of the time of redemption, the Court may compel delivery of possession to the part entitled thereto by order, directing the Chief Law Enforcement Officer to effect such delivery, after hearing to show cause on the merits.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 25.

SUBCHAPTER 3

FORECLOSURE BY ADVERTISEMENT

Section

- 461. Limitation.**
- 462. Requisites for Foreclosure.**
- 463. Notice of Sale, Service On Occupant.**
- 464. Requisites of Notice.**
- 465. Attorney to Foreclose: Record of Power.**

- 466. Sale, How and by Whom Made.**
- 467. Postponement.**
- 468. Separate Tracts.**
- 469. Foreclosure for Installments; Sales; Disposition of Proceeds; Redemption.**
- 470. Statement of Unpaid Amount.**
- 471. Surplus.**
- 472. Mortgagee or Assignees May Purchase.**
- 473. Certificate of Sale.**
- 474. Premises in More Than One County; Record.**
- 475. Execution After Expiration of Term.**
- 476. Perpetuating Evidence of Sale.**
- 477. Entry in Record.**
- 478. Affidavit of Costs.**
- 479. Excessive Costs or Interest.**
- 480. Certificate as Evidence.**
- 481. Action to Set Aside for Certain Defects.**
- 482. Action to Set Aside Sale: Limitation.**
- 483. Interest of Purchaser; Attachment or Judgment.**
- 484. Redemption by Mortgagor.**
- 485. Redemption by Creditor.**
- 486. Redemption: How Made.**
- 487. Certificate of Redemption.**
- 488. Effect of Redemption.**
- 489. Foreclosure Pending Action to Set Aside Mortgage; Redemption.**

§ 461. Limitation.

Subject to the provisions of this chapter, any mortgage or real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 27.

§ 462. Requisites for Foreclosure.

To entitle any part to make such foreclosure, it is requisite: That some default in a condition of such mortgage has occurred, by which the power to sell has become operative. That no such action or proceeding has been instituted at law to recover the debt then remaining secured by such mortgage, or any part thereof, or if the action or proceeding has been instituted, that the same has been discontinued, or that an execution upon the judgment rendered therein has been returned unsatisfied, in whole or in part. That the mortgage has been recorded, and if it has been assigned, that all assignments thereof have been recorded; provided, that if the mortgage is upon

registered land, it shall be sufficient if the mortgage and all assignments thereof have been duly registered.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 28.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 463 Notice of Sale, Service On Occupant.

Six weeks published notice shall be given that such mortgage will be foreclosed by sale of the mortgaged premises or some part thereof, and at least four weeks before the appointed time of sale a copy of such notice shall be served in like manner as a summons in a civil action in the Court of Central Jurisdiction upon the person in possession of the mortgaged premises, if the same are actually occupied. If there be a building on such premises used by a church or religious corporation, for its usual meetings, service upon any officer or trustee of such corporation shall be a sufficient service upon it.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 29.

§ 464. Requisites of Notice.

Each notice shall specify: the name of the mortgagor and of the mortgagee and of the assignee of the mortgage, if any and the original principal amount secured by said mortgage. The date of the mortgage and when and where recorded, except where the mortgage is upon registered land, in which case the notice shall state that fact, and when and where registered. The amount claimed to be due thereon, and taxes, if any paid by the mortgagee at the date of the notice. A description of the mortgaged premises, conforming substantially to that contained in the mortgage. The time and place of sale and the time allowed by law for redemption by the mortgagor, his personal representative or assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 30.

§ 465. Attorney to Foreclose: Record of Power.

When an attorney at law is employed to conduct such foreclosure, his authority shall appear by power of attorney executed and acknowledged by the mortgagee or assignee of the mortgage in the same manner as a conveyance, and recorded prior to the sale in the county where the foreclosure proceedings are had. If such attorney be employed on behalf of such mortgagee or assignee by an attorney, in fact his authority shall likewise be evidenced by recorded power.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 31.

§ 466. Sale, How and by Whom Made.

The sale shall be made by the Chief Law Enforcement Officer at public venue to the highest bidder, in the district in which the premises to be sold, or some part thereof are situated, between nine o'clock a.m. and the setting of the sun.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 32.

§ 467. Postponement.

Such sale may be postponed from time to time, by inserting a notice of such postponement as soon as practicable, in the newspaper in which the original advertisement was published, and continuing such publication until the time to which the sale is postponed at the expense of the party requesting the same.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 33.

§ 468. Separate Tracts.

If the mortgaged premises consist of separate and distinct farms or tracts, they shall be sold separately, and no more farms or tracts shall be sold than are necessary to satisfy the amount due on such mortgage at the date of notice of such sale, with interest, taxes paid, and costs of sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 34.

§ 469. Foreclosure for Installments; Sales; Disposition of Proceeds; Redemption.

Where a mortgage is given to secure the payment of money by installments, each installment, either for principal or interest or both, as is due at any time, may be taken and deemed to be a separate and independent mortgage, and such mortgage for each such installment may be foreclosed by advertisement or by action, in the manner and with like effect as if a separate mortgage were given for each of such installments, and such foreclosure may be made and sale had subject to the installment yet to become due upon the mortgage; and a redemption from any such sale shall have the like effect as if the sale for such installment had been made upon an independent subsequent mortgage; provided in such cases the attorney's fees on the foreclosure so made shall not exceed the amount permitted by law in case of a mortgage securing the amount of the debt then due on such foreclosure. The proceeds of the sale shall be applied first in payment of the costs of the foreclosure sale, and of the installment due with interest thereon, taxes and insurance premiums paid, if any, and then towards the payment of the residue of the sum secured by such mortgage, and not due and payable at the time of such sale; and, if such residue does not bear interest, such application shall be made with rebate of the legal interest for the time during which the residue shall not be due and payable; and the surplus, if any, shall be paid to the subsequent lienor, if any, in the order of their priority, and then to the owner of the equity of redemption, his legal representative or assigns. In case of redemption from any sale herein authorized, at the option of the redemptioner, the whole amount remaining unpaid on the mortgage, with interest and other items, if any, which have become part of the amount secured by the lien of the mortgage, may be included in the amount paid on redemption, and in such event, the redemption so made shall have like effect as if the foreclosure sale had been made for the entire amount secured by the mortgage, including such additional items.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 35.

§ 470. Statement of Unpaid Amount.

Before any sale herein authorized, the holder of the mortgage shall file with the Chief Law Enforcement Officer a verified itemized statement in writing showing the entire amount remaining unpaid on the mortgage, including taxes and insurance premiums paid and other items which have become part of the amount secured, and the rate of interest to accrue on same, which statement shall be subject to public inspection and shall be read by the Chief Law Enforcement Officer at the sale, immediately after reading the notice of sale. The certificate of sale shall set forth correctly, in addition to the amount of sale, the remaining amount still unpaid on and secured by mortgage, subject to which the sale is made and the rate of interest to accrue on same.

If during the time to redeem from the sale, any additional or other item, other than interest at the rate so stated in the certificate shall attach to such amount subject to which the sale was made, or any change shall occur in such amount or the rate of interest thereon, the facts with respect thereto, shall be set forth by affidavit, made and filed for record, and copy furnished the Chief Law Enforcement Officer, in accordance with the provisions of this chapter and the provisions of that section shall apply thereto.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 35.01.

§ 471. Surplus.

In all cases not provided for in 21 MLBS § 470, if after sale of any real estate, made as herein prescribed, there remains in the hands of the officer making the sale any surplus money, after satisfying the mortgage, with interest taxes paid, and costs of sale, the surplus shall be paid over by such officer on demand, to the mortgagor, his legal representative or assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 36.

§ 472. Mortgagee or Assignees May Purchase.

The mortgagee, his assignees, or his or their legal representatives, may fairly and in good faith purchase the premises so advertised, or any part thereof, at such sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 37.

§ 473. Certificate of Sale.

- (a) When any sale of real property is made under a power of sale contained in any mortgage, the officer shall make and deliver to the purchaser a certificate, executed in the same manner as a conveyance, containing:
 - (1) A description of the mortgage,
 - (2) A description of the property sold,
 - (3) The price paid for each parcel sold,

- (4) The time and place of the sale, and
 - (5) The name of the purchaser,
 - (6) The time allowed by the law for redemption.
- (b) The certificate shall be recorded within twenty days after such sale, and when so recorded, upon expiration of the time for redemption, shall operate as a conveyance to the purchaser or his assignee of all the right, title and interest of the mortgagor in and to the premises named therein at the date of such mortgage, without any other conveyance.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 38.

§ 474. Premises in More Than One County; Record.

If any mortgage covering real estate in more than one county be foreclosed by proceedings had in one county, and the mortgage debt be thereby paid, in whole or in part, there may be recorded by the clerk of court of the other county a certified copy of the certificate of sale and other foreclosure proceedings of record in the county in which the foreclosure proceedings were had.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 39.

§ 475. Execution after Expiration of Term.

Where the terms of office, of the law enforcement officer who made the sale expires within twenty days thereafter, and before he has executed the certificate required by law, he may execute and acknowledge the same in like manner and with like effect as if his term had not expired.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 40.

§ 476. Perpetuating Evidence of Sale.

Any party desiring to perpetuate the evidence of any sale made in pursuance of this chapter may procure:

- (a) An affidavit of the publication of the notice of sale and of any notice of postponement to be made by the printer of the newspaper in which the same was inserted or by some person in his employ knowing the facts.
- (b) An affidavit or return of service of such notice upon the occupant of the mortgaged premises to be made by the officer or person making such service, or in case the premises were vacant or unoccupied at the time the service must be made, an affidavit or return showing that fact, to be made by the officer or person attempting to make such service.
- (c) An affidavit by the person foreclosing the mortgage, or his attorney, or someone knowing the facts, setting forth the facts relating to the military service status of the owner of the mortgaged premises at the time of sale.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 41.

§ 477. Entry in Record.

A note referring to the page and book where the evidence of any such sale is recorded shall be made by the recorder in the margin of the record of the mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 42.

§ 478. Affidavit of Costs.

Within ten days after the filing for record of the certificate of sale, the party foreclosing or his attorney shall make and file for record with the clerk of court an affidavit containing a detailed bill of costs and disbursements of the foreclosure, including attorney's fees, and setting forth that the same have been absolutely and unconditionally paid or incurred.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 43.

§ 479. Excessive Costs or Interest.

At any time within one year after the sale, the mortgagor, his heirs or assigns, may recover from the owner of the mortgage at the time of foreclosure three times the amount of any sums charged as costs or disbursements on such foreclosure but not absolutely paid, unless such amounts have been paid to the mortgagor or his assigns.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-41, § 44.

§ 480. Certificate as Evidence.

Every law enforcement officer's certificate of sale made under a power, to sell contained in a mortgage shall be prima facie evidence that all the requirements of law in that behalf have been compiled with and prima facie evidence of title in fee thereunder in the purchaser at such sale, his heirs or assigns, after the time for redemption therefrom has expired.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 45.

§ 481. Action to Set Aside for Certain Defects.

No such sale shall be held invalid or be set aside by reason of any defect in the notice thereof, or in the publication or service of such notice, or in the proceedings of the officer making the sale, unless the action in which the validity of such sale is called in question be commenced, or the defense alleging its invalidity be interposed, with reasonable diligence, and not later than five years after the date of such sale; provided that persons under disability to sue when such sale was made by reason of being minors, insane persons, idiots, or persons in captivity of any country with which the United States is at war, may commence such action or interpose such defense at any time within five years after the removal of such disability.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 46.

§ 482. Action to Set Aside Sale: Limitation.

No such sale shall be held invalid or set aside unless the action in which its validity is called in question be commenced, or the defense alleging its invalidity be interposed, within fifteen years

after the date of such sale; provided that persons under disability, as provided in 21 MLBS § 481, may commence such action or interpose such defense within the time therein provided. This section shall not affect or prejudice the rights of any bona fide purchaser.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 47.

§ 483. Interest of Purchaser; Attachment or Judgment.

The interest acquired upon such sale is subject to the line of any attachment or judgment duly made or docketed against the person holding the same, as in case of real property, and may be attached and sold on execution in the same manner.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 48.

§ 484. Redemption by Mortgagor.

- (a) When residences and/or fee land have been sold in conformity with the preceding sections of this chapter the mortgagor, his personal representatives or assigns, within six months after such sale, except as otherwise provided in subsection (b), may redeem such residence and/or fee land hereinafter provided , by paying the sum of money for which the same were sold, with interest from the time of sale at the rate provided to be paid on the mortgage debt, not to exceed four percent per annum, and if no rate be provided in the mortgage, at the rate of four percent per annum, together with any further sums which may be payable pursuant to this chapter. Where the redemption period is as provided in this section, the mortgagee, or his successors, assigns or personal representative or any other purchaser so purchasing at the Chief Law Enforcement Officer's sale shall by purchasing the property at the officer's sale thereby waive his right to a deficiency judgment against the mortgagor.
- (b) Notwithstanding the provisions of subsection (a), when residences have been sold in conformity with the preceding sections of this chapter, the mortgagor, his personal representatives or assigns, within 12 months after such sale may redeem such residence in accordance with the provisions of payment of subsection (a), if the mortgage was executed prior to July 1, 1967, or the amount claimed to be due and owing as of the date of the notice of foreclosure sale is less than 66 percent of the original principal amount secured by the mortgage or the mortgaged premises, as of the date of the execution of the mortgage.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 49.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 485. Redemption by Creditor.

If no such redemption be made by the mortgagor, his personal representatives or assigns, the senior creditor having a lien, legal or equitable, upon the mortgaged premises, or some part subsequent to the mortgage, may redeem within five days after the expiration of the redemption period specified in 21 MLBS § 484 and each subsequent creditor having a lien in succession, according to priority of liens, within five days after the time allowed the prior lien holder, respectively, may redeem by paying the amount aforesaid and all liens prior to his own held by the person from whom redemption is made; provided that no creditor shall be entitled to redeem unless within the period allowed for redemption he file for record notice of his intention to redeem with the clerk of court, of each district where the mortgage is recorded.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 50.

Cross References

Foreclosure by action, redemption by mortgagor or creditor, *see* 21 MLBS § 439.

§ 486. Redemption: How Made.

- (a) Redemption shall be made as follows: The person desiring to redeem shall pay to the person holding the right acquired under such sale, or for him to the chief law enforcement officer, who made the sale, or his successor in office, the amount required by law for such redemption, and shall produce to such person or officer:
 - (1) A copy of the docket of the judgment, or of the deed or mortgage, or of the record or files evidencing any other lien under which he claims a right to redeem, certified by the officer in whose custody such docket, record or files shall be, or the original deed or mortgage, with the certificate of record endorsed thereon.
 - (2) Any assignment necessary to establish his claim, verified by the affidavit of himself or a subscribing witness thereto, or some person acquainted with the

signature of the assignor. If the redemption is under an assignment of a judgment, the assignment shall be filed in the court rendering the judgment, as provided by law, and the person so redeeming shall produce a certified copy thereof, and of the record of its filing and the copy of the docket shall show that the proper entry was made upon the docket.

- (3) An affidavit of himself or his agent, showing the amount then actually due on his lien.
- (b) Within twenty-four hours after such redemption is made, the person redeeming shall cause the documents so required to be produced to be filed with the clerk of court, who shall endorse thereon the date and hour of filing, and shall preserve the same in his office for one year thereafter, for which service he shall be entitled to receive \$1.00. If such redemption shall be made at any place other than the district-seat, it shall be sufficient forthwith to deposit such documents in the nearest post office, addressed to such recorder, with the postage prepaid.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 51.

§ 487. Certificate of Redemption.

- (a) The person or officer from whom such redemption is made shall make and deliver to the person redeeming a certificate executed and acknowledged in the same manner as a conveyance, containing:
 - (1) The name of the person redeeming, and the amount paid by him on such redemption.
 - (2) A description of the sale for which such redemption is made and of the property redeemed.
 - (3) A statement of the claim upon which such redemption is made and if upon a lien, the amount claimed to be due thereon at the date of redemption.
- (b) If redemption is made by the owner of the property sold, his heirs, personal representatives, or assigns such certificate shall be recorded within four days after the expiration of the year allowed him for redemption, and if made by a creditor holding a lien, the certificate shall be recorded within four days after such redemption. Unless so recorded, the certificate shall be void as against any person in good faith redeeming from the same person or lien.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 52.

§ 488. Effect of Redemption.

If redemption is made by the owner of the property sold, his heirs, personal representatives or assigns, such redemption annuls the sale; if by a creditor holding a lien on the property or some part thereof, the certificate of redemption, executed, acknowledged and recorded as provided in 21 MLBS § 487, operates as an assignment to him of the right acquired under such sale, subject to such right of any other to redeem as provided by law.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 53.

§ 489. Foreclosure Pending Action to Set Aside Mortgage; Redemption.

When an action is brought wherein it is claimed that any mortgage as to the plaintiff or person for whose benefit the action is brought is fraudulent or void, or has been paid or discharged, in whole or in part, if such mortgage has been foreclosed by advertisement, and the time for redemption from the foreclosure sale will expire before final judgment in such action, the plaintiff or beneficiary having the right to redeem, for the purpose of saving such right in case the action fails, may deposit with the chief law enforcement officer, before the time of redemption expires the amount for which the mortgaged premises were sold, with interest thereon to the time of deposit, together with a bond to the holder of the chief law enforcement officer's certificate of sale in an amount and with sureties to be approved by the chief law enforcement officer, conditioned to pay all interest that may accrue to be allowed on such deposit if the action fail. He shall, in writing, notify such law enforcement officer that he claims the mortgage to be fraudulent or void or to have been paid or discharged, in whole or in part, as the case may be, and that such action is pending, and direct him to retain such money and bond until final judgment. In case such action fails, such deposit shall operate as a redemption of the premises from such foreclosure sale, and entitle the plaintiff to a certificate thereof. Such foreclosure deposit, bond and notice shall be brought to the attention of the court by supplemental complaint in the action and the judgment shall determine the validity of the foreclosure sale, and the rights of the parties to the moneys and bond so deposited, which shall be paid and delivered by the sheriff as directed by such judgment upon delivery to him of a certified copy thereof. The remedy therein provided shall be' in addition to other remedies now existing.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-42, § 54.

CHAPTER 6

RECOVERY OF POSSESSION OF PERSONAL PROPERTY

Section

- 501. Personal Property Recoverable Before Final Judgment.
- 502. Motion.
- 503. Notice of Hearing.
- 504. Findings and Order.
- 505. Protective Orders.
- 506. Stay.
- 507. Claimant's Bond.
- 508. Respondent's Bond.
- 509. Fair Market Value.
- 510. Deposit in Lieu of Bond.
- 511. Order for Seizure of Property.
- 512. Insufficiency of Surety.
- 513. Custody, Delivery and Return of Property.
- 514. Failure of Claimant to Establish Right to Possession.

§ 501 Personal Property Recoverable Before Final Judgment.

In any action to recover possession of personal property, a claimant may obtain possession of the property prior to final judgments with the exception of houses.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 3.

§ 502. Motion.

Any person seeking to recover possession of personal property after the service of a complaint and summons, but prior to final judgment shall proceed by motion. The motion shall be accompanied by sworn affidavit which contains the following:

- (a) The property sought to be recovered;
- (b) The facts which gave rise to the claimant's right to possession, referring to the documents, if any, evidencing the claimant's right to possession and the underlying obligation supporting the right;
- (c) The specific facts showing the respondent is wrongfully detaining the property;

- (d) If the property being claimed is secured for an obligation, the date and amount of the original obligation, the amount which has been paid by the respondent and the amount now owing to the claimant;
- (e) A statement that the respondent clearly understood the terms of the agreement;
- (f) If the claimant asserts that the respondent is wrongfully detaining the property by reason of a breach of contractual duty other than the failure to pay money, the claimant shall state the specific contractual provision and the facts relating thereto; and
- (g) A good faith approximation of the current market value of each item or categories of like items of property being claimed.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.

§ 503. Notice of Hearing.

The claimant's motion to recover possession of property together with claimant's affidavit and a notice of hearing shall be served upon the respondent in the manner prescribed in 24 MLBS § 2007(a). If the respondent has already appeared in the action, and the motion may be served by Registered United States mail, Return Receipt Requested. The notice of hearing served upon the respondent shall be signed by the claimant or the attorney for the claimant and shall provide, at a minimum the following information in substantially the following language:

NOTICE OF HEARING

TO: (the respondent)

A hearing will be held on the day of ____ at ____, 20 ____, at o'clock __m, (place) to determine whether the law enforcement officer shall remove from your possession and deliver to (claimant) (hereinafter "claimant") the following property: (List Property)

You have a right to appear at this hearing on your own behalf or with an attorney. You will have the opportunity to present defenses to the claimant's claims and to state reasons why the property described above should not be taken. You shall be presumed to be in illegal possession of the property until you prove otherwise.

If the Court determines that the claimant has a right to have possession of the property while this lawsuit is pending, you may nevertheless keep the property until the lawsuit is decided if you file with the Court a surety bond in the amount of \$... (an amount computed pursuant to 21 MLBS § 507). This amount is (1-1/4 times the claimant's estimate of the value of the property) (1-1/2

times the claimant's claim against you.) If you believe the (value of the property) (amount of the claim) is overstated, you may ask the Court to lower it.

If you do not appear at the hearing, the Court has authority to issue an order directing that the above described property be immediately taken from your possession.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.02.

§ 504. Findings and Order.

After a hearing, the Court shall order seizure of the property from respondent and deliver to claimant, if claimant has demonstrated the probability of success on the merits entitling claimant to possession of the property and upon compliance with the bonding requirements set forth in 21 MLBS § 507, unless the Court makes the following findings: Respondent has shown a defense to the merits of claimant's claim, the defense is a fair basis for litigation and the defense would, if established at hearing on the merits, entitle respondent to retain possession of the property. The interests of respondent cannot be adequately protected by the bond filed by the claimant pursuant to 21 MLBS § 507, if the property is delivered to the claimant prior to final decision on the merits and the harm suffered by the respondent would be substantially greater than the harm which would be suffered by the claimant if the property were not delivered to the claimant prior to final decision on the merits.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40 § 4.03.

§ 505. Protective Orders.

If the Court makes the findings prescribed by 21 MLBS § 504 and orders that respondent may retain possession pending final decision on the merits, the Court shall enter a further order protecting the rights of the claimant to the extent possible. The order may require that respondent make partial payment of the debt which may be due and that the payment shall be made either directly to claimant or into an escrow, that respondent post a bond in an amount set by the Court, that respondent make the property available for inspection from time to time, that respondent be restrained from certain activities, including, but not limited to selling, disposing or otherwise encumbering the property, or any other provision the Court may deem just and appropriate.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.04.

§ 506. Stay.

An order requiring seizure of property may be stayed up to ten days to allow the respondent time to post a bond pursuant to 21 MLBS § 508.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.041.

§ 507. Claimant's Bond.

An order for seizure of property from the respondent shall provide that the seizure shall be contingent upon claimant's filing of a bond approved by the Court conditioned for the return of the property to the respondent, if a return be adjudged and for the payment to the respondent of any sum adjudged against the claimant. The bond shall be in an amount which is 1-½ the fair market value of the property seized.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.05.

§ 508. Respondent's Bond.

Except as otherwise provided in clause, the respondent may retain or regain possession of the property by filing of a bond approved by the Court conditioned that the property shall be delivered to the claimant, if delivery be adjudged, and for the payment to the claimant of any sum adjudged against the respondent. The bond shall be in an amount 1-¼ times the fair market value of the property or 1-½ times the amount of the claimant's claim, whichever is less. An order for seizure may specify a time limitation within which the bond must be filed. For the purpose of protecting or preserving the property pending final hearing on the merits, the Court may in extraordinary circumstances, which shall be specified in its order, provide that the respondent may not retain or regain possession of the property upon re-bonding, or may limit or condition the right to retain or regain the property upon re-bonding. The cost of regaining possession of the property from the sheriff or the claimant shall be borne by respondent except as set forth in 21 MLBS § 514.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.051.

§ 509. Fair Market Value.

The current fair market value of the property shall initially be presumed as stated in the affidavit submitted pursuant to 21 MLBS § 503. If the Court determines the current fair market value of the property is different, it shall adjust the required amount of the bonds.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.052.

§ 510. Deposit in Lieu of Bond.

In lieu of filing a bond, either claimant or respondent may satisfy bonding requirements by depositing with the Court cash, a cashier's check or a certified check.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40 § 4.052.

§ 511. Order for Seizure of Property.

- (a) An order for seizure of property shall:
 - (1) Identify the property to be seized;
 - (2) Direct a law enforcement officer to seize the property; and
 - (3) Specify that the claimant is authorized, immediately or after a specified reasonable period of time, to sell or otherwise dispose of the property pending final hearing on the merits unless the Court makes a specific finding that the interests of respondent cannot be adequately protected by the bond.

- (b) An order for seizure of property may:
 - (1) Describe the place or places which may be entered by force, by the law enforcement officials, subject to the limitations of paragraph (3).
 - (2) Require that the respondent, his agents or employees deliver the property to claimant or disclose its location, and if delivery is not made or the location is not disclosed, that respondent must appear in Court at a specified time and place to give testimony as to the location of the property and to show cause why an order should not be entered finding respondent in contempt of court for failure to deliver the property or to disclose its location.

- (3) Provide that if the property, or any of it is concealed in a building or elsewhere, and a public demand made by the law enforcement official for its delivery is refused or there is no response the law enforcement official shall cause the building or enclosure to be broken open and shall take the property therefrom.

- (c) The law enforcement official may not enter the residence of a person other than respondent unless the order specifies, identifying with particularity the residence or residences which may be entered, on the basis of a finding by the Court that probable cause exists to believe that the property is at this residence.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.

§ 512. Insufficiency of Surety.

A person asserting a claim to property seized by order of the Court may by motion challenge the sufficiency of the surety for the bond filed with the Court. If the Court finds the surety insufficient, it may grant a reasonable time for filing of another bond.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.04.

§ 513. Custody, Delivery and Return of Property.

When the law enforcement official has taken property pursuant to an order of the Court, he shall keep it in a secure place and shall deliver it to the party entitled thereto as soon as reasonably possible upon receiving his lawful fees and expenses for taking and keeping the property. The law enforcement official shall promptly return, without cost, any property taken which is not specified in the court order.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 5.05.

§ 514. Failure of Claimant to Establish Right to Possession.

If at a hearing following seizure of property pursuant to 21 MLBS § 503, claimant fails to establish a right to continued possession, the Court shall order the property returned to respondent, the costs to be borne by claimant. The Court may order claimant's bond to continue in an amount sufficient to offset damages claimed by respondent by reason of the seizure.

Historical and Statutory Notes

Source:

Band Statute 1087-MLC-40, § 4.052.