

BARANOF ISLAND HOUSING AUTHORITY



EVICTIION / EJECTMENT POLICY

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Article I. INTRODUCTION

Article II. This policy gives a basic overview of the steps generally involved in evicting and ejecting Baranof Island Housing Authority (“BIHA”) tenants^{1/} and homebuyers^{2/} (under a BIHA Mutual Help and Occupancy Agreement (“MHOA”)), Lease Purchase Option Agreement, and Rental Agreements. 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.

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 BIHA Program Lease Agreements 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^{3/}; 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 a clean and safe environment.^{4/}

^{1/} A “BIHA tenant” or “tenant” for the purposes of this policy means: a person entitled under a BIHA rental or lease agreement to occupy a BIHA dwelling unit to the exclusion of others.

^{2/} A “BIHA homebuyer” or “homebuyer” for the purpose of this policy means: a person entitled under a BIHA MHOA to occupy a BIHA dwelling unit to the exclusion of others.

^{3/} 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.

^{4/} 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 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 30-day written notice to terminate a tenancy when a tenant is behind in rent, (see *Appendix A Late Fee Notice, Demand Notice, Notice to Quit for Late Rent*).^{5/}

All 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.^{6/} If the rent is paid before the thirty (30) days are up, then the tenant may remain on the premises. If the tenant tries to pay after the thirty (30) days are up, BIHA may refuse to accept the rent and continue with the termination process.^{7/}

If BIHA accepts a partial rent payment after giving a Late Fee, Demand Notice or Notice to Quit 30-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.^{8/} 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.^{9/}

(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 Quit for Damage Above \$400.00*).^{10/} BIHA may continue with the termination process even though the tenant agrees to repair the damage.

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

^{6/} AS § 09.45.105.

^{7/} AS § 34.03.220(b).

^{8/} Id.; AS 34.03.240.

^{9/} BIHA Lease Agreement Part 1, p. 5; BIHA Rent Collection Policy, p. 2.

^{10/} AS 34.03.220(a)(1).

(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*).^{11/}

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*).^{12/}

(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, 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

^{11/} AS 09.45.090(a)(2)(G).

^{12/} AS 34.03.220(e).

substantial damage to the premises (see paragraph (b) above) or other than noncompliance as to a utility service (see paragraph (d) above).^{13/}

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*).^{14/}

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 month period, BIHA may 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

^{13/} AS 34.03.220(a)(2).

^{14/} AS 34.03.300(a).

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 30-day period.^{15/}

(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.^{16/}

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.^{17/}

(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.^{18/} Absences beyond a total of three 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;

^{15/} 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).

^{16/} AS 34.03.290(b).

^{17/} AS 34.03.290(c).

^{18/} AS 34.03.150.

- 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.^{19/}

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.^{20/} 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.^{21/}

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 times the actual cost of repairing any damage occurring during the tenant's absence or occupancy.^{22/}

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. 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);
- 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.^{23/}

^{19/} AS 34.03.360(1).

^{20/} AS 34.03.140(d)(2); AS 34.03.230(b).

^{21/} AS 34.03.230(b) – (c).

^{22/} AS 34.03.230(a).

^{23/} AS 09.45.100 – .105.

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.^{24/}

It is advisable to hand-deliver or mail the notice by certified mail. It is also advisable that a record of service 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

Section 2.05 See Appeal Policy. 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.^{25/}

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.^{26/}

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

^{24/} 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).

^{25/} AS 34.03.260(a)(1).

^{26/} AS 34.03.260(a)(2).

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.^{27/}

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.^{28/}

Sale proceeds in excess over and above expenses incurred by BIHA in disposing of the tenant's belonging should be paid to the tenant.

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.^{29/}

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.^{30/} 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.^{31/}

If a BIHA tenant gives notice that complies with 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.^{32/}

^{27/} AS 34.03.260(b).

^{28/} AS 34.03.260(e); AS 09.35.140.

^{29/} AS 34.03.070.

^{30/} Id.

^{31/} AS 34.03.070(b).

^{32/} AS 34.03.070(g).

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.^{33/}

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.^{34/}

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.

^{33/} Id.

^{34/} AS § 22.15.040.

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 owe 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.^{35/}

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.^{36/}

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

^{35/} Alaska District Court Rule 16(f).

^{36/} Alaska District Court Rule 16(b).

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 possession of rented property as a result of any material breach.^{37/} 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, 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.

^{37/} 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).

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

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 Initiating an FED Action

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.(see *Appendix W Letter to State Trooper*).

Service 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.

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.

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 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.^{38/}

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.

Article VI. DAMAGE COLLECTION

Section 6.01 Execution Procedure Summary

The following gives a general summary of the steps involved in an execution procedure.

^{38/} *Vinson v. Hamilton*, 854 P.2d 733, 737 (Alaska 1993).

(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.

(e) 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

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.

If the judgment debtor fails to make payments, BIHA may begin execution procedures.

Section 6.03 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. 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:

- i. Information for Issuance of Writ of Execution, 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*).

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

Section 6.04 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.^{39/}

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 use a process server and shall file the execution documents and inform the court.

Section 6.05 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.

Section 6.06 Filing Procedure for Execution on Judgment Debtor's PFD^{40/}

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

³⁹ 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

^{40/} 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.

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 judgment 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 judgment creditor for collection of a judgment debtor's PFD. BIHA must file these specialized forms after April 1 and before August 30, if BIHA wants to execute on the prior years dividend. A levy will only be placed against the judgment debtor's prior year dividend.^{41/} 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); and
- iii. 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.

Section 6.07 Service Procedure for Execution on Judgment Debtor's PFD

BIHA shall use a company that specializes in debt collection to serve the execution documents to collect a judgment debtor's PFD.

Section 6.08 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;^{42/} 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.

Section 6.09 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.

^{41/} 15 AAC 23.210; AS 43.23.065.

^{42/} The interest rate on the debt is provided on the final judgment issued by the court.

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*).

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.^{43/} 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.^{44/} 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 6.10 Ejectment Notice to Quit

Like an eviction, if a BIHA homebuyer fails to comply with any of his or her responsibilities under the MHOA, 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 give the homebuyer a 30-day Notice to Quit (see *Appendix JJ Ejectment Notice to Quit*).

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 MHOA 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;

^{43/} *Kopanuk v. AVCP Regional Housing Authority*, 902 P.2d 813 (Alaska 1995).

^{44/} *Chilton-Wren v. Olds*, 1 P.3d 693, 698 (Alaska 2000).

- (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**

Section 6.11 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.