

# TABLED

CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

Date: MAY 02 2024

ORDINANCE NO. 185 (2024)

*An ordinance amending C.C. Sec. 91-8 to state that a pawnbroker cannot take any interest in a possessory holding and any improvements thereon as collateral for a loan or for resale.*

WHEREAS, Chapter 91 of the Cherokee Code governs pawnbrokers and pawn transactions of personal property within the Qualla Boundary establishing the licensure requirements to become a pawnbroker, the fees and interests of loans related to pawn transactions, and the limitations of certain pawn transactions; and

WHEREAS, there are no laws in the Cherokee Code governing the pawning of Tribal possessory holdings nor regulating the transactions of possessory holdings; and

WHEREAS, because there are no laws regulating the pawning of possessory holdings or placing liens on real property, it has led to instances of Tribal members using a possessory holding as collateral for a loan in a pawn transaction, losing the possessory holding for failure to repay the loan, and having no recourse to have their possessory holding returned to them, or alternatively obtain any money from the resale of the possessory holding above the amount that is utilized to satisfy the loan; and

WHEREAS, due to predatory pawn practices involving possessory holdings, Sec. 91-8 governing the limitations of pawn transactions should be amended to state that a pawnbroker cannot take possessory holdings, or any improvements located thereon, as collateral for a loan or for resale.

NOW THEREFORE BE IT ORDAINED by the Eastern Band of Cherokee Indians in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapter 91 is hereby amended as follows:

**Sec. 91-1. - Definitions.**

As used in this chapter, the following definitions shall apply:

- (a) *Pawn or pawn transaction* means a written bailment of personal property as security for a debt, redeemable on certain terms within 180 days, unless renewed, and with an implied power of sale on default.
- (b) *Pawnbroker* means any person engaged in the business of lending money on the security of pledged goods and who may also purchase merchandise for resale from dealers and traders.
- (c) *Pawnshop* means the location at which, or premises in which a pawnbroker regularly conducts business.

1 (d) *Person* means any individual, corporation, joint venture, association, or any other legal entity,  
2 however organized.

3 (e) *Pledged goods* means tangible personal property which is deposited with, or otherwise actually  
4 delivered into, the possession of a pawnbroker in the course of his business in connection with  
5 a pawn transaction.

6 (f) *Possessory holding* means an area or parcel of Tribal land that has been assigned to or is  
7 recognized by the Tribal government as being the holding of the Tribe, a Tribal member, or  
8 group of Tribal members, or their first-generation heirs. The assignment or recognition grants  
9 to the holder of the interest certain rights, enumerated in Tribal law, in the possessory interest.

10 (fg) *Purchase* means any item purchased from an individual for the purpose of resale whereby the  
11 seller no longer has a vested interest in the item.

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13 [Sections 91-2 through 91-7 remain unchanged]

14  
15 Sec. 91-8. Limitations of transactions.

16  
17 [subsection (a) remains unchanged]

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19 (b) A pawnbroker shall not:

20 (1) Accept a pledge from a person under the age of 18 years;

21 (2) Make any agreement requiring the personal liability of a pledgor in connection with a  
22 pawn transaction;

23 (3) Accept any waiver, in writing or otherwise, of any right or protection accorded a pledgor  
24 under this chapter;

25 (4) Fail to exercise reasonable care to protect pledged goods from loss or damage;

26 (5) Fail to return pledged goods to a pledgor upon payment of the full amount due the  
27 pawnbroker on the pawn transaction. In the event such pledged goods are lost or  
28 damaged while in the possession of the pawnbroker, it shall be the responsibility of the  
29 pawnbroker to replace the lost or damaged goods with merchandise of like kind and  
30 equivalent value. In the event the pledgor and pawnbroker cannot agree as to the  
31 replacement, the pawnbroker shall reimburse the pledgor in the amount of the value  
32 agreed upon pursuant to section 91-5(b)(9);

33 (6) Take an article in pawn, pledge, or as security from any person, which is known to such  
34 pawnbroker to be stolen, unless there is written agreement with local police;

35 (7) Sell, exchange, barter, or remove from the pawnshop any goods pledged, pawned, or  
36 purchased earlier than 48 hours after the transaction, except in case of redemption by  
37 pledgor or items purchased for resale from wholesalers;

38 (8) Operate more than one pawnshop under one license, and such shop must be at a  
39 permanent place of business; ~~or~~

40 (9) Take as pledged goods any manufactured mobile homes, recreational vehicle, or motor  
41 vehicle other than a motorcycle; ~~or~~ -

42 (10) Take a possessory holding or other interest in real property, and/or improvements  
43 located thereon, as collateral for security of a loan, nor purchase for resale a possessory  
44 holding or other interest in real property and improvements located thereon.

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1 BE IT FINALLY ORDAINED that all ordinances that are inconsistent with this ordinance are  
2 rescinded, and that this ordinance shall become effective when ratified by the  
3 Principal Chief.

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5 *Submitted by Tribal Realty Services Office*