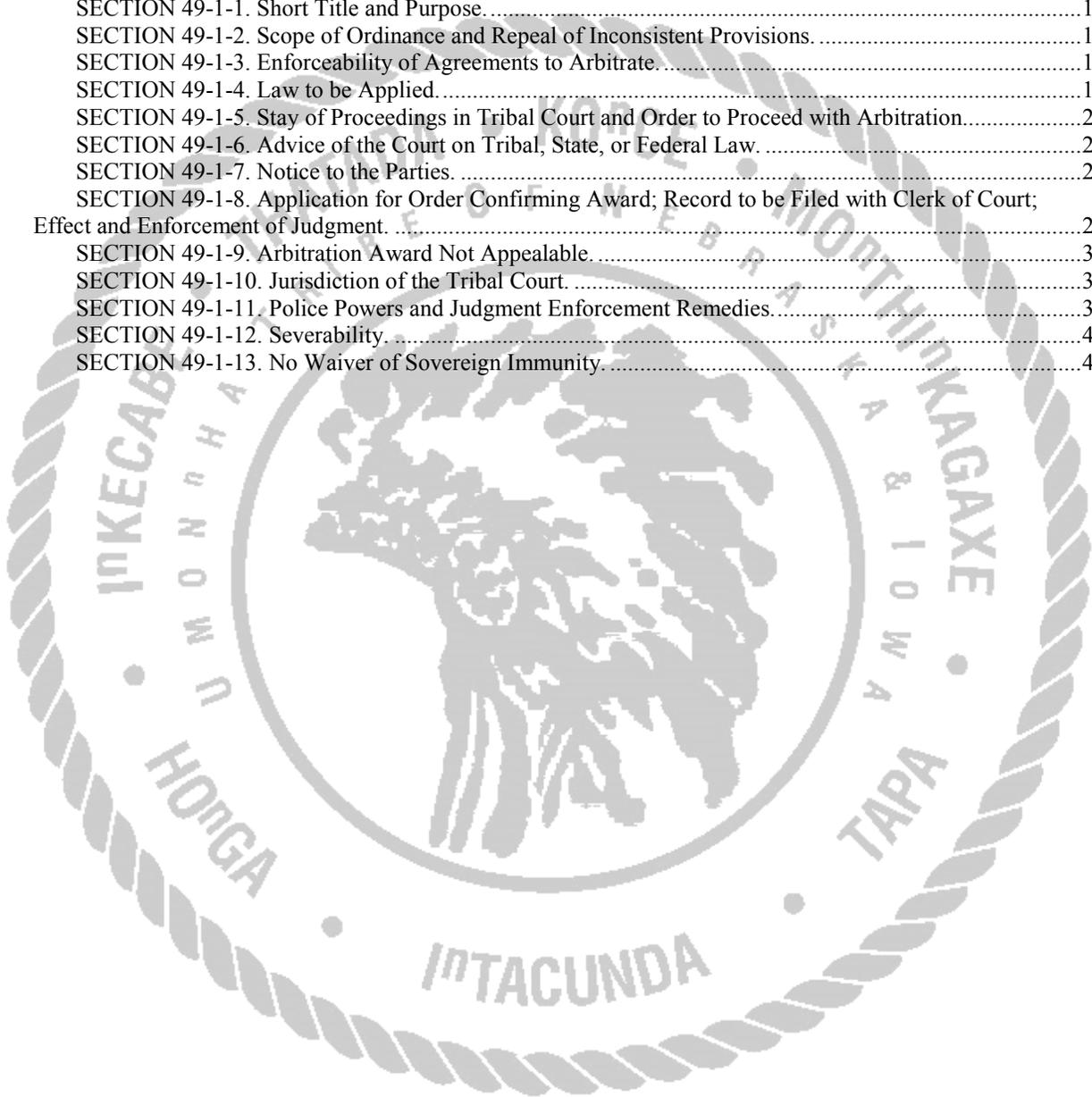


**OMAHA TRIBAL CODE (2013)**

**TITLE 49. ARBITRATION ORDINANCE**

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# OMAHA TRIBAL CODE (2013)

## TITLE 49. ARBITRATION ORDINANCE

### CHAPTER 1. ARBITRATION

*Source: Omaha Tribal Council Ordinance No. 07-68 (6-7-07)*

#### SECTION 49-1-1. Short Title and Purpose.

- (a) Title. This Ordinance is entitled “The Omaha Tribe of Nebraska Arbitration Ordinance.”
- (b) Purpose. It is the purpose of this Ordinance to authorize the arbitration of disputes in contractual agreements and to provide for the enforcement of agreements to arbitrate, and resulting arbitration awards, by the Tribal Court.

#### SECTION 49-1-2. Scope of Ordinance and Repeal of Inconsistent Provisions.

- (a) Scope. This Ordinance applies to any written contract or other instrument entered into by the Omaha Tribe of Nebraska, by any subdivision, instrumentality or agency of the Tribe, or by any other person in a transaction that is subject to the jurisdiction of the Tribe that has been approved by resolution of the Tribal Council, and in which the parties to the contract or other instrument agree to settle any claim, controversy, or other dispute arising out of the contract or other instrument by arbitration.
- (b) Inconsistent provisions. Any prior legislation or other laws of the Tribe that are inconsistent with the purpose and procedures established by this Ordinance are repealed to the extent of any inconsistency.

#### SECTION 49-1-3. Enforceability of Agreements to Arbitrate.

An agreement in any written contract or other instrument, or in a separate writing executed by the parties to any written contract or other instrument, to settle by arbitration any controversy arising out of the contract or other instrument, or any other transaction contemplated by the agreement, shall be valid, irrevocable and enforceable.

#### SECTION 49-1-4. Law to be Applied.

- (a) In any contract or other instrument described in Section 2(a) of this Ordinance, the parties may agree on the jurisdiction whose substantive law will govern the interpretation and enforcement of the contract, instrument or controversy. The parties’ choice of law is valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties to the contract.
- (b) In any proceeding under this Ordinance, whenever the contract or other instrument includes a choice of law provision, the Tribal Court will:
  - (1) apply the substantive law of the jurisdiction selected in that provision; and
  - (2) apply the procedural rules of the Tribal Court, but if no Tribal Court procedural rules exist, the court or other dispute resolution forum will apply the Federal Rules of Civil Procedure (in their most recent form).

No procedural rule of the Tribal Court may, however, bar, unreasonably delay, or impair any action, proceeding, or remedy where that action, proceeding, or remedy would not be barred, unreasonably delayed, or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applied.

- (c) In any proceeding in the Tribal Court relating to a contract or other instrument described in Section 2(a) of this Ordinance, whenever the contract or other instrument does not include a choice of law provision, the Tribal Court will apply the substantive law of the Tribe, including any applicable choice-of-law principles.

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### **SECTION 49-1-5. Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration.**

(a) If any action for legal or equitable relief, or any other proceeding, is brought in the Tribal Court by any party to any contract or instrument described in Section 2(a) of this Ordinance, the Tribal Court may not review the merits of the pending action or proceeding, and must stay the action or proceeding until an arbitration has been had in compliance with the agreement.

(b) A party to any contract or other instrument described in Section 2(a) of this Ordinance claiming the neglect or refusal of another party to the contract to proceed with an arbitration under the terms of the agreement, may apply to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. The Tribal Court will order the parties to arbitration in accordance with the provisions of the contract or other instrument. The question of whether an obligation to arbitrate the dispute at issue exists will be decided by the arbitrator(s).

### **SECTION 49-1-6. Advice of the Court on Tribal, State, or Federal Law.**

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may apply to the Tribal Court for advice on any question of Tribal law or state or federal law arising in the course of the arbitration; so long as the parties agree in writing that the advice of the Court is final as to the question presented and that it binds the arbitrator(s) in rendering any award. The arbitrator(s) may apply to any state or federal court of competent jurisdiction for advice on any question of state or federal law arising in the course of the arbitration so long as the parties agree, in writing, that the advice of the state or federal court will be final as to the question presented, and that it shall bind the arbitrator(s) in rendering any award.

### **SECTION 49-1-7. Notice to the Parties.**

An arbitration award must be in writing and signed by the arbitrator(s). The arbitrator(s) must provide written notice of the award to each party by certified or registered mail, return receipt requested.

### **SECTION 49-1-8. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.**

(a) At any time within one year after an arbitration award has been rendered and the parties to the arbitration have been provided notice of the outcome, any party to the arbitration may apply to the Tribal Court for an order confirming the award.

(b) Any party applying to the Tribal Court for an order confirming an arbitration award must, at the time the award is filed with the Clerk of the Tribal Court for entry of judgment, file true and correct copies of the following papers with the Clerk:

- (1) the agreement to arbitrate;
- (2) if applicable, the Tribal Council resolution approving application of this Ordinance;
- (3) written identification of the arbitrator(s) and any material documenting the selection or appointment of the arbitrator(s);
- (4) any written agreement requiring the reference of any question as provided in Section 6;
- (5) each written extension of the time, if any, within which to make the award;
- (6) the award; and
- (7) evidence that all parties to the arbitration received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the arbitration award.

(c) An arbitration award shall not be subject to review or modification by the Tribal Court, but will be confirmed strictly as provided by the arbitrator; provided, that the Tribal Court may decline to enforce any arbitration award if it finds that any of the following occurred:

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- (1) the award was procured by corruption, fraud, or undue means;
- (2) there was evident partiality or corruption in the arbitrator(s);
- (3) the arbitrator(s) were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy, or were guilty of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) the arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award on the subject matter submitted was not made.

Where an arbitration award is vacated, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s).

(d) In any of the following cases, where the Tribal Court is authorized to make an order regarding arbitration, and the Tribal Court may modify or correct the arbitration award upon application of any party to the arbitration:

- (1) where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
- (2) where the arbitrator(s) have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or
- (3) where the arbitration award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(e) The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct enforcement of the award in the manner provided by law.

### **SECTION 49-1-9. Arbitration Award Not Appealable.**

No further appeal may be taken from an order issued by the Tribal Court under this Ordinance that enforces an agreement to arbitrate or affirms an award issued by an arbitrator.

### **SECTION 49-1-10. Jurisdiction of the Tribal Court.**

To the extent allowed by federal law, the jurisdiction of the Tribal Court over any action to enforce an agreement to arbitrate, to compel arbitration under an agreement to arbitrate, and to enforce an award made by an arbitrator under an agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 2(a) of this Ordinance, is concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the parties to the contract, agreement or other instrument have explicitly consented. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 2(a) of this Ordinance, and any waiver of the obligation of the parties to exhaust Tribal Court remedies shall be valid and enforceable in accordance with its terms when approved in writing by the Tribal Council.

### **SECTION 49-1-11. Police Powers and Judgment Enforcement Remedies.**

The Tribe's police powers shall be available to secure and support any arbitration award under this Ordinance, and all police or other law enforcement officials of the Tribe must carry out any orders that may be entered by the Tribal Court under the terms of this Ordinance.

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## SECTION 49-1-12. Severability.

If any section, provision, or part of this Ordinance, or its application to any party, is held invalid for any reason by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Ordinance remains in full force and effect.

## SECTION 49-1-13. No Waiver of Sovereign Immunity.

Nothing in this Ordinance is or may be interpreted to constitute a waiver of the sovereign immunity of the Tribe or any of its officers, employees or agents acting within the scope of their authority.

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