

BARANOF ISLAND HOUSING AUTHORITY



EVICTON / EJECTMENT POLICY

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Article I. INTRODUCTION

This policy gives a basic overview of the steps generally involved in evicting and ejecting Baranof Island Housing Authority (“BIHA”) tenants / and homebuyers / (under a BIHA Rental Agreement, Lease Purchase Option Agreement, and Mutual Help and Occupancy Agreement (“MHOA”)), This policy describes eviction, small claims, default, collection and ejectment proceedings. This policy is not a complete statement of everything there is to know about these proceedings

Article II. Termination of Tenancy

This section discusses the lawful way to begin the eviction process. If a BIHA tenant does not act in accordance with his or her responsibilities under Alaska law, BIHA policies, and/or Low Rent Residential Lease Agreement Parts 1 and 2 (together sometimes referred to herein as “**BIHA Program Lease Agreements**”) or BIHA General Admission and Residential Occupancy Policies (“**BIHA Policies**”), BIHA may begin the eviction process. The term “eviction” is often used to refer to an action brought by a landlord to end a tenancy and requires that the tenant vacate the premises^{1/}; however, only a court of law may order the eviction of a tenant if he or she refuses to vacate the premises (see below Article IV Eviction Actions). The law describes the landlord’s action as “terminating the tenancy.”

Alaska’s Uniform Landlord and Tenant Act (“**AULTA**”), Alaska Statutes §§ 34.03.010, et al., and Alaska Statutes §§ 09.45.060 – 09.45.160 regulate BIHA’s ability to terminate a tenancy under BIHA Lease Agreements for a rented dwelling unit, such as an apartment or house.. These regulations do not apply to a BIHA MHOA (see below Article VII Ejectment Actions). BIHA tenants have rights in addition to those provided by the AULTA and Alaska Statutes, which are discussed further below. .

Section 2.01 Tenant’s Responsibilities

Pursuant to AULTA, BIHA Lease Agreements and BIHA Policies, a tenant has numerous responsibilities and obligations when the tenant signs a lease agreement with BIHA. These responsibilities and obligations include paying rent on the first of each month, providing accurate and complete information concerning low income housing eligibility, including income, assets and compensation, and keeping the dwelling unit in a clean and safe environment.^{2/}

^{1/} In this policy “dwelling unit” and “premises” mean a structure or a part of a structure that is the property of BIHA, that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household. A dwelling unit and premises includes the structure of which it is a part and facilities and appurtenances in it, and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

^{2/} AS 34.03.120(a); BIHA Policies; BIHA Lease Agreements.

Section 2.02 Termination of Tenancy

A tenant's failure to comply with any of his or her responsibilities under AULTA, BIHA Lease Agreements or BIHA Policies as they now exist or are hereinafter amended, is a breach of the tenant's responsibilities under his or her BIHA Lease Agreements. Such a breach permits BIHA to begin the termination process. Some breaches may be cured, stopping the termination. Others cannot. In each case, BIHA must provide a tenant with a written Notice to Quit (see below Section 2.03 Notice to Quit). The following are circumstances whereby BIHA may begin the termination process. Each scenario, based on the behavior or violation, discusses the amount of time BIHA must give a tenant to vacate the premises.

(a) Termination for Late Rent

BIHA Lease Agreement Part 1 says rent is considered delinquent if a rent payment is not received by the end of business on the tenth calendar day of each month. BIHA requires a Late Notice issued on the 11th day of the month, a Demand Notice issued on the 20th, and a 3010-day written notice to terminate a tenancy when a tenant is behind in rent, Alaska law requires a 7-day written notice (see *Appendix A Late Fee Notice, Demand Notice, Notice to Quit for Late Rent*).^{3/}

All The notices must state the outstanding balance of rent and any other charges owed by the tenant, and must inform the tenant that he or she must pay the delinquent rent, enter into a Payback Agreement by the 20th, or vacate the premises.^{4/} If the rent is paid before the thirty (30) ten days are up, then the tenant may remain on the premises. If the tenant tries to pay after the thirty (30) days ten days are up, BIHA may refuse to accept the rent and continue with the termination process.^{5/}

If BIHA accepts a partial rent payment after giving a Late Fee, Demand Notice or Notice to Quit 3010-day written notice for nonpayment, BIHA must either make a new written agreement (see *Appendix B Partial Payment Agreement*) with the tenant to extend the termination for a specific period of time or restart the termination process.^{6/} Pursuant to BIHA Lease Agreements, BIHA may only accept a partial payment if: (1) a tenant is current on his or her previous rental payments; and (2) a tenant pays half month's rent in advance to start the partial payment.^{7/}

(b) Termination for Deliberate Infliction of Substantial Damage to the premises

BIHA must give a tenant a minimum 24-hour written notice to terminate a tenancy when the tenant or the tenant's guests have intentionally caused more than \$400.00 damage to the leased premises or BIHA property (see *Appendix C Notice to*

^{3/} BIHA Lease Agreement Part 1, p. 5; BIHA Rent Collection Policy, p. 2; AS § 09.45.090(a)(1).

^{4/} AS § 09.45.105.

^{5/} AS § 34.03.220(b).

^{6/} Id.; AS 34.03.240.

^{7/} BIHA Lease Agreement Part 1, p. 5; BIHA Rent Collection Policy, p. 2.

Quit for Damage Above \$400.00).^{8/} BIHA/ BIHA may continue with the termination process even though the tenant agrees to repair the damage.

(c) Termination for Illegal Activity on the Premises

If a tenant or a guest of a tenant engages in an illegal activity on the premises or on any BIHA property (such as prostitution, gambling, or illegal drug or alcohol production or sale), BIHA may terminate the tenant's tenancy with a 5-day written notice to terminate (see *Appendix D Notice to Quit for Illegal Activity*).^{9/}

The following Alaska Statutes discuss the elements of illegal activity that are common in tenant / landlord eviction actions:

- i. illegal activity involving prostitution and / or a place of prostitution means an act in violation of Alaska Statute §§ 11.66.100, 11.66.120(a)(1) or 11.66.130(a)(1) or (4);
- ii. illegal activity involving gambling or the promotion of gambling means a violation of Alaska Statute §§ 11.66.200 (other than a social game as that term is defined by AS 11.66.280(9)), 11.66.210 or 11.66.220;
- iii. illegal activity involving a controlled substance or an imitation controlled substance means a violation of Alaska Statute §§ 11.71.010(a), 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1), (2), or (5); and
- iv. illegal activity involving alcoholic beverages means a person's act of delivering an alcoholic beverage in violation of AS 04.11.010(b) in an area where the results of a local option election have, under AS 04.11.491, prohibited the Alcoholic Beverage Control Board from issuing, renewing, or transferring a liquor license or permit.

(d) Termination for Failure to Pay Utility Bills

If a utility company discontinues service to the premises due to the tenant's failure to pay the utility bill, BIHA may issue a 5-day written notice to terminate the tenancy (see *Appendix E Notice to Quit for Discontinuation of Utility Services*). If the tenant reinstates the service within three days after service of the notice and repays BIHA for any payments made to the utility company, and provided the premises was not damaged in any way due to the lapse in service, the termination process ends and the tenant can remain. However, in the absence of due care by the tenant, if the same utility service is disconnected again within six months, BIHA can terminate the tenancy with a 3-day written notice, and the tenant has no right to cure (see *Appendix F Notice to Quit for Second Violation Discontinuation of Utility Service*).^{10/}

(e) Termination for Breach of Duties

A 30-day written notice is required when BIHA wishes to terminate a tenancy because a tenant has breached an important part of his or her BIHA Lease Agreements

^{8/} AS 34.03.220(a)(1).

^{9/} AS 09.45.090(a)(2)(G).

^{10/} AS 34.03.220(e).

and BIHA Admissions & Occupancy Policy, , or if a tenant does not comply with his or her obligations under AULTA (see *Appendix G Notice to Quit for Material Breach of Lease Agreement and Tenant's Responsibilities under AS 34.03.120(a)*). This does not include a tenant's deliberate infliction of substantial damage to the premises (see paragraph (b) above) or other than noncompliance as to a utility service (see paragraph (d) above).^{11/}

Alaska Statute § 34.03.120(a) lists a BIHA tenant's obligations under AULTA. It states a tenant must:

- i. keep the premises as clean and safe as possible;
- ii. dispose all ashes, rubbish, garbage, and other waste from the dwelling unit in a clean and safe manner;
- iii. keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as possible;
- iv. use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other facilities and appliances, including elevators, on the premises;
- v. not deliberately or negligently destroy, deface, damage, impair, or remove a part of the premises or knowingly permit any person to do so;
- vi. not unreasonably disturb, or permit others on the premises with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of the premises;
- vii. maintain smoke detection devices and carbon monoxide detection devices as required under AS 18.70.095;
- viii. not, except in an emergency when the landlord cannot be contacted after reasonable efforts to do so, change the locks on any doors of the premises without first securing the written agreement of the landlord and, immediately after changing the locks, providing the landlord a set of keys to all doors for which locks have been changed; in an emergency, the tenant may change the locks and shall, within five days, provide the landlord a set of keys to all doors for which locks have been changed and written notice of the change; and
- ix. not unreasonably engage in conduct, or permit others on the premises to engage in conduct, that results in the imposition of a fee under a municipal ordinance adopted under AS 29.35.125.

A 30-day written notice is also required when BIHA is terminating a tenancy because a tenant has refused BIHA's reasonable requests to enter the premises (see *Appendix H Notice to Quit for Refusal of Entry*).^{12/}

If a tenant's breach is corrected before expiration of the notice period, the tenant may remain on the premises. However, if the tenant commits a similar breach in substantially the same way more than once in a six monthsix-month period, BIHA may

^{11/} AS 34.03.220(a)(2).

^{12/} AS 34.03.300(a).

terminate the tenancy with a 5-day written notice, and the tenant has no right to cure (see *Appendix I Notice to Quit for Second Material Breach of Lease Agreement and Tenant's Responsibilities under AS 34.03.120(a)*).

Under Alaska Statute § 34.03.220(a), BIHA is not prohibited from evicting a tenant and not allowing the tenant to cure a violation of the rental agreement if it is both material and not curable by repairs or the payment of damages or otherwise. In these situations, the tenant is obligated to leave by the end of the 1030-day period.^{13/}

(f) Landlord's Termination of Rental Agreement by Choice

A 30-day written notice is required if BIHA wishes to terminate a month-to-month tenancy for general reasons (see *Appendix J Notice to Quit for General Reason*). This notice must be delivered 30 days before the rental due date specified in the notice as the termination date. A termination notice may not be used to terminate a lease prior to the end of the lease term without cause.^{14/}

If the tenant remains in possession without BIHA's consent after expiration of the term of the BIHA Lease Agreements or after termination under the 30-day rule specified above, BIHA may, after serving a Notice to Quit (see below Section 2.03 Notice to Quit), bring an action for possession. If the tenant's holdover is willfull and not in good faith, BIHA, in addition, may recover an amount not to exceed one and one-half times BIHA's actual damages.^{15/}

(g) Termination for Absence or Abandonment

BIHA is not required to provide a tenant with a notice terminating the tenancy if BIHA is confident that the tenant has abandoned the premises.

BIHA Lease Agreement Part 1 states a tenant must notify BIHA and obtain written approval from BIHA every time he or she plans to be absent from the dwelling unit for more than seven consecutive days. If the tenant plans to be gone for less than seven days, then finds he or she will actually be gone for more than seven days, the tenant must notify BIHA as soon as possible.^{16/} Absences beyond a total of three

^{13/} AS 34.03.220(a)(2); *Osness v. Dimond Estates, Inc.*, 615 P.2d 605, 609-610 (Alaska 1980) (incidents of guest of tenant's children accidentally discharging rifle in tenant's trailer, resulting in bullet passing through trailer next door, and of stolen property of other tenants being discovered by police in tenant's trailer, after being brought by friend of tenant's teenage son, disturbed peace and harmony of mobile home park neighborhood to degree and in manner that was "material," and not "remediable," under statute permitting termination of tenancy for noncompliance with rental agreement, justifying eviction under rental agreement holding tenant responsible for conduct of their children and guests, and prohibiting unnecessary disturbances); *Taylor v. Gill Street Investments*, 743 P.2d 345, 348 (Alaska 1987) (tenants actions which left an indelible imprint on the atmosphere of the neighborhood were not remediable by repairs or the payment of damages or otherwise, and the landlord was not prohibited by the state from evicting the tenant).

^{14/} AS 34.03.290(b).

^{15/} AS 34.03.290(c).

^{16/} AS 34.03.150.

months in any calendar year are prohibited, except as provided by BIHA Lease Agreement Part 1, section K.4..

BIHA may assume the dwelling unit has been abandoned when the following conditions are met:

- i. tenant is delinquent in rent;
- ii. tenant has left the dwelling unit, and has left behind, in the dwelling unit, his or her personal belongings; and
- iii. tenant has been absent for a continuous period of seven consecutive days without giving BIHA written notice of his or her absence.^{17/}

If BIHA has determined that the dwelling unit has been abandoned, it may terminate the tenancy. BIHA may then enter, clean-up, and re-rent the unit.^{18/} If BIHA makes a good faith effort to re-rent the dwelling, the former tenant is obligated to BIHA for rental payments until the end of the following rental period, the end of the lease period (if the agreement is a lease), or until a new tenant moves in, whichever is sooner.^{19/}

If a tenant willfully fails to give BIHA proper notice of his or her absence, BIHA may sue the tenant for one and one half- and one-half times the actual cost of repairing any damage occurring during the tenant's absence or occupancy.^{20/}

Section 2.03 Notice to Quit

As discussed above, a written notice is required to terminate a tenancy. The notice is called a "Notice to Quit." A Notice to Quit must be served on a tenant prior to filing an eviction action in a court of law. Specific requirements that must be included in the Notice to Quit are as follows: Pursuant to Alaska Statutes, there are specific requirements with regard to what must be included in a Notice to Quit, and how a Notice to Quit must be served. Failure to comply with these requirements will lengthen and delay the termination and eviction process, and may entitle a tenant to monetary damages against BIHA. These requirements are discussed further below.

(a) Elements of Notice to Quit

Pursuant to Alaska law, a Notice to Quit must:

- i. be in writing;
- ii. state why the tenancy is being terminated;
- iii. give the date and time when the tenancy will end and the tenant must vacate;
- iv. give the tenant the required number of days allowed by law to move out (see above Section 2.02 Termination of Tenancy);

^{17/} AS 34.03.360(1).

^{18/} AS 34.03.140(d)(2); AS 34.03.230(b).

^{19/} AS 34.03.230(b) – (c).

^{20/} AS 34.03.230(a).

- v. if the termination is based on a tenant's breach or violation of AULTA or BIHA Lease Agreements, and the breach may be corrected by the tenant, the notice must specify what corrective actions the tenant must take to remedy the violation, and the date and time when the corrective action must be completed to avoid termination of the tenancy; and
- vi. give notice that if the tenant continues to occupy the dwelling after the termination date, BIHA shall file an eviction action in a court of law and may sue to remove the tenant.^{21/}

Form Notices to Quit are attached for BIHA's use and review, as referenced above.

(b) Serving a Notice to Quit

A Notice to Quit must be served on the tenant by either:

- i. hand-delivering the notice in person to the tenant or occupant;
- ii. leaving the notice at the dwelling unit when the tenant is absent from the premises; or
- iii. sending the notice by certified mail.^{22/}

It is advisable to hand-deliver or mail the notice by certified mail. It is also advisable that a record of service must be made at the time of service describing how, when, and by whom the tenant was served (see *Appendix A – J*). This assures that the tenant will receive the Notice to Quit and BIHA has a proof of service. Proof of service will assist BIHA if it is necessary to prove in court that the Notice to Quit was delivered to the tenant as required under Alaska law.

Section 2.04 BIHA Appeal Process Grievance Hearing

See Appeal Policy. Pursuant to the BIHA Grievance Procedure, prior to termination of tenancy, a tenant may serve BIHA with a grievance and request a grievance hearing protesting BIHA's decision to terminate tenancy. The tenant must file the grievance in writing and serve the grievance on BIHA within ten working days of receiving the Notice to Quit, which is the basis of the grievance.

(a) Written Grievance

If a tenant serves BIHA with a grievance concerning the termination of the tenancy, BIHA must stop all termination proceedings, and attempt to resolve the grievance with the tenant at the time the grievance is presented to BIHA. Ten working days after the grievance is filed, BIHA must provide the tenant with a written decision regarding the tenant's grievance. The written decision must state the following:

^{21/} AS 09.45.100 – .105.

^{22/} AS 09.45.100; It is important to note, under Alaska law, if BIHA sends the Notice to Quit to a tenant by certified mail, the tenant has three additional days to correct the problem or quit the premises as specified in the notice. AS 09.45.090(c).

- (i) Names of persons at meeting to resolve grievance;
- (ii) Date of the Meeting
- (iii) The proposed decision concerning the grievance, and the reasoning for the decision and;
- (iv) Advise the tenant of his or her right to a hearing if the grievance is not resolved in the tenant's favor, and the procedure by which such a hearing may be obtained, as specified in the Baranof Island Housing Authority Grievance Policy.

(b) Request for Grievance Hearing

If a tenant serves BIHA with a written grievance and is not satisfied with BIHA's decision on the grievance, the tenant may request a grievance hearing. The tenant must serve a written request for a grievance hearing on BIHA within ten days after receipt of BIHA's written decision concerning the grievance. The written request must specify the reason for the grievance, and remedy sought.

(c) Grievance Hearing

When BIHA receives a written request for a grievance hearing, it must stop all termination, eviction and ejection proceedings.

BIHA must select an impartial hearing officer to conduct the hearing, and provide the tenant with the date and time of the hearing. BIHA and the tenant must both be present for the hearing.^{23/}

The tenant shall be afforded a fair hearing compliant with the basic safeguards of due process, as specified under BIHA Grievance Procedure, Section IV. The formal judicial rules of evidence are not applicable during the hearing.^{24/}

At the hearing, the tenant must prove that the tenancy should not be terminated. BIHA will then have an opportunity to rebut that evidence justifying BIHA's reasons for terminating the tenancy.^{25/} The hearing officer must provide the parties with a written decision within ten working days after the hearing. The hearing officer's decision regarding the termination of tenancy is binding on BIHA and the tenant.^{26/} Therefore, if the hearing officer decides in the tenant's favor, the tenant may continue to reside at the leased premises. If the hearing officer decides in BIHA's favor, BIHA may continue the termination of tenancy.

(d) Continuation of Termination of Tenancy

If a tenant is not successful on a written grievance or at a grievance hearing, a second Notice to Quit shall be delivered to the tenant in writing informing the tenant that he or she must quit, vacate and surrender the premises within three days, or on the original eviction date, whichever is later, and if the tenant does not vacate the premises on or

^{24/} Id.

^{25/} Id.

^{26/} Id. at Section V.

before such date, a legal action shall brought against the tenant (see Appendix K Notice to Quit for Continuation of Termination of Tenancy).

Section 2.05 Abandoned Belongings

Often a tenant will abandon a dwelling unit during the termination and eviction process, leaving personal belongings behind. If this occurs, BIHA must provide the tenant with a written notice stating:

- i. where the tenant's belongings are being held;
- ii. that the tenant has a minimum of fifteen days to remove the belongings; and
- iii. what BIHA intends to do with the belongings if they are not removed.^{27/}

Belongings not removed by tenant within that time frame may be:

- i. sold at public sale (property not sold may be disposed of);
- ii. disposed of as BIHA sees fit; or
- iii. destroyed or otherwise disposed of when the cost of having a public sale would exceed the value of the items.^{28/}

BIHA must exercise reasonable care over the tenant's belongings and keep them in a safe place. BIHA is not responsible for damage or loss not caused by BIHA's neglect or deliberate action. If the tenant's property is stored in the dwelling, storage charges may not exceed fair market rent. If the property is held at a commercial storage facility, BIHA may pass the moving and storage costs on to the tenant.^{29/}

To hold a public sale, BIHA must post a written or printed public sale notice in three specific places within five miles of the location of the sale, not less than thirty days prior to the sale. One of the notices must be posted at the post office nearest the place of the sale.^{30/}

The law does not state what should be done with the sale proceeds, but Sale proceeds in any excess over and above expenses incurred by BIHA in disposing of the tenant's belonging should be paid to the tenant. applied to the tenant's outstanding balance. If no outstanding balance exists, proceeds in excess shall be paid to the tenant.

It is important to note that if BIHA deliberately or negligently violates the law governing a tenant's abandoned property, the tenant may sue BIHA for up to twice the tenant's actual damages.^{31/} Therefore, it is advisable for BIHA to exercise its rights regarding abandoned property with caution.

^{27/} AS 34.03.260(a)(1).

^{28/} AS 34.03.260(a)(2).

^{29/} AS 34.03.260(b).

^{30/} AS 34.03.260(e); AS 09.35.140.

^{31/} AS 34.03.260(d).

Section 2.06 Return of Deposit

When a tenant's tenancy is terminated, property or money held by BIHA as prepaid rent or as a security deposit may be applied to the payment of accrued rent and the amount of damages that BIHA has suffered by reason of the tenant's noncompliance with the tenant's responsibilities under the BIHA Lease Agreements.^{32/}

The accrued rent and damages must be itemized by BIHA in a written notice mailed to the tenant's last known address, together with the amount due, if any (see *Appendix L Notice Regarding Deposit*). If BIHA willfully fails to provide notice regarding a tenant's deposit, the tenant may recover an amount not to exceed twice the actual amount withheld.^{33/} The deposit notification is separate from the original Notice to Quit served on the tenant concerning the termination of tenancy.

Pursuant to Alaska Statute § 34.03.070(b), the term "damage" includes the deterioration of the premises and, if applicable, to the contents of the premises. Damages do not include deterioration that are the result of the tenant's use of the premises by normal, non-abusive living, or caused by BIHA's failure to comply with an obligation of a landlord under AULTA, BIHA Lease Agreements, BIHA Policies, NAHASDA and other applicable law.^{34/}

If a BIHA tenant gives notice that complies with AULTA, BIHA Lease Agreements and BIHA Policies, BIHA shall mail the written notice concerning the deposit and refund within 14 days to greatest extent feasible after the tenancy is terminated and possession is delivered to BIHA. If the tenant does not give notice that complies with AULTA, BIHA Lease Agreements and BIHA Policies, BIHA must mail the written notice regarding the deposit and refund within 30 days to the greatest extent feasible after the tenancy is terminated, possession is delivered to BIHA, or BIHA becomes aware that the dwelling unit is abandoned.^{35/}

If BIHA does not know the mailing address of the tenant, but knows or has reason to know how to contact the tenant to give the notice regarding a tenant's deposit, BIHA must make a reasonable effort to deliver the notice and refund to the tenant.^{36/}

Article III. SMALL CLAIMS ACTION

If a tenant vacates the premises in the time specified by the Notice to Quit, but owes back rent to BIHA, or caused damage to the premises, and the back rent and damage is less than \$10,000, BIHA may file a small claims action to collect damages against the tenant in the Small Claims Court. If BIHA's claim is over \$10,000, it can still use small claims court, but it must give up the right to collect the amount over \$10,000. The \$10,000 figure does not include interest or court costs.^{37/}

^{32/} AS 34.03.070.

^{33/} Id.

^{34/} AS 34.03.070(b).

^{35/} AS 34.03.070(g).

^{36/} Id.

^{37/} AS § 22.15.040.

BIHA may be represented in any stage of a small claims proceeding by any BIHA officer or employee authorized in writing to represent BIHA.

Before moving forward with a full blown small claims action against a BIHA former tenant, it is advisable for BIHA to send a request in writing to the former tenant requesting payment of back rent owed and cost of any damage to the premises. This can save BIHA time and money because the former tenant may be willing to pay BIHA, but may need time to facilitate payment. If the former tenant is willing to pay BIHA, BIHA should ask the former tenant to sign a payment agreement and make installment payments to pay off the money owed (See *Appendix M Delinquent Payment Agreement*). The payment agreement must be signed by BIHA and the former tenant. This agreement may be used by BIHA to bring a breach of contract legal action against the former tenant if he or she fails to pay the money owed as agreed.

Section 3.01 gives a brief outline and discussion of the small claims process.

Section 3.01 Small Claims Trial Summary

(a) Notice To Quit given to tenant.

Before a lawsuit to collect damages against a tenant may be filed, BIHA must give the tenant a written notice specifying the reason BIHA intends to terminate the tenancy. The notice must give the tenant time to correct the problem (or move out) in order to avoid eviction.

(b) Small Claims lawsuit filed.

BIHA files a complaint with the small claims court if the tenant moves out, but does not fix the problem specified in the Notice to Quit.

(c) Tenant given notice of lawsuit.

The tenant is served with a copy of the complaint and a court summons. The summons orders the tenant to:

- i. Appear at a small claims trial, and
- ii. File a written answer to any claim of damages made in the complaint.

(d) Small Claims trial.

The court holds a small claims trial one to six months after the small claims action is filed. At the trial, the court decides if BIHA is entitled to the damages specified in its complaint.

(e) Default Judgment.

This will happen if the tenant fails to file an answer or fails to appear at the small claims trial (see below Article V Default Judgment).

Section 3.02 Filing and Serving Procedures

If the former tenant fails to respond or rejects BIHA's offer regarding a payment plan, BIHA may file a small claims action against the former tenant. In a small claims action, BIHA is known as the plaintiff, and the former tenant is known as the defendant.

(a) Filing Procedure

The following must be filed in the Small Claims Court to begin a small claims action:

- i. Small Claims Summons (see Appendix N Small Claims Summons);
- ii. Small Claims Complaint plus any supporting documents referenced in the Complaint (see Appendix O Small Claims Damage Complaint); and
- iii. court filing fee (\$40 for a case making a claim for \$2,500 or less, and \$75 for a case making claim for more than \$2,500).

The complaint must specify that BIHA is bringing a small claims action against the defendant (former tenant). BIHA must name as defendant(s) everyone listed on the lease and all other adults living in the dwelling, and attach the Notice of Quit to the complaint. BIHA must prepare a separate summons for each named defendant.

(b) Serving Procedure

The following must be served on each defendant to notify the defendant(s) about BIHA's small claims action against him or her:

- i. Small Claims Summons executed by the court;
- ii. a copy of the Small Claims Complaint plus a copy of any supporting documents filed with the complaint ;
- iii. Small Claims Answer form (Form SC-3, provided by the court, see Appendix P); and
- iv. Small Claims Handbook (provided by the court).

Service of above-listed documents may be completed by certified mail or personal service by a process server.

It is advisable to have the defendant personally served by a process server. If BIHA serves the defendant by process server, BIHA should provide the process server with service instructions (see Appendix Q Process Server Service Instructions), which describes the defendant, lists the documents to be served, describes where the defendant may be found, and informs the process server that BIHA has filed a small claims action against the defendant. The process server will provide BIHA, and file with the court, a "Return of Service," which confirms that the defendant was properly served.

After being properly served, the defendant has 20 days to file an answer and respond to BIHA's complaint. If the defendant does not file an answer to BIHA's complaint, BIHA may file an Application for an Entry of Default Judgment against the defendant (see below Article V Default Judgment).

Section 3.03 Defendant's Answer

If the defendant files an answer to BIHA's complaint and the answer states that the defendant agrees to owing BIHA money, the court shall enter a judgment in BIHA's favor and BIHA may initiate collection proceedings (see below Article VI Damage Collection). However, if the defendant files an answer which denies that he or she owes anything to BIHA, the court will set the matter for trial. The court will notify BIHA and the defendant of the date and time of the trial. The date set for trial shall be not less than 15 days from the date the court mails notice of the trial date to the parties.^{38/}

If the defendant's answer states a counterclaim against BIHA, the counterclaim will be heard with the original complaint at trial. As long as the case remains in small claims court (see below Section 3.05 Small Claims Request for Formal Rules), BIHA does not have to file an answer or reply to the defendant's counterclaims.

Section 3.04 Small Claims Trial

Small claims trials are informal proceedings tried by the court without a jury. The formal rules of evidence are relaxed; therefore, the court may admit any evidence which is relevant and material, despite the fact that such evidence might be inadmissible under Alaska's formal rules of evidence.^{39/}

The examination of witnesses during a small claims trial is also informal. Testimony may be given in narrative form, but must be given under oath. Both an adverse party and the court have the right to question and cross-examine a party or witness.

At the conclusion of the trial, the court will decide the case on the evidence presented. A judgment from a small claims court may be enforced in the same manner as other judgments.

Section 3.05 Small Claims Request for Formal Rules

After BIHA files a Small Claims Complaint against a defendant, the defendant may file a motion requesting that the formal court rules (Alaska's Rules of Civil Procedure) be used during the proceeding instead of informal rules (Alaska's Small Claims Rules). If the defendant requests the formal court rules, the court must grant the request and will bump the case up to the District Court. At that point, because of the formality of the rules and a District Court proceeding, it is advisable to speak with BIHA counsel about a proper course of action.

Article IV. Eviction

If a tenant does not correct the problem or vacate the premises within the time period stated in the Notice to Quit, a forcible entry and detainer (FED) action may be filed against the tenant. An FED action is a court action by which BIHA may take back

^{38/} Alaska District Court Rule 16(f).

^{39/} Alaska District Court Rule 16(b).

possession of rented property as a result of any material breach.^{40/} It exists to protect a landlord's right to possession and to prevent the use of self-help, and is designed to be a uniquely expedited process that ensures a fair hearing on the issue of possession. In an FED action, BIHA is known as the plaintiff, and the tenant is known as the defendant.

Normally, a for-profit or nonprofit corporation may not represent itself in an FED action. However, pursuant to Alaska Statute § 09.45.158, a nonprofit housing corporation, such as BIHA, may designate an officer or employee of the corporation who is not an attorney to commence and maintain an FED action on behalf of BIHA against a defendant (tenant). When a BIHA officer or employee appears on BIHA's behalf, and the officer or employee is not an attorney, the written proceedings shall be in the name of the person representing BIHA and that person is the sole representative of BIHA as between BIHA and the tenant.

Section 4.01 gives a brief outline and discussion of the eviction process.

Section 4.01 FED Summary

(a) Notice To Quit given to tenant.

Before filing a lawsuit to evict a tenant may be filed, BIHA must give the tenant a Notice to Quit specifying the reason BIHA intends to evict the tenant. The Notice to Quit must give the tenant time to correct the problem (or move out) in order to avoid eviction.

(b) FED lawsuit filed.

BIHA files a FED Complaint with the court if the tenant does not fix the problem and does not move out by the deadline set in the Notice to Quit.

(c) Tenant given notice of lawsuit.

The tenant is served with a copy of the FED Complaint and a FED Summons executed by the court. The FED Summons orders the tenant to:

- i. appear at an eviction hearing, and
- ii. file a written answer to any claim of damages made in the FED Complaint.

(d) Eviction Hearing.

The court holds an eviction hearing within 15 days after the case is filed in court and at least two days after the FED Summons and Complaint are served on the tenant. At this hearing, the court decides whether the tenant must vacate the premises.

(e) Judgment on Damages.

^{40/} An FED action may not be used if BIHA and the tenant have entered into a Mutual Help and Occupancy Agreements (“MHOA”). The court action for an MHOA is an ejectment action (see below Article VII Ejectment Action).

If the FED Complaint asks for damages, one of the following two things happens after the eviction hearing:

- i. Damages Hearing. This trial will only be held if, within 20 days after the FED Summons and Complaint are served on the tenant, the tenant files an answer disagreeing with the claims for money damages made in the complaint.
- ii. Default Judgment. This will happen if the tenant fails to file an answer and BIHA requests a default judgment against the tenant for money (see below Article V Default Judgment).

Section 4.02 Documentation Necessary to Initiate FED Action

The following documents must be prepared to start an FED action:

- i. FED Complaint (see Appendix R Complaint for Forcible Entry and Detainer);
- ii. FED Summons (see Appendix S Summons for Forcible Entry and Detainer);
- iii. District / Superior Court case description form (see Appendix T-1 and T-2, District / Superior Court Case Description Form);
- iv. Judgment for Possession (see Appendix U FED Judgment for Possession);
- v. Writ of Assistance (see Appendix V Writ of Assistance); and
- vi. Service Instructions (see Appendix Q Process Server Service Instructions).

(a) FED Complaint

An FED Complaint must specify that BIHA is bringing an FED cause of action against the defendant. BIHA must name as defendants everyone listed on the lease and all other adults living in the dwelling unit, and attach the Notice to Quit and other supporting documents to the FED Complaint.

The court clerk will schedule an FED hearing when the FED Complaint is filed with the court.

(b) Summons

An FED Summons is specific to an FED proceeding. BIHA must prepare a separate FED Summons for each named defendant.

(c) Case Description

A case description form is necessary to put the court on notice of the type of legal action (FED action) being brought by BIHA against the defendant. A completed case description form must be filed with the FED Complaint and Summons.

(d) Judgment for Possession

A FED Judgment is necessary to speed the FED process along. If BIHA is successful at the FED possession hearing, the court will sign the judgment immediately and request that the defendant vacate the premises. A completed FED Judgment form must be filed with the FED Complaint and Summons.

(e) Writ of Assistance

A Writ of Assistance is a document signed by the court enforcing the court's decision to evict the defendant, which gives a peace officer the authority to remove the defendant. If the defendant complies with the court's order regarding eviction, but does not move out by the date the judge sets at the eviction hearing, BIHA may provide the Writ of Assistance to a peace officer to assist in removing the defendant from the premises.

(f) Service Instructions

The service instructions are necessary to provide a process server with complete service instructions regarding service of the FED Complaint and Summons on the defendant. The instructions must list the documents to be served, and provide as much information as possible about how to locate the tenant. FED documents must be served quickly because of the expedited scheduling of the FED hearing; therefore, it is important that BIHA list "F.E.D. Summons and Complaint" as documents to be served so that the process server recognizes the need to serve the defendant as soon as possible.

Section 4.03 How, What and Where to Initiating ane FED Action

BIHA must file the FED action in the judicial district where the property is located. The Alaska District Court has jurisdiction over an FED action if the value of the past due rent and damage to the property is \$100,000 or less. The Alaska Superior Court has jurisdiction over an FED action if the value of the past due rent and damage to the property is greater than \$100,000.^{41/} Normally, FED actions involve past due rent and damages that are \$100,000 or less, and are filed in the Alaska District Court. Actions in the Alaska Superior Court are formal proceedings; thus, if past rent due and damages exceed \$100,000, it is advisable for BIHA to contact legal counsel for assistance.^{42/}

When filing an FED action in the Alaska District Court, along with the district court case description form and FED Complaint, Summons, Judgment and Writ of Assistance, as referenced above, BIHA must pay a \$90.00 filing fee.

Section 4.04 Service of FED Complaint and Summons

After BIHA has filed all necessary documents with the court, the original FED Summons and a signed copy of the FED Complaint must be served on each of the named defendants. BIHA may use the services of a police officer or state trooper to serve the documents. Many parts of Southeast Alaska do not have process servers;

^{41/} Alaska Rule of Civil Procedure 3.

^{42/} Alaska Statute 22.15.030(a)(6) and (b).

therefore, BIHA must engage the services of a police officer or state trooper to serve the FED Complaint and Summons (see *Appendix W Letter to State Trooper*).

BIHA must contact the process server or peace officer to make arrangements for delivery and service of the FED Complaint and Summons. The process server must serve the defendant with the complaint and summons at least two days before the FED hearing. BIHA must provide the process server with process server fees (\$35 for each person served) and complete service instructions. As referenced above, the Sservice instructions must: (1) list the documents to be served; (2) provide as much information as possible about how to locate the tenant; and (3) specify that BIHA is filing an FED action against the tenant.

The process server's fees are recoverable by BIHA as costs related to the FED action against the tenant. The current amount recoverable is \$35 for each person on whom service is made plus a minimum of \$10 for the first 25 miles or portion thereof traveled by the process server. Additional amounts may be recovered for extra mileage or extra time spent serving the documents.

After the process server serves the tenant, the process server must file a Return of Service with the court, which provides the court with proof that the defendant was properly served. A separate Return of Service must be prepared for each named defendant served with an FED Complaint and Summons. The process server must file all Returns of Service with the court and give copies to BIHA before the FED hearing. It is advisable for BIHA to bring copies of the Return of Service to the FED hearing in case the process server did not file the Return of Service with the court.

The court will continue or reschedule the FED hearing if the process server does not serve the FED Complaint and Summons at least two days before the FED hearing.^{43/} Therefore, it is very important to make certain that the FED Complaint and Summons are served on the defendant in a timely manner.

Section 4.05 Tenant's Answer to FED Complaint

When the defendant is served with BIHA's FED Complaint and Summons, the tenant must appear at the FED hearing and has 20 days to respond and file an answer to the complaint. If the defendant does not file a written answer to BIHA's complaint within the 20-day time limit, BIHA may move forward with default judgment proceedings against the defendant (see below Article V Default Judgment). If BIHA does not ask the court for a default judgment, the court will dismiss the case after 180 days for lack of prosecution.

If the tenant files an answer contesting BIHA's FED Complaint, a trial must be scheduled to resolve BIHA's damage claims against the defendant.

Section 4.06 FED and Damage Hearings

There will be two hearings. The first, the FED hearing, will address who gets possession of the dwelling unit. The second, the damage hearing, which is scheduled

^{43/} Civil Rule 85(a)(2) and AS 09.45.120.

by the court at a date after the first hearing, will determine whether BIHA or the tenant have any damages. At the damage hearing, both BIHA and the tenant have a right to present evidence of damages and a right to a jury trial. There is no right to a jury trial at the FED Hearing.^{44/}

(a) FED Hearing

Alaska Rule of Civil Procedure 85 requires the FED Hearing to be held at least two days after the FED Complaint and Summons are served on the defendant and not more than 15 days after the case is filed. The court clerk's office will need to know when the FED Complaint and Summons will be served on the tenant in order to schedule the FED Hearing no sooner than two days after the tenant is served.^{45/}

On the date of the FED Hearing, the court will only consider the issue of whether to evict the defendant from the premises. The court will not decide BIHA's claims for unpaid rent or other damages at this time. However, the tenant may present evidence contesting the eviction that disputes the amount of rent owed.

During the FED Hearing, the court will expect BIHA to present evidence proving that the requirements of an eviction have been satisfied. Therefore, BIHA must be prepared to prove that the defendant should be evicted from the premises because of the reasons stated in the Notice to Quit. BIHA must be prepared to provide the court with all exhibits (documents) and other evidence relating to the eviction portion of the case at the time of the hearing. This may include: the rental agreement, Notice to Quit, Return of Service, and other evidence relating to the reasons for eviction. If BIHA wishes to have witnesses testify at the FED Hearing, BIHA must arrange to have the witnesses present at the time of the hearing. Permission for a witness to appear telephonically must be obtained from the court prior to the hearing.

During the FED Hearing, the tenant will also have an opportunity to present testimony and documentation rebutting BIHA's claim to evict.

At the conclusion of the FED Hearing, the court will decide to grant or deny BIHA's request to evict the tenant. If the court grants BIHA's request, the court will sign the FED Judgment for Possession and order that the tenant vacate the premises by a specific date and time. BIHA should also request that court sign the FED Writ of Assistance. In case the tenant still does not move, BIHA can use the Writ of Assistance to request police assistance and remove the tenant from the premises on the date and time specified by the court. If the court denies BIHA's request, the defendant may remain at the premises and BIHA may be required to pay the defendant's attorney's fees and costs.

If the defendant does not appear at the FED Hearing, as often happens, the court may order that the tenant loses the eviction portion of the case by default and order the tenant to vacate the premises. The court will require proof from BIHA that the tenant was served with the FED Complaint and Summons, that the Notice to Quit was properly

^{44/} *Vinson v. Hamilton*, 854 P.2d 733, 737 (Alaska 1993).

^{45/} Alaska R. Civ. P. 85(a)(2).

served and contained the statutory requirements, and that the tenant did not correct the problems described in the Notice to Quit.

(b) FED Damage Hearing

If BIHA's FED Complaint asks for monetary damages, and the tenant files a written answer within 20 days after being served with the complaint, there will need to be a trial to decide the amount of the damages owed. The trial to determine damage will be a formal civil action and is governed by the Alaska Rules of Civil Procedure. At this point, it is advisable for BIHA to contact its legal counsel and discuss a proper course of action regarding the trial.

As stated previously, if the defendant does not file a written answer to BIHA's FED Complaint within the 20-day time limit, BIHA may move forward with default judgment proceedings against the defendant (see below Article V Default Judgment).

Article V. DEFAULT JUDGMENT

If the defendant (tenant) does not file an answer, BIHA can ask the court for a judgment by default. The likelihood of a default judgment depends on whether or not the defendant appears at the FED or small claims hearing.

Section 5.01 Tenant Did Not Answer or Appear

If the defendant does not file a written answer to the FED or Small Claims Complaint, and does not appear in court for the FED or small claims hearing, or file any other written response with the court, the procedure for obtaining a default judgment is simplified.

(a) Prepare and File Application for Entry of Default and Default Judgment

BIHA must first prepare an Application for Entry of Default Judgment (see *Appendix X Application for Entry of Default Judgment*). The application must provide the following:

- i) Defendant(s) name(s) and the date defendant(s) was served with the summons and complaint.
- ii) Calculation of amounts owed by the defendant(s) to BIHA. BIHA must attach documentation to support all monetary claims:

Unpaid Rent. List the amount owed for each month. Attach a copy of the rental / lease agreement and records of payments.

Itemized Damages to Premises. Attach any invoices for repairs. If BIHA is charging for its own employees' time spent cleaning and making repairs, BIHA should itemize its hourly rate and the hours worked.

Late Fees. Pursuant to BIHA's Low Rent Collection Policy, a tenant who has not paid rent by the tenth of the month shall be assessed a \$25.00 late fee; therefore, BIHA is authorized add late fees to amounts to BIHA.

Subtract Amounts Tenant Paid. If BIHA received a security deposit from the tenant, provide the amount received. If BIHA received any money from the tenant since filing the complaint, provide and describe all such amounts.

- i. **Costs.** Itemize the costs BIHA has incurred, including the filing and process server fees.
- ii. **Actual Attorney Fees.** Includes all attorney's fees and costs BIHA incurred during the proceeding.^{1/}

Prejudgment Interest. Prejudgment interest is interest on the principal amount owed by the defendant(s) to BIHA. Prejudgment interest is normally calculated from the date the defendant(s) is served with the FED Complaint and Summons to the date the Final Default Judgment is entered.^{46/}

BIHA must attach a proposed Default Judgment (see *Appendix Y Default Judgment*) to the application.

The proposed judgment must have a complete case caption, the same as the summons and complaint. The remainder of the judgment should be left blank for the court to complete.

The Application and Default Judgment must be filed with the court. There is no additional filing fee. The court clerk will review the default documents and determine whether default can be entered. If there are any deficiencies in BIHA's Application or Default Judgment, the court will notify BIHA. BIHA must correct the problem or the court will not process BIHA's Application for Entry of Default Judgment and the case will be dismissed for lack of prosecution. If there are no deficiencies in the default documents, the clerk will sign the Application for Entry of Default Judgment and the Default Judgment will be entered.

(b) Damage Hearing

Occasionally, the court may have questions or need additional information regarding the damages BIHA is claiming. The court may schedule a damages hearing to address these questions. If a hearing is scheduled, BIHA will be notified of the hearing date and time by mail. At this hearing, BIHA will be asked to provide additional documentation or testimony under oath about the damages.

^{46/} If BIHA want interest to begin on a date other the date the FED summons and complaint was served, it must attach a separate computation sheet showing the amounts due, the dates they became due, the interest rates and interest calculations, any payments, and how such payments were applied to interest and principal. Generally, prejudgment interest will not be awarded on unpaid rent if late fees have been assessed.

Section 5.02 Tenant Did Not Answer but Appeared

If the defendant does not file a written answer to the complaint, but did appear in court for the eviction hearing, or filed some other type of written response with the court, the procedure for obtaining a default judgment is the same as above, except before filing the Application for Default Judgment with the court, BIHA must send a copy of the Application for Default Judgment (and all attachments) by first-class mail to the defendant(s) named on the application. BIHA must also complete and file with the court a "Certificate of Service" (see *Appendix Z Certificate of Service*). A Certificate of Service is a document that verifies BIHA served the defendant with the Application for Default Judgment. If BIHA does not properly serve the defendant, the court will not process BIHA's Application for Entry of Default Judgment, and may possibly dismiss BIHA's case or fine BIHA for failing to comply with Alaska Rules of Civil Procedure.

It is important to note that BIHA may not serve the defendant at the address from where he or she was evicted unless the defendant's current address and whereabouts are not readily ascertainable.

Article VI. DAMAGE COLLECTION

An important thing to remember when BIHA files a small claims, FED or ejectment legal action against a defendant to collect unpaid rent or damages is that the court will not actually give BIHA any money if BIHA wins. All the court will give BIHA is a judgment stating that it is entitled to collect the money from the defendant. If the defendant does not pay voluntarily, BIHA must use an execution proceeding to attempt to enforce the judgment. This procedure will only be successful if the defendant has money or property which can be seized to pay the judgment. Often, the defendant has no property of value and execution proceedings are unsuccessful.

When BIHA begins a damage collection proceeding against a defendant, BIHA is known as the Judgment Creditor and the defendant is known as the Judgment Debtor.

Execution proceedings are complicated. This section is a basic overview of the steps generally involved. It is not a complete statement of everything there is to know about how to collect the amount owed after winning a judgment. It is advisable to discuss collection issues with BIHA's legal counsel before initiating damage collection.

Section 6.01 Execution Procedure Summary

The following gives a general summary of the steps involved in an execution procedure. However, execution procedures are frequently more complicated than this, and depending on the property BIHA wants to seize, the steps may be somewhat different.

- (a)** Judgment. BIHA wins a judgment and defendant has failed to pay what the defendant owes BIHA under the judgment.
- (b)** Request payment. BIHA may request payment from the Judgment Debtor (defendant). If the judgment debtor fails to pay upon request, BIHA may begin execution procedures to try to collect the judgment.

- (c) Request and Serve Writ of Execution. BIHA asks the court for a Writ of Execution. The Writ of Execution is used to seize some of the judgment debtor's property (money). The judgment debtor is served with a copy of the Writ of Execution informing the judgment debtor that he or she may have certain exemption rights.
- (d) Judgment Debtor may claim exemptions. The judgment debtor has a certain amount of time within which to contact the court to claim exemptions. If the judgment debtor claims exemptions, the court will decide whether to grant the exemptions.

Money transferred to BIHA. If the judgment debtor does not claim any exemptions, money will begin to be transferred to BIHA.

Section 6.02 Request Payment

Before moving forward with a full blown collection proceeding, it is advisable for BIHA to ask the judgment debtor to pay the judgment. This can save BIHA time and money if the judgment debtor is willing to pay, but needs some time to arrange payment.

If the judgment debtor is willing to pay BIHA, BIHA should ask the judgment debtor to sign a payment agreement to make installment payments to pay off the judgment (See *Appendix M Delinquent Payment Agreement*). The payment agreement must be signed by BIHA and the judgment debtor.

As long as the judgment debtor makes the payments under the payment agreement, BIHA will not be allowed to use execution procedures to collect the money owed. If the judgment debtor fails to make payments, BIHA may begin execution procedures.

Section 6.03 Execution Procedure

If it becomes evident that the judgment debtor is not going to pay voluntarily, BIHA may begin execution procedures and request the court to issue a "Writ of Execution." A Writ of Execution is a court order directing a peace officer or process server to take possession of property of the debtor to pay the judgment. Property can include money, bank accounts, wages, personal or real property, or any other assets belonging to the debtor which has value. There is usually a brief waiting period after the judgment is distributed before a writ of execution can be issued, normally ten days.

If the required time period has passed, BIHA must decide which of the following four categories of property it is going to attempt to execute on:

- (1) debtor's earnings;
- (2) debtor's Alaska Permanent Fund Dividend;
- (3) debtor's property; or
- (4) real property owned by debtor.

Collection proceedings on a judgment debtor's real or personal property are complicated. Therefore, this policy focuses on BIHA's ability to execute on a judgment debtor's earnings and Alaska PFD, which are normally straightforward procedures.

Section 6.04 Filing Procedure for Execution on Judgment Debtor's Earnings

To seize the judgment debtor's earnings, BIHA must complete and file the forms listed below with the court. These forms are specialized court forms. These specialized forms are as follows:

BIHA must prepare and file these forms as shown in *Appendices AA – FF* with the court.

- i. Information for Issuance of Writ of Executions, Court Form CIV-501 (Appendix AA);
- ii. Writ of Execution for Garnishment of Earnings, court form CIV-525 (Appendix BB);
- iii. Employer's Response to Writ of Execution for Garnishment of Earnings, court form CIV-526 (Appendix CC);
- iv. Service Instructions for Writ of Execution for Garnishment of Earnings, court form CIV-561 (Appendix DD);
- v. Notice of Garnishment and Notice of Right to Exemptions, court form CIV-530 (Appendix EE);
- vi. Claim of Exemption from Garnishment, court form CIV-531 (Appendix FF)

Section 6.05 Service Procedure for Execution on Judgment Debtor's Earnings

The Writ of Execution and the Employer's Response to Writ of Execution must be served on the judgment debtor's employer.^{47/}

The Notice of Garnishment and the Claim of Exemption from Garnishment (*Appendix EE and FF*) must be served on the debtor either before, or within three days after, the debtor's wages are seized. BIHA shall It is advisable to use a process server so BIHA is assured the documents are served rapidly, and BIHA is certain that the documents are served directly on the judgment debtor. If the BIHA chooses to serve the execution document by process server, itand shall must file the execution documents and inform the court. The clerk will then complete the paperwork and see that the proper forms are given to the process server.

The judgment debtor's employer must fill out the Employer's Response form (*Appendix CC*) within 24 hours after receiving it and return it to the court. If the court has not received the employer's response within seven days, BIHA may call the employer. If the employer does not understand the purpose of the form or the execution process, BIHA should inform the employer to call the court.

Proof that the execution documents (*Appendices AA – FF*) were properly served must be filed with the court before the court will release any money collected under the Writ of Execution. Again, it is advisable for BIHA to use a process server to serve the execution documents because the process will file a Return of Service with the court.

Once the Writ of Execution is served on the employer, the employer should begin sending payments to the court. The court will hold the money in its trust account for about 30 days. Unless ordered to do otherwise by the court, the judgment debtor's employer should keep sending payments to the court on each of the debtor's paydays until the amount stated in the Writ of Execution has been paid in full.

Section 6.06 Exemptions re: Execution on Judgment Debtor's Earnings

The judgment debtor has fifteen days from the date the notice is received to claim exemptions. If the debtor files for an exemption, the court will send BIHA a copy of the claim and a form that can be used to respond to the claim. BIHA must file a response with the court within ten days. The court will decide the claim based on the information submitted, or the court will schedule a hearing. If a hearing is scheduled, the court will notify both BIHA and the judgment debtor of the date and time the hearing will be held. At the hearing, the judgment debtor has the burden of proof; that is, the judgment debtor must prove to the court that he or she is entitled to the exemption. BIHA will have an opportunity to question the debtor and present rebutting evidence.

⁴⁷ 7 5 CFR 582.202 and Civil Rule 69(f)(1). AS 09.38.080(c); AS 09.40.060 and AS 09.35.110

If the judgment debtor does not file an exemption within fifteen days after receiving the execution documents, the court will send the money to BIHA as soon as it is sure the employer's check has cleared the bank.

Section 6.07 Filing Procedure for Execution on Judgment Debtor's PFD^{48/}

Before BIHA may seize a judgment debtor's PFD, BIHA must positively identify the judgment debtor to the court and the Department of Revenue ("DOR"). Pursuant to DOR Regulations, 15 AAC 23.213(d), to establish a positive identification, BIHA is required to provide the DOR with a three-point match between the collection documentation filed with the court and DOR records about the judgment debtor. BIHA must provide an exact match for any three of the following identifiers:

- i. Debtor's first name;
- ii. Debtor's date of birth;
- iii. Debtor's social security number; and
- iv. Debtor's last name.

To seize the judgement debtor's Permanent Fund Dividend (PFD), BIHA Must complete and file the forms listed below with the court. These forms are specialized court forms for the specific use of a judgement creditor for collection of a judgement debtor's PFD. BIHA Must file these specialized forms after April 1 and before August 30, if BIHA wants to execute on the prior year's dividend. A levy will only be placed against the judgement debtor's prior year dividend. 1/ these specialized forms are as follows:

- i. Information for Issuance of Writ of Execution, court form CIV-501 (Appendix AA);
- ii. Writ of Execution, court form CIV-502 (Appendix GG) (used if serving judgment debtor by process server);
- iii. and Process Server Service Instructions (Appendix Q Process Server Service Instructions).

BIHA must prepare and file these forms as shown in *Appendices AA, GG and Q* with the court. The service instructions are necessary to provide a process server with complete service instructions regarding service of the execution documents.

^{48/} Pursuant to Alaska Statute § 43.23.065(c), certain creditor claims (child support, court ordered restitution, education loans and court ordered fines) have priority over judgment creditor claims. If another judgment creditor was pursuing a creditor claim against judgment debtor with a higher priority, that claim would be paid before BIHA's claim.

Section 6.08 Service Procedure for Execution on Judgment Debtor's PFD

BIHA shall may use a company that specializes in debt collection to serveprocess server or certified mail to serve the execution documents to collect a judgment debtor's PFD. It is advisable to use a process server.

The pecking order for creditors' claims against a judgment debtor's PFD is on a first-come first-serve bases. Therefore, if BIHA wants to be first in line to collect against the judgment debtor's PFD, it must be the first judgment creditor to serve the execution documents on the DOR. If BIHA uses a process server, it can be assured that the execution documents will be served on April 1, the first such documents may be served on the DOR.

BIHA must contact the process server or peace officer to make arrangements for delivery and service. The execution documents must be served on the DOR at its office in Juneau, Alaska. Therefore, it is advisable to hire a Juneau process server. If BIHA hires a Juneau process server, it must provide the court with a stamped envelope addressed to the process server so the court can mail the execution documents and service instructions to the process server.

BIHA must provide the process server with complete service instructions. BIHA must include identifying information about the judgment debtor, and inform the process server that the execution documents must be served on the DOR in Juneau. BIHA will be notified by the process when the writ has been served.

If the judgment debtor's PFD funds are seized, the DOR will send the funds to the court. The DOR will also send BIHA notice of the seizure. The judgment debtor has 30 days to object to the seizure. The court will notify BIHA if a hearing is scheduled regarding the judgment debtor's objection. If no objection is filed or if the court finds that no mistake has been made, the court will send BIHA a check for the amount received from the DOR.

Section 6.09 Collection of Interest and Costs

After the amount stated in the Writ of Execution is paid in full, BIHA may attempt the collection of:

- (1) interest on the debt from the date of the Writ of Execution to the date the debt was paid;^{49/} and
- (2) the costs of having the Writ of Execution and other documents served on the employer and the judgment debtor. BIHA must file a Supplemental Notice to Writ of Execution for Garnishment (court form CIV-533, *Appendix HH*) to collect the interest and costs. BIHA must include a stamped envelope with the supplemental notice so the court will forward the supplemental notice to the employer by first class mail.

^{49/} The interest rate on the debt is provided on the final judgment issued by the court.

Section 6.10 Judgment Satisfied

If the employer keeps sending payments to the court after BIHA's judgment against the judgment debtor is satisfied, BIHA must notify the court so the court can send the employer a Notice of Termination of Writ of Execution.

It is BIHA's duty to provide the judgment debtor and the court with documentation acknowledging that the judgment has been satisfied (see *Appendix II Satisfaction of Judgment*). BIHA must provide the judgment debtor and the court with such documentation within 10 days after the judgment is satisfied. If BIHA fails to do so within 10 days without just cause, BIHA will be liable to the judgment debtor for all damages which the judgment debtor may have sustain because of that failure.

Article VII. EJECTMENT ACTIONS (MUTUAL HELP AND OCCUPANCY AGREEMENTS)

The ejectment process is a common law legal action used for MHOAs, when BIHA desires to end the contract relationship for any material breach, such as nonpayment, disturbing the peace (breach of quiet enjoyment), or damage to the property beyond normal wear and tear, and cannot work out a resolution with the homebuyer. There are no statutory rules that regulate the ejectment process.

An ejectment trial is unlike an FED hearing because the court must treat a homebuyer under a MHOA as a homeowner with equitable interest, not just possessor interest.^{50/} An/ An ejectment trial provides the homebuyer with procedural safe guards, such as the right to a jury, discovery, preparation time, and procedural continuances, that are needed for a full and fair trial on issues other than possession.^{51/} BIHA/ BIHA may not represent itself in an ejectment action. It must be represented by an attorney.

This section is a basic overview of the steps generally involved in an ejectment proceeding. It is not a complete statement of everything there is to know about ejectment proceedings. Because BIHA must be represented by an attorney in ejectment actions, forms are not included in this section.

Section 7.01 Ejectment Notice to Quit

Like an eviction, if a BIHA homebuyer fails to comply with any of his or her responsibilities under the MHOHA, BIHA may begin the termination process by providing the homeowner with a Notice to Quit (see above Sections 2.02 Termination of Tenancy and 2.03 Notice to Quit).

BIHA shall Normally, it is advisable to give the homebuyer a 30-day Notice to Quit (see *Appendix JJ Ejectment Notice to Quit*). However, there is no rule of law that specifies the amount of time BIHA must give the homeowner to vacate the dwelling unit. A 30-day Notice to Quit is recommended because the homebuyer has a vested interest in dwelling unit and should be afforded a fair and reasonable opportunity to cure the specified problem.

^{50/} *Kopanuk v. AVCP Regional Housing Authority*, 902 P.2d 813 (Alaska 1995).

^{51/} *Chilton-Wren v. Olds*, 1 P.3d 693, 698 (Alaska 2000).

The Notice to Quit must comply and be served on the homebuyer as specified in Section 2.03 Notice to Quit above. The Notice to Quit must specify all breach(es) and / or violations committed by the homebuyer under the MOHAMHOA and the law.

Prior to termination of tenancy, a homebuyer may serve BIHA with a notice of appeal except for situations identified in Section 2.02

- a) Termination of late rent;
- b) Termination for deliberate infliction of substantial damages to the premises
- c) Termination for illegal activity on the premises
- d) Termination to pay utility bills
- e) Termination of breach of duties
- f) Landlord's termination of rental agreement by choice
- g) Termination for absence or abandonment

with a grievance and request a grievance hearing protesting BIHA's decision to terminate tenancy. If the homebuyer does request a grievance, BIHA must follow the steps specified above in section 2.04 BIHA Grievance Hearing and BIHA Grievance Procedure.

Section 7.02 Ejectment Proceeding

If 30 days expires without cure, and the homebuyer has not moved out, BIHA may file an ejectment action against the homebuyer in Alaska Superior Court. In an ejectment action, BIHA is known as the plaintiff, and the homebuyer is known as the defendant.

After a defendant (homebuyer) is properly served with an ejectment summons and complaint, the defendant has 20 days to file and serve an answer to the complaint, personally or through a lawyer, on BIHA. If the defendant does not file an answer within 20 days after service, BIHA may start default proceedings and request a default judgment.

Obtaining a default judgment in an ejectment action is a two step process: (1) BIHA must request possession of the dwelling unit; and (2) after BIHA regains possession of the dwelling unit and assesses damages thereto, BIHA must request damages.

To begin the default process, BIHA must file an Application for Entry of Default. This application informs the court that BIHA properly served the defendant, and that the defendant did not appear or file an answer within 20 days of receiving the complaint. After the court confirms that the defendant was properly served and did not respond, the court will sign the Entry of Default. If three days have passed since the signing of the Entry of Default without an objection or response by the defendant, BIHA may begin default judgment proceedings first requesting possession, and second requesting damages.

To begin the default judgment process, BIHA must file an Application for Entry of Default Judgment requesting possession of the dwelling unit. BIHA must attach the following to the application: (1) a Default Judgment for possession, specifying the time and date the defendant must move-out; and (2) Writ of Assistance. After BIHA uses the Default Judgment for possession and the Writ of Assistance to remove the defendant from the

dwelling unit, BIHA must assess any and all damages it has incurred, which include economic damages, attorney's fees and costs, arrearages, property repairs beyond normal wear and tear, utilities, etc. After BIHA has assessed damages, it may move forward with the procedure to request a default judgment requesting damages.

To begin the default judgment process for damages, BIHA must file a second Application for Entry of Default Judgment requesting damages. BIHA must attach the following to the application: (1) a Default Judgment for damages; (2) an affidavit of accounting, asking for economic damages, arrearages, property repairs beyond normal wear and tear, utilities, etc.; (3) an attorney's fees affidavit and bill of costs; and (4) a Request for Calculation and Award of Pre- and Post-Judgment Interest.

Often, the court will request that BIHA prove it is entitled to the damages specified in its application. Therefore, the court will likely schedule a hearing to address these questions. If a hearing is scheduled, BIHA must provide the court with documentation and testimony under oath confirming the factual allegations in its complaint, and that it is entitled to the specified damages.

If there are no deficiencies in the default documents, the court will sign the Entry of Default and the Default Judgments. Thereafter BIHA may start collection proceedings against the defendant (see above Article VI. Damage Collection).

If the defendant answers the complaint, the ejectment action will likely go to trial, unless BIHA is able to negotiate a settlement. Unlike an FED action, ejectment actions may take several months to a year from start (filing of ejectment complaint) to finish (trial and collection of damages). An ejectment trial is a formal proceeding and is governed by Alaska Rules of Evidence and Civil Procedure. At the trial, BIHA must be prepared to provide the court with proof that the homebuyer breached the MHOA. BIHA may not represent itself in an ejectment action. BIHA must be represented by attorney in such proceedings.