

**JAMESTOWN S'KLALLAM TRIBE
TRIBAL CODE
TITLE 20 – CIVIL ACTIONS**

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Section 20.01.01 Scope

This Title shall apply to all civil actions in the Jamestown S'Klallam Tribal Court unless otherwise specifically provided for in other sections of the Tribal Code. The term "civil action" shall include those court actions which do not have imposition of a criminal penalty as their object.

Section 20.01.02 Parties

The party initiating the civil action will be known as the petitioner or plaintiff. The party against whom the action is brought will be known as the respondent or defendant. Additional persons, claims or remedies may be joined in the action in the interest of justice.

Section 20.01.03 Time Limit

No complaint shall be filed in a civil action unless the event giving rise to the complaint occurred within three (3) years of filing of the complaint.

Section 20.01.04 Survival of Actions

Civil actions commenced in the Tribal Court shall survive to the personal representatives of the petitioner if they die or become unable to pursue the action before its completion.

Chapter 20.02 Filing Complaints

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Section 20.02.01 Complaints, Generally

Civil actions shall be initiated by filing a complaint in the Tribal Court unless otherwise specified in this Title.

Section 20.02.02 Complaint, Contents

All complaints filed in the Tribal Court shall be typed and contain the following:

- A. The names of the parties;
- B. A brief statement of the facts which justify granting the relief asked for;
- C. A statement of the relief asked for;
- D. A brief statement of the facts that show that the Court has jurisdiction over both the parties and the subject matter of the action;
- E. The signature of the petitioner or their spokesperson; and
- F. A statement signed by the petitioner before a public notary or judge, swearing or affirming that the petitioner has read the complaint and believes the contents to be true and correct.

Section 20.02.03 Filing Fee

The petitioner shall pay to the Court a filing fee of twenty-five dollars (\$25.00) at the time that the complaint is filed. The filing fee may be waived by the Court, in its discretion, upon good cause shown.

Section 20.02.04 Service of Notice

After the complaint is filed, the petitioner shall cause the defendant to be served with a copy of the complaint and a summons in the form maintained by the Clerk of Court. The defendant may be served by any person over the age of eighteen (18) years who is neither a party to the action, nor a member of a party's immediate family. Personal service may be affected by personally delivering a copy of the summons and complaint to the party or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the residence of the person served, with directions to deliver it to the person to be served. If the respondent cannot be found on the trust or reservation lands of the Tribe, service may be accomplished by certified mail, return receipt requested.

Section 20.02.05 Service by Publication

When the respondent cannot be found on the trust or reservation lands of the Tribe and attempts to serve the respondent by certified mail under Section 20.02.04 have failed, the petitioner may ask the judge to allow service by publication. If the request is granted, the petitioner shall: 1) post copies of the summons and complaint at the offices of the Tribe at 1033 Old Blyn Hwy., Sequim, WA 98382 ("Tribal Center") for three (3) weeks, 2) publish the summons once a week for three (3) consecutive weeks in a newspaper of general circulation in Clallam and Jefferson Counties, and 3) publish the summons in the next issue of the Jamestown S'Klallam newsletter to citizens, after the request to serve by publication is granted.

Section 20.02.06 Summons, Content

The summons shall notify the respondent that if they do not appear or answer the complaint within twenty (20) days from the date of service, the Court may grant the judgment in favor of the plaintiff.

Section 20.02.07 Summons, Proof of Service

The person serving the summons and complaint shall file with the Court certification that they have served the respondent, including the date and place of service. If service was made on the person other than the respondent as provided in Section 20.02.04, the certification shall state the name of the person served, the date and place of service, and the instructions given. In case of service by certified mail, the return receipt shall constitute the proof of service. In case of service by publication, an affidavit by the publisher, or an affidavit by Tribal staff, if posted at the Tribal Center, and a copy of the summons as published shall constitute the proof of service.

Chapter 20.03
Respondent's Answer

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Section 20.03.01 Answer, Counterclaims, Default

Section 20.03.02 Service of Answer and Other Pleadings

Section 20.03.03 Default

Section 20.03.04 Default Set Aside

Section 20.03.01 Answer, Counterclaims, Default

Within twenty (20) days after the respondent is served with a copy of the civil complaint, they must contact the Court Clerk and state whether they will appear in Court to respond to the complaint. A written answer stating the nature of the defense may be filed with the Court Clerk within twenty (20) days, and if filed, a copy shall be sent to the plaintiff by the respondent. In addition to any defenses the respondent may raise, they may also raise any claims they may have against the petitioner.

Section 20.03.02 Service of Answer and Other Pleadings

The respondent's answer and all further pleadings made by either party may be served by regular mail, with the original filed with the Court with an affidavit of mailing. The affidavit shall be signed by the person mailing the pleading and show the name and address of the party the pleading was mailed to and the date of the mailing.

Section 20.03.03 Default

When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that fact is demonstrated to the Court by appropriate motion and affidavit or testimony, a default judgment may be entered by the Court, and notice of such default judgment shall be sent to the defaulting party. The moving party may obtain a default judgment upon satisfactory proof to the Court of the following:

- A. Proper service of the Summons and Complaint;
- B. A complaint alleging facts to support a cause of action;
- C. Evidence supporting the granting of the requested relief; and
- D. Jurisdiction of the Court over the persons and subject matter of the action.

The Court shall not take any action in the case to enter a default judgment or otherwise act in response to a complaint until 20 days have passed after the respondent is served. The only exception will be if the plaintiff files a motion seeking preliminary relief under Chapter 20.08 of this Title.

Section 20.03.04 Default Judgment Set Aside

For good cause shown, the Court may set aside a default judgment either on its own motion or that of a party to the action.

Chapter 20.04 Discovery

Sections:

Section 20.04.01 Discovery, Generally

Section 20.04.02 Privileges

Section 20.04.03 Methods of Discovery

Section 20.04.04 Responding to a Request for Discovery

Section 20.04.01 Discovery, Generally

Parties may request information and evidence, which can reasonably be expected to lead to admissible evidence, from any person having such information in their possession, knowledge or control. This section is intended to make information available to parties prior to trial to assist in reaching settlement, ascertaining the truth and ultimately to expedite the judicial process.

Section 20.04.02 Privileges

A person may refuse to make available the information requested if its release would cause undue hardship, such release is subject to a prior legal restraint, or would violate a confidence which it is Tribal policy to protect. If the parties disagree about whether the responding party is required to release the information, the Court shall decide the dispute. The Court may place conditions on a release of information in order to 1) protect confidential material, 2) prevent unreasonable burden or expense to a party, or insure fairness to all parties.

Section 20.04.03 Methods of Discovery

Methods of discovering and exchanging information may include, but need not be limited to, written questions or oral examination, requests for names of witnesses, requests for admissions, physical inspection of property, requests to perform scientific or physical tests, requests for permission to enter upon land or other property, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing what they want.

Section 20.04.04 Responding to a Request for Discovery

A person who receives a request for information under this Chapter shall: 1) provide the information, or 2) respond that they do not have the information in their possession, knowledge or control, or 3) object in writing to the request, stating the specific grounds for the objection. One of the three (3) responses must be made to the requesting party within twenty (20) days of receiving the request. If the person from whom discovery is sought fails to respond, the discovering party may move for a court order requiring a response. An evasive or incomplete response shall be considered a failure to respond.

Chapter 20.05 Motions

Sections:

Section 20.05.01 Motions

Section 20.05.02 Modifications of Existing Orders

Section 20.05.01 Motions

All motions in a case pending before the Court shall be made upon five (5) days notice to the opposing party or in open court during the course of proceedings. On motions made in open court, the Court may allow the opposing party such time as the Court feels necessary to respond to the motion. The Court may also shorten or extend the time for responding to any motion if justice so requires.

Section 20.05.02 Modifications of Existing Orders

In any case where the Court has continuing jurisdiction, a party may move for the Court to modify the previously entered order, judgment or decree.

Chapter 20.06 Trial Procedure

Sections:

Section 20.06.01 Trial Process

Section 20.06.02 Juries

Section 20.06.03 Standard of Proof

Section 20.06.04 Evidence

Section 20.06.05 Applicable Law

Section 20.06.01 Trial Process

All trials in civil actions shall proceed in the following order:

- A. Jury selection in those cases to be tried before a jury;
- B. An opening statement by the petitioner summarizing what they intend to prove and stating the burden of proof;
- C. An opening statement by the respondent summarizing what they intend to prove;
- D. The petitioner shall call witnesses and present other evidence to the court. The witnesses shall be subject to cross-examination by the other parties in the case. Following cross-examination, the petitioner shall have a second opportunity to question the witnesses. When the petitioner has presented all their witnesses and evidence and completed all cross-examinations, they shall inform the court that their case is complete;
- E. Following the completion of the petitioner's case the respondent may move to dismiss the case. If, in the opinion of the judge, after resolving all the disputed pieces of evidence and testimony in favor of the petitioner and drawing all reasonable inferences in favor of the petitioner, there is insufficient evidence to support the case, the case shall be dismissed;
- F. If the case is not dismissed, the respondent may call witnesses and present evidence. The witnesses shall be subject to cross-examination by all of the parties. The respondent shall then have a second opportunity to question the witness followed by a second opportunity for cross-examination by all other parties. Following the testimony of all witnesses and the introduction of all evidence by the respondent, the respondent shall inform the Court that their case is complete;
- G. The petitioner shall then have an opportunity to introduce additional evidence to rebut the evidence produced by the respondent;
- H. The respondent shall then have an opportunity to present additional evidence to rebut that presented by the petitioner;
- I. In the case of a jury trial, the Court shall then instruct the jury about the law governing the case and the applicable burden of proof;
- J. The petitioner shall then make a closing argument to the jury or the judge, as the case may be. The respondent shall then have an opportunity to make a closing argument. The petitioner shall have an opportunity to rebut the arguments made by the respondent in their closing argument;
- K. The jury or the judge shall then deliberate upon the case and announce its verdict; and
- L. Judgment shall be entered on the verdict in accordance with this Title.

Section 20.06.02 Juries

A party may request that the case be tried before a jury. The request must be filed at least fourteen (14) days before the trial date and must be accompanied by a fee or other security in an amount reasonably calculated to cover the costs incurred by having a jury. Any excess charges shall be reimbursed at the conclusion of trial. The fee may be waived by the Court upon a showing of good cause.

Section 20.06.03 Standard of Proof

The party asking for judgment shall have the burden of proving all elements of their case by the standard of proof known as the *greater weight of the evidence/preponderance of the evidence*.

Section 20.06.04 Evidence

All relevant evidence shall be admissible in civil proceedings, except when the Court finds that its prejudicial value outweighs its probative value or when inadmissible under this Title. The Tribal Rules of Evidence, applicable in all civil proceedings in Tribal Court, are set out in Appendix A to Title 19 – Rules of Court of the Tribal Code.

Section 20.06.05 Applicable Law

In deciding civil actions, the Tribal Court shall first look at the Tribal Code, and resolutions of the Jamestown S’Klallam Tribal Council, which apply to the issue of the case. The Court may then look to Tribal custom and usage and in doing so the Court may request the advice of persons familiar with Tribal custom and usage. The Court may then look to any other laws which may be applicable and may be guided by the law developed by other jurisdictions including other tribes.

Chapter 20.07 Judgment

Sections:

Section 20.07.01 Judgment

Section 20.07.02 Judgment, Contents

Section 20.07.03 Preparation of the Judgment

Section 20.07.04 Reconsideration of Judgment

Section 20.07.05 Costs

Section 20.07.01 Judgment

Following the announcement of the verdict, the judge shall announce the judgment in the case. Where there is no jury, the verdict and the judgment may be combined in the same announcement. The judgment shall be reduced to writing. A copy shall be delivered to each of the parties or their spokespersons.

Section 20.07.02 Judgment, Contents

The judgment shall contain a statement of all relief granted to the prevailing party including, where appropriate, the declaration of rights and responsibilities of the parties, an assessment of damages, including a provision for interest until the judgment is paid, an order directing that certain actions be taken or not taken, and an assessment of the costs of the action and to whom those costs are assigned.

Section 20.07.03 Preparation of the Judgment

Where desired by one or more of the parties or where directed by the Court, the parties shall prepare a proposed written judgment incorporating the verdict of the Court. In addition, the parties may prepare and present to the judge proposed findings of fact and conclusions of law. No such proposed findings, conclusions or judgment shall be signed by the judge until the other parties have been given seven (7) days notice of their presentation to the judge, or such notice has been waived in writing.

Section 20.07.04 Reconsideration of Judgment

No later than seven (7) days after a judgment is final, a party may ask the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment. The judge may grant a new hearing or reconsider and change the judgment if they find one of the following to be true:

- A. The original judgment was based on, or reached as a result of, fraud or mistake; or
- B. There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case; or
- C. The Court did not have the jurisdiction over a party or over the subject matter at the time of the hearing on the case, but has subsequently acquired such jurisdiction.

Section 20.07.05 Costs

The Court may assess the costs of the case against the party or parties against whom judgment was given. The costs shall consist of witness fees and expenses, jury fees and any other expenses connected with the procedure under this Title, as the Court may direct.

Chapter 20.08 Injunctions

Sections:

Section 20.08.01 Emergency Restraining Order

Section 20.08.02 Preliminary Injunction

Section 20.08.03 Bond

Section 20.08.01 Emergency Restraining Order

When the complaining party demonstrates to the Court by affidavit or verified complaint that immediate and irreparable damage, injury or loss will occur unless a party is restrained by the Court, the Court may issue an emergency restraining order, without notice to the adverse party, provided that the applicant provides the Court with written reasons supporting their claim that notice should not be required and certifying their efforts, if any, to notify the adverse party. Any emergency restraining orders issued by the Court shall contain a statement of the injury, why it is irreparable, and why the order was granted without notice. No restraining order shall be issued unless a complaint in writing shall have been filed with the Court. An emergency restraining order shall expire by its own terms not more than thirty-five (35) days from the date of its issuance and this fact shall be shown on the face of the order. Such an order may be renewed for a like period of time, but not more than once. Such renewal must be requested before the expiration of the initial order and shall be granted only upon notice to the opposing party. An emergency restraining order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

Section 20.08.02 Preliminary Injunction

Following opportunity for hearing either on affidavits or on testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party and after notice and opportunity to be heard by the opposing party or parties.

Section 20.08.03 Bond

The Court may, in its discretion, require a bond of the party seeking an emergency restraining order or preliminary injunction to protect the party to be restrained in the event that such relief ultimately is determined to be unjustified; provided, however, that no such bond shall be required of the Jamestown S'Klallam Tribe if it is the petitioner.

Chapter 20.09
Enforcement of Judgments

Sections:

- Section 20.09.01 Definitions**
- Section 20.09.02 Jurisdiction and Applicability**
- Section 20.09.03 Execution; Statute of Limitations**
- Section 20.09.04 Types of Execution**
- Section 20.09.05 Application for Order**
- Section 20.09.06 Written Response of Judgment Debtor**
- Section 20.09.07 Hearing on Application**
- Section 20.09.08 Garnishment Order**
- Section 20.09.09 Obligation of Garnishee**
- Section 20.09.10 Costs of Garnishment**
- Section 20.09.11 Attachment Order**
- Section 20.09.12 Recovery Order**
- Section 20.09.13 Service of Orders**
- Section 20.09.14 Notice to Judgment Debtor of Execution of Court Order**
- Section 20.09.15 Exemptions from Attachment and/or Garnishment**
- Section 20.09.16 Claim of Exemption; Waiver**
- Section 20.09.17 Appraisal and Sale of Attached Property**
- Section 20.09.18 Redemption of Attached Property**
- Section 20.09.19 Foreign Judgments**
- Section 20.09.20 Judgments and Decedents' Estates**
- Section 20.09.21 Applicability of Federal Administrative Garnishment Laws and Regulations**

Section 20.09.01 Definitions

The following definitions shall apply to this Chapter:

- A. "Assets" means the money, personal property or other things of value that a Judgment Debtor possesses or has a right to, now or in the future, which may be executed against by the Tribal Court, upon application of a Judgment Creditor, to satisfy a debt incurred by the Judgment Debtor;
- B. "Debt" means a sum of money due by certain and express agreement, including a specified sum of money owing to one party from another, including not only obligations of a Judgment Debtor to pay, but a right of a Judgment Creditor to enforce and receive such payment;
- C. "Defendant" means a party being sued under this Chapter by a Plaintiff. In actions related to Attachment or Garnishment, the Defendant may be known alternatively as the Judgment Debtor;
- D. "Disposable Wages" means that part of the Wages of an individual left after deduction of federal tax withholding and any other amounts required by applicable law to be withheld by the employer;
- E. "Employee" means a person employed by an Employer under any contract of hire, express or implied, oral or written, where the Employer has the power or right to control and direct such individual in return for which such individual receives a salary or wages;
- F. "Employer" means the Tribe, a Tribal Entity or a Third Party Employer;
- G. "Foreign Judgment" means a judgment rendered by a state, including a Washington State court, a federal court or the court of another federally recognized Indian tribe;
- H. "Garnishment" means the judicial method to obtain satisfaction of a judgment by reaching the unpaid past or future Disposable Wages of, or related Assets of, an Employee;

- I. "Judgment Creditor" means a party in whose favor a money judgment has been entered by a court of law, including the Tribal Court, and which has not yet been paid or otherwise satisfied by the Judgment Debtor;
- J. "Judgment Debtor" means a party against whom judgment has been recovered and which remains unsatisfied;
- K. "Plaintiff" means a party suing a Defendant under this Chapter. In actions related to Attachment or Garnishment, the Plaintiff may be known alternatively as the Judgment Creditor;
- L. "Third Party Employer" means a business entity, whether for-profit or not-for-profit, that is qualified to do business on the trust or reservation lands of the Tribe;
- M. "Tribal Entity" means a Tribally chartered business entity, program or a political subdivision of the Tribe;
- N. "Tribal Non-Fee Land" means the trust and reservation lands of the Tribe; and
- O. "Wages" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus or otherwise, by an Employer.

Section 20.09.02 Jurisdiction and Applicability

- A. The Tribal Court shall have jurisdiction over any action brought by a party for the Attachment, Recovery or Garnishment of the Assets of another party pursuant to the provisions of this Chapter. In the case of Attachment and Garnishment actions, the moving party may be denominated as a Judgment Creditor and the other party as a Judgment Debtor; and
- B. The provisions of this Chapter shall not apply to Attachment, Recovery or Garnishment actions that arise, if at all, under the provisions of either Title 6 - Fishing or Title 9 - Hunting of the Tribal Code, provided, however, that to the degree such actions are not addressed in those titles, then the provisions of this Chapter shall apply.

Section 20.09.03 Execution; Statute of Limitations

When a Tribal Court judgment has not been paid or otherwise satisfied by a Judgment Debtor, the Judgment Creditor shall be entitled to have the judgment enforced by the Tribal Court. Execution shall be allowed on any such judgment commencing not less than ten (10) days nor longer than three (3) years from the date judgment was entered.

Section 20.09.04 Types of Execution

Execution of a Tribal Court order against a Judgment Debtor may take the form of an Attachment, Recovery or Garnishment, subject to the exemptions set forth in section 20.09.15 of this Chapter.

Section 20.09.05 Application for Order

The Judgment Creditor shall file an application for the desired order with the Court. The application shall contain the following information:

- A. The name and address of the Judgment Debtor, date of entry of judgment, the amount of the judgment, any amount paid on the judgment, the amount currently owing on the judgment, including interest, and, if it is a foreign judgment, the name and location of the Court, the case number and the date of the registration of the judgment in the foreign court;
- B. Whether any court orders have previously been issued to satisfy the same judgment and whether any such orders remain outstanding;
- C. The amount of expenses incurred, and/or expected to be incurred, by the Judgment Creditor to satisfy the judgment;

- D. The name of the Judgment Creditor and their address or the address of their attorney or spokesperson; and
- E. A statement of the type of execution order sought (i.e., Attachment, Recovery or Garnishment), the name and address of the party on whom it is to be served (i.e., the Judgment Debtor, their attorney, or both), and a description of the property or other things of value to be attached or the monies to be garnished.

Section 20.09.06 Written Response of Judgment Debtor

Within twenty (20) days of receipt of the notice from the Tribal Court that an application for an Attachment and/or Garnishment order under this Chapter has been filed, the Judgment Debtor shall file with the Court a written response to the application containing: a) an admission to or denial of any of the facts in the application, b) an explanation of the facts denied, c) a statement of exempt property or money under the terms of section 20.09.15 of this Chapter, and d) any other defenses to the request for Garnishment and/or Attachment.

Section 20.09.07 Hearing on Application; Failure to Appear

- A. After reasonable notice to the both parties, the Tribal Court shall hold a hearing on the Judgment Creditor's application. At the hearing, the Court shall determine whether an Attachment, Recovery or Garnishment judgment should be issued, and if so, what Assets of the Judgment Debtor are available for execution in accordance with this Chapter;
- B. Upon failure of the Judgment Debtor to appear for a scheduled hearing, the Court may render a default judgment against them, provided evidence is offered that the Judgment Debtor was validly served with the notice of the hearing and reasonable proof is offered substantiating the Judgment Creditor's claim for relief; and
- C. Upon failure of the Judgment Creditor to appear for the scheduled hearing, the Court shall dismiss the action for failure to prosecute. Such dismissal shall not bar the Judgment Creditor from refileing its complaint with the Court, unless the Court, in its discretion, orders otherwise. Dismissal with or without prejudice shall also be at the Court's discretion.

Section 20.09.08 Garnishment Order

After a finding of indebtedness by one party to another and a finding that the Assets to be garnished belong to the Judgment Debtor and are under the control of a third party, the Tribal Court may issue a Garnishment order. The Garnishment order shall be directed to the third party garnishee in possession of the garnished Assets and shall direct them to pay them over to the court, up to the amount of the judgment, subject to the exemptions contained in section 20.09.15 of this Chapter.

Section 20.09.09 Obligation of Garnishee

Upon receipt of an order of Garnishment, a third party garnishee shall pay over to the Court any garnished Assets in their possession, subject to the exemptions set out in section 20.09.15 of this Chapter, up to the amount of the judgment. Failure to respond to the order of Garnishment, or disbursal of the garnished Assets to any person, other than the Court following receipt of the order, may subject the garnishee to appropriate sanctions, as determined by the Court.

Section 20.09.10 Costs of Executing Judgments

The Judgment Debtor or defendant shall pay all costs of enforcing and executing judgments granted pursuant to this Chapter and the Court shall order the particular amount to be paid as part of any order.

Section 20.09.11 Attachment Order

After a finding by the Tribal Court that there is a valid indebtedness that remains unsatisfied by a Judgment Debtor and that there are Assets which can be attached to satisfy that debt that are under the jurisdiction of the Tribe, the Tribal Court may issue an Attachment order. Such order shall direct the Tribe's enforcement officers to seize the described Assets and hold them for sale, at the discretion of the Court.

Section 20.09.12 Recovery Order

- A. When a moving party (“Plaintiff”) has received a judgment from the Tribal Court allowing them to recover personal property from another party (“Defendant”) and the Defendant has failed to deliver possession of the personal property to the Plaintiff within the time limit prescribed in the judgment, the Plaintiff may seek a Recovery order from the Court for such property;
- B. The application for a Recovery order shall describe the basis for Plaintiff’s claim, the personal property involved in enough detail to enable enforcement officers to take possession of the specified personal property from a wrongful holder and deliver possession thereof to the Plaintiff; and
- D. On issuance of a Recovery order, such order shall be served on the party against whom it is issued, with a copy to the Tribal law enforcement officer charged with enforcement of the order.

Section 20.09.13 Service of Orders

Orders of Attachment, Recovery or Garnishment shall be served in the same manner as the summons and complaint provided for under this Title. Proof of service shall be filed with the Court.

Section 20.09.14 Notice to Judgment Debtor of Execution of Court Order

- A. When attached Assets have been paid or turned over to the Court or seized and delivered to the Court in accordance with this Chapter, the Court, within fourteen (14) days of receipt, shall give the Judgment Debtor a written notice of the following:
 - 1. That the described Assets are in the possession of the Court pursuant to a court order;
 - 2. That the Assets will be sold at a public auction on a date specified in the notice and the proceeds applied to the judgment;
 - 3. That the Judgment Debtor has the right to contest the execution order by filing an appropriate pleading with the Court requesting a hearing; and
 - 4. That the Judgment Debtor has the right to satisfy the judgment and obtain the return of the Assets upon terms and conditions set by the Court;
- B. When a Garnishment order has been executed, the Court, within fourteen (14) days of confirmation from a third party garnishee that they have implemented the order, shall notify the Judgment Debtor that:
 - 1. The Garnishment is in effect and the date it went into effect;
 - 2. They may have a right to contest the execution order by filing an appropriate pleading with the Court requesting a hearing; and
 - 3. They have the right to satisfy the judgment and obtain a release of the Garnishment Order; and
- C. When a Recovery order has been executed pursuant to this Chapter, the Court will notify the Defendant within fourteen (14) days of such execution and shall inform them that they have no further rights under this Chapter.

Section 20.09.15 Exemptions from Attachment and/or Garnishment

In the execution of any judgment for Attachment and/or Garnishment, the following shall be exempt from execution, except as specifically provided herein:

- A. All wearing apparel of every person in the family, except that only Five Hundred Dollars (\$500.00) in value in furs, jewelry, beadwork, and personal ornaments for any one person shall be exempt;
- B. Items of bona fide religious or cultural significance;

- C. Any tools, instruments and materials used to carry out one's primary trade;
- D. Provisions and fuel for the comfortable maintenance of the home for three (3) months' time;
- E. Any real property;
- F. Seventy-five percent (75%) of weekly disposable wages (gross wages minus deductions required by law, but not including voluntary payroll deductions), salary or other compensation regularly paid for personal services per pay period; or
- G. A motor vehicle not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) in value.

No property shall be exempt under this section from execution issued upon a judgment for all or any part of the purchase price thereof or for any tax levied upon such property, if the property has been specifically pledged as security to the Judgment Creditor.

Section 20.09.16 Claim of Exemption; Waiver

When a Judgment Debtor claims personal property to be exempt, they shall deliver to the enforcement officer executing the order, or to the Court, a list of property owned or claimed by them, and shall verify such a list by affidavit. They shall also deliver to such enforcement officer, or the Court, a separate list of items of the property they claim to be exempt. Failure to claim items as exempt shall result in a waiver of the exemption, provided, that the judgment debtor shall be served with the copy of the exemption section of this Title at the time of the service of the writ of execution.

Section 20.09.17 Appraisal and Sale of Attached Property

- A. Appraisal of Property. Immediately upon receipt of attached property, the Court shall cause it to be appraised by three disinterested persons, one selected by the Judgment Creditor, one by the Judgment Debtor, and one by the Court, and all to be admonished by the Court to make an impartial appraisal. If either party fails to select an appraiser, the Court shall make the selection. However, the parties may agree on one appraiser, and may agree to allow the Court to select the one appraiser. If a majority of the appraisers cannot agree on an appraisal within forty-eight (48) hours, the Court may appoint new appraisers. Appraisers must be qualified by knowledge or experience for the type of property under consideration;
- B. Notice of Sale. The Court shall, within five (5) days after appraisal, post a notice at the Tribal Center at 1033 Old Blyn Hwy., Sequim, WA 98382, and publish in the Tribal citizen newsletter and a local newspaper, a notice of sale containing a full description of the property to be sold, its appraised value, the names of the parties to the judgment, and the time and place of sale;
- C. Time and Place of Sale. The sale must be held not less than ten (10) days nor more than thirty (30) days after posting and publication of the notice. The place of sale shall be a convenient public location on the trust or reservation lands of the Tribe, or at another location, as the Court deems appropriate;
- D. Procedure of Sale. The Court shall sell the property publicly to the highest bidder for cash, but not for less than the appraised value. The high bidder shall pay over the amount of their bid to the Court and receive the property. The Court shall issue the purchaser a certificate of sale which shall describe the property, the amount paid, and the Judgment Debtor's redemption rights, if any. If the high bidder refuses to pay, the Court may again sell the property in accordance with this Chapter, and any further bids from the bidder refusing to pay, in the previous bidding, shall be rejected;
- E. Private Sale If the Court is unable to sell the property for its appraised value, the Court may hold it for fourteen (14) days after the date of the attempted public sale during which time it may sell it to the first person offering to purchase at the appraised value in cash. If the Court is unable to sell the property privately, the Court shall return it to the Judgment Creditor, but if the debt is less than the appraised price, the Court shall not deliver the property until the Judgment Creditor pays the Judgment Debtor the excess in

cash. If, at the end of fourteen (14) days after the attempted private sale, the property remains unclaimed by the Judgment Creditor, the Court shall return it to the Judgment Debtor;

- F. Proceeds of Sale. The Court shall first pay the costs of the sale and any outstanding Court costs. The remainder of the proceeds up to the amount of the judgment shall be paid to the Judgment Creditor. If any amount remains, the amount shall be returned to the Judgment Debtor; and
- G. Deficiency. If the proceeds of the sale are not sufficient to satisfy the judgment, the Judgment Debtor continues to be liable for any deficiency. The Judgment Creditor may use any methods provided for in this Chapter to collect the deficiency.

Section 20.09.18 Redemption of Attached Property

The Judgment Debtor shall have the right, any time before the sale of their property, to redeem said property by paying to the Court the total amount of the judgment plus any outstanding court costs and the costs of Attachment to date. The Court may restrain the commission of waste or changing the character of the property during the redemption period, but the purchaser may use the property in the manner it has been previously used, make necessary repairs thereon, and otherwise make reasonable use of it.

Section 20.09.19 Foreign Judgments; Statute of Limitations

- A. Execution of a foreign judgment shall be allowed under this Chapter once the foreign judgment is registered with the Tribal Court, provided the foreign judgment has been registered with the Tribal Court within one (1) year of its issuance in the foreign court. The Tribal Court shall take into consideration the following factors in determining whether to give a foreign court's order full faith and credit:
 - 1. Did it have jurisdiction over both the alleged Judgment Debtor and the subject matter;
 - 2. Did it grant the alleged Judgment Debtor due process, as required by applicable law;
 - 3. Does the foreign court provide for recognition and implementation of orders, judgments and decrees issued by the Tribal Court;
 - 4. Was the judgment obtained by extrinsic fraud;
 - 5. Is the cause of action or defense on which the judgment in question was based repugnant to the public policy of the Tribe;
 - 6. The proceeding in the foreign court was contrary to an agreement between the parties as to how the dispute was to be resolved, such as an agreement to use mediation or arbitration;
 - 7. Was there an attempt to enforce the judgment in the foreign jurisdiction and, if not, why not; or
 - 8. Does the judgment of the foreign court conflict with another final or conclusive judgment of a court of competent jurisdiction;
- B. The foreign judgment against an employee of the Tribe or one of its entities shall not be refused recognition for lack of personal jurisdiction if: 1) the defendant was served personally in the foreign jurisdiction, 2) the defendant personally appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over them; and 3) the defendant prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
- C. A party seeking registration of a foreign judgment shall: 1) file a certified copy of the judgment with the Clerk of Court, 2) pay a Twenty-five Dollar (\$25.00) filing fee and 3) serve a copy of the notice of registration with the judgment debtor. The Tribal Court shall then conduct an inquiry into the validity of the foreign judgment. If the foreign judgment is found to be valid and is in keeping with the public policy of

the Jamestown S'Klallam Tribe, the Court shall recognize and register the foreign judgment, which may then be executed pursuant to the provisions of this Chapter; and

- D. If the Judgment Debtor satisfies the Court either that an appeal is pending or that they are entitled to and intend to appeal from the foreign judgment, the Court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the Judgment Debtor to prosecute the appeal.

Section 20.09.20 Judgments and Decedents' Estates

A judgment shall be considered a lawful debt in all proceedings held by the U.S. Department of Interior or by the Tribal Court to distribute decedents' estates after completion of probate proceedings.

Section 20.09.21 Applicability of Federal Administrative Garnishment Laws and Regulations

It is the policy of the Tribe, for itself and for its entities, to comply with federal government administrative garnishment ("AWG") orders issued pursuant to such authorities as the Debt Collection Improvement Act of 1996 ("DCIA") and their implementing regulations, as amended from time-to-time, provided that such federal garnishment request is not in conflict with Tribal law or custom. Upon receipt of an AWG order, the relevant Tribal employer will:

- A. Verify an employee's employment;
- B. Complete and return the applicable forms cited in the order;
- C. Deduct the wage garnishment amount from the employee's wages on the first payday after receipt of the order;
- D. Continue deductions until the Tribal employer receives notification from the relevant federal government department or agency to suspend or discontinue deductions; and
- E. Send withheld monies to the address listed in the wage garnishment order within three (3) days of withholding.

Chapter 20.10
Civil Forfeiture Proceedings

Sections:

Section 20.10.01 Property Which May Be Forfeited

Section 20.10.02 Nature of Forfeiture

Section 20.10.03 How to Begin a Forfeiture Proceeding

Section 20.10.04 Order for Seizure of Property

Section 20.10.05 Seizure of Property Before Petition is Filed

Section 20.10.06 Inventory of Property and Notice of Seizure

Section 20.10.07 Release of Property Pending Forfeiture Trial

Section 20.10.08 Procedures and Burdens of Proof

Section 20.10.09 Disposition of the Property

Section 20.10.01 Property Which May Be Forfeited

The Tribal Court may order forfeiture of the following kinds of property located within its jurisdiction:

- A. Property which is deemed to be contraband by the Tribal Code;
- B. Property being used to violate, or is in violation, of the Tribal Code; and
- C. Property otherwise subject to forfeiture by specific provision of the Tribal Code. If a specific provision of the Tribal Code sets forth its own forfeiture proceedings, they shall be controlling and the Tribal Court may rely on such additional provisions as justice may require.

Section 20.10.02 Nature of Forfeiture

Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited.

Section 20.10.03 How to Begin a Forfeiture Proceeding

In order to begin a forfeiture proceeding, the Tribe shall file a Petition for Forfeiture in the Tribal Court and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue.

Section 20.10.04 Order for Seizure of Property

Any time after a Petition for Forfeiture is filed, if the Tribe demonstrates to the Court that there is probable cause to believe the property named is subject to forfeiture under Tribal law, the judge may issue an order which directs Tribal enforcement officers to seize and hold the property pending resolution of the forfeiture suit.

Section 20.10.05 Seizure of Property before Petition is Filed

In the following circumstances, the Tribe, through its enforcement officers, may seize any property which is subject to forfeiture before a Petition for Forfeiture is filed or before an order of seizure has been obtained:

- A. When the Tribal Code or regulation allows immediate seizure;
- B. When the property presents an urgent or immediate threat or danger to persons, property, or wildlife within the Tribe's jurisdiction; or
- C. When the Tribe has probable cause to believe that the property is subject to forfeiture and is likely to be removed from the Tribe's jurisdiction if it is not seized immediately.

Whenever the Tribe seizes property before it has filed and served a Petition for Forfeiture, it must file and serve the petition no later than five (5) days after the seizure has taken place. At the time of filing, or as soon after that as the judge can schedule a hearing, the Tribe shall request an order of seizure as provided in Section 20.10.04 of this Title.

Section 20.10.06 Inventory of Property and Notice of Seizure

The Tribal enforcement officer who seizes property pursuant to these provisions shall prepare a notice, with a complete list, which states the time and place of seizure, the name and address of the owner, if known, and the authority for seizure. The officer shall promptly deliver a copy of the notice and list to the Court, to the owner of the property, and to the person in whose possession the property was found. If the owner of the property cannot be identified or located, the officer shall post the notice and list at the place where the property was found and at the Tribal Government Center at 1033 Old Blyn Hwy., Sequim, WA 98382.

Section 20.10.07 Release of Property Pending Forfeiture Trial

Pending the forfeiture trial, a person, who presents satisfactory proof that they own the property which has been seized, may gain possession of the property by posting a bond or deposit with the Tribe. The bond or deposit shall be in the amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the Tribal Court. The Court shall order the bond or cash forfeited if it is shown by a *preponderance of the evidence* that the owner used the property in violation of Tribal law after posting the bond. If the Court ultimately rules in the Tribe's favor on the Petition for Forfeiture, the Court shall order either the bond or the property itself forfeited.

Section 20.10.08 Procedures and Burdens of Proof

Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except that in cases where the property owner does not post bond and regain possession of the property, trial of the principle issue in the case must be held no later than thirty (30) days after the Petition for Forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.

Section 20.10.09 Disposition of the Property

If the Court rules in favor of the property owner, all property seized or bonds or cash deposited shall promptly be returned to the owner. If the Court rules in favor of the Tribe and orders the property forfeited, the Court's order shall transfer title to the property to the Jamestown S'Klallam Tribe. The Tribe may then dispose of the property as it sees fit.

Chapter 20.11 Abandonment of Property

Sections:

Section 20.11.01 Scope

Section 20.11.02 Notice

Section 20.11.03 Declaration of Abandonment

Section 20.11.01 Scope

This Chapter sets forth the procedure for the Tribe to seek a declaration of abandonment from the Tribal Court and for disposal of property abandoned on the trust and reservation lands of the Tribe.

Section 20.11.02 Notice

Unless otherwise specified under this Title, the Tribe shall notify the last known owner of any property apparently abandoned on its trust and reservation lands that it is seeking a declaration of abandonment for the purpose of disposing of the property. The notice shall include the location and description of the property, the date it was apparently abandoned, the address and telephone number, where additional information is available and a statement that if the property is not claimed within forty-five (45) days the Tribe will request the Tribal Court to declare it to be abandoned and that it will dispose of the property. The notice shall be sent by certified mail, return receipt requested, to the person's last known address.

Section 20.11.03 Declaration of Abandonment

If the last know owner makes no attempt to claim the property within the time specified in the notice, the Tribe may file an action in the Tribal Court for Declaration of Abandonment. The procedure shall conform to the rules for civil actions under this Title. If the Court finds that the property has been abandoned, it shall issue a declaration to that effect and shall authorize the Tribe to dispose of the property as it sees fit.

Chapter 20.12
Codification and Amendments

Sections:

Section 20.12.01 Date of Codification

Section 20.12.02 Amendments

Section 20.12.01 Date of Codification

Title 20 was codified at a Tribal Council Meeting held on November 8, 2005 by Resolution #38-05.

20.12.02 Amendments

Title 20 was amended on July 24, 2012 by Resolution #28-12. Title 20, Chapter 9, was amended on July 11, 2013 by Resolution #27-13. Title 20 was amended on February 25, 2015 by Resolution #08-15.