TITLE 19. DOMESTIC RELATIONS

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TITLE 19. DOMESTIC RELATIONS

CHAPTER 1. MARRIAGE

SECTION 19-1-1. Marriage License.

(a) No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Clerk of the Tribal Court.

(b) Upon payment of a $3.00 fee, the Clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Domestic Relations Code.

(c) The Clerk shall keep a record of all marriage licenses and certificates issued.

(d) The marriage license, properly endorsed by the person performing the marriage, shall be returned to the Clerk who shall issue a marriage certificate to the parties.

SECTION 19-1-2. Existing Marriages.

(a) All marriages performed other than as provided for in this Domestic Relations Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

(b) All marriages performed on the Reservation prior to the effective dates of this Code, including those perfected according to any Tribal custom, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the Clerk by affidavit or otherwise of the validity of their marriage, and payment of a $3.00 fee.

SECTION 19-1-3. Persons Who May Marry.

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(a) They are at least 18 years old or 14 years of age or over but less than 18 years of age, and have the written consent of their parents or guardians, properly notarized, to marry;

(b) At least one of the persons to be married is an enrolled member of the Tribe;

(c) Both parties to the marriage have obtained a blood test to detect venereal disease within 30 days prior to the marriage and such test results were negative. A certificate of the test results shall be presented to the clerk before any license is issued.

SECTION 19-1-4. Who May Perform Marriages.

(a) A marriage may be solemnized on the Reservation by any of the following

(1) recognized clergymen or persons recognized by their religions as having authority to marry;

(2) a judge of the Tribe;

(3) any person recognized by any state law as having authority to marry.

(b) No marriage solemnized before any person professing to have authority to marry shall be invalid for want of such authority, if consumated in the belief of the parties or either of them that such person had such authority and that they have been lawfully married.

SECTION 19-1-5. Marriage Ceremony.

No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he thereafter declares them to be husband and wife.

SECTION 19-1-6. Void and Voidable Marriages.

(a) Marriages between ancestors and their descendants, between brothers and sisters, of half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

(b) Marriages between a person who is at the time of the marriage, married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a Court of Competent jurisdiction if the party previously married:

(1) actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or

(2) actually believed, in good faith, that his or her prior spouse was dead.

(c) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the children of such marriage born or conceived prior to the voiding or receipt of notice of the invalidity of the marriage for any reason shall be the legitimate children of both parents.

(d) If either party to a marriage is incapable as a result of some physical cause to enter into the marital state in regard to sexual relations and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or coercion, the marriage is voidable.

CHAPTER 2. ANNULMENT

SECTION 19-2-1. Grounds for Annulment.

A marriage may be annulled for any of the following causes existing at the time of marriage:

(a) That the party in whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other as husband or wife;

(b) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

(c) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband or wife;

(d) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

(e) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with they other as husband or wife;

(f) Impotence which continues and appears to be incurable.

SECTION 19-2-2. Action to Annul - Parties and Limitations.

An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

(a) For causes mentioned in Subsection 19-2-1 (a), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;

(b) For causes mentioned in Subsection 19-2-1 (b) by either party during the life of the other, or by such former husband or wife;

(c) For causes mentioned in Subsection 19-2-1 (c) by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

(d) For causes mentioned in Subsection 19-2-1 (d) by the party injured, within two years after the

discovery of the facts constituting a fraud;

(e) For causes mentioned in Subsection 19-2-1 (e), by the injured party, within four years after the marriage;

(f) For causes mentioned in Subsection 19-2-1 (f) by the injured party, within two years after the marriage.

SECTION 19-2-3. Legitimacy of Children.

When a marriage is annulled for any reason, other than for fraud in that the wife is pregnant with a child from a man other than the husband, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

SECTION 19-2-4. Conclusiveness of Judgment of Annulment.

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

CHAPTER 3. DIVORCE

SECTION 19-3-1. Divorce and Annulment Procedure.

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final decree of divorce shall restore the parties to the status of unmarried persons.

SECTION 19-3-2. Residency Requirement.

In order to maintain an action for divorce or annulment in the Omaha Tribal Court, at least one party to the marriage must be an enrolled member of the Tribe and have lived within the territorial jurisdiction of the Tribal Court for at least six weeks prior to bringing the action, except that an annulment may be granted where either party lives within the territorial jurisdiction of this Court and the marriage was performed under authority of this Code.

SECTION 19-3-3. Grounds for Divorce.

A divorce may be granted for any of the following causes:

(a) Impotency of the defendant at the time of the marriage where such impotency continues to the time of commencement of the action;

(b) Adultery, unless it should appear that it was condoned by the party complaining;

(c) Willful, continued and abstinate desertion of the plaintiff for more than one (1) year immediately preceding commencement of the action;

(d) Willful neglect of the defendant to provide for the plaintiff the common necessities of life for a period of six (6) months;

(e) Habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;

(f) Conviction and sentence of at least six (6) months to jail of the defendant of a Class A offense under this Code, or of a felony and sentence of at last one (1) year of the defendant to any penitentiary and not pardoned before being sent there;

(g) Habitual cruel treatment of the plaintiff by the defendant to the extent of causing bodily injury or great mental distress to the plaintiff;

(h) When the parties have lived apart without cohabitation for a period of three consecutive years, except under a decree of separate maintenance;

(i) Permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudged insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent; further, no divorce shall be granted on this ground unless a guardian ad litem has been appointed to represent the defendant in the divorce proceedings;

(j) Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy; or

(k) Incompatibility (No Fault)

(1) "Incompatibility" exists when, because of discord or conflict of personalities, the legitimate ends of the marriage relationship are destroyed and there is no reasonable expectation of reconciliation.

(2) If the parties to a divorce proceeding represent to the Court by sworn pleading(s) that incompatibility exists and that they desire a divorce on such ground, the Court shall, without requiring an evidentiary hearing on the question of incompatibility, enter an appropriate decree of divorce, which decree shall also dispose of, or reserve for later disposition, all matters respecting property, debts, custody, visitation, support, alimony and such related issues as the Court may deem appropriate.

(3) If any party to a divorce proceeding represents to the Court that "incompatibility" of the parties does not exist, no decree of divorce on such ground may be entered without an evidentiary hearing upon which the Court will determine whether the incompatibility of the parties has been proven.

SECTION 19-3-4. Limitations.

A divorce must be denied in all cases when there is an unreasonable lapse of time before the commencement of the action, or two years have passed since the grounds became or should have become known to the complaining party and subsequent actions thereto on the part of the complainant indicate condonation of the activity or situation, provided that this limitation shall not apply to a divorce proceeding on grounds of incompatibility.

SECTION 19-3-5. Right of Husband to Divorce.

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

SECTION 19-3-6. Alimony and Suit Money; Restraint.

(a) The court may order either party to pay the clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.

(b) The court may restrain either, party from doing certain acts harmful to the other or to the children, or the property of either, during the pendency of the divorce proceedings.

SECTION 19-3-7. Pleadings; Findings; Decree.

The complaint shall be in writing and signed by the plaintiff or the plaintiff's counsel or attorney. No decree of divorce shall be granted except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence, provided that this requirement of proof shall not be applicable to divorce proceedings resolved:

(a) by consent decree,

(b) by default or

(c) upon admission of the grounds for divorce pleaded.

The decree shall become absolute upon entry.

SECTION 19-3-8. Disposition of Property and Children-Support.

(a) When a decree of divorce is made, the court may make such orders in relation to the children, property and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. subsequent changes or new orders may be made by the court with respect to the custody of the children or the distribution of property as shall be reasonable and proper.

(b) The purpose of alimony is not punitive, but may be ordered by the Court as necessary on a temporary basis to enable a spouse in need to secure additional job skills, education, training or medical treatment toward the end of becoming self-supportive, provided, that in the case of an aged or ill spouse of limited means and limited employment options, permanent alimony may be required as the Court deems just under the circumstances taking into account the relative financial status and obligations of the parties, the duration of the marriage and such other factors as the Court deems appropriate.

SECTION 19-3-9. Custody of Children in Case of Separation.

In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties and the natural, presumption that the mother is best suited to care for young children. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the court may nevertheless, determine the children's custody otherwise, provided, that for any child over the age of 14, the child's preference as to custody shall be binding on the Court.

CHAPTER 4. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

SECTION 19-4-1. Separate Maintenance.

(a) A wife, living in this jurisdiction, who through no fault of her own or by agreement with her husband, is living separate and apart from her husband, or whose husband has deserted her, or has failed to support her when otherwise able to do so, may maintain an action for a decree of separate maintenance.

(b) During the pendency of the action the court may order the husband to pay temporary alimony and suit money as in an action for divorce.

(c) If it appears that the wife is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

SECTION 19-4-2. Property Rights of Married Persons.

(a) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.

(b) Either a wife or a husband can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried

(c) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts obligations of the other spouse solely by reason of marriage to the other spouse.

(d) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.

(e) Nothing in this section shall alter existing inter-spousal or spousal rights and limitations respecting the sale, transfer or encumbrance of real property constituting a marital "homestead" interest under applicable law.

SECTION 19-4-3. Family Expenses.

The expenses of the family and the education of the children are chargeable upon the property of both

husband and wife or either of them, and they may be enforced jointly or separately.

SECTION 19-4-4. Custody of Children and Property.

(a) Absent a judicial decree of property distribution or custody or otherwise, neither the husband or the wife can remove the other or the children from the place of family dwelling without the consent of the other, provided, however, that children may be removed from the family residency by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Court within ten days for an order of the court, modifiable at any time, approving such removal of the children.,

(b) If a husband abandons his wife, the wife is entitled to custody of all children under the age of sixteen (16) unless a court of competent

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