PONCA TRIBE OF NEBRASKA
LAW & ORDER CODE
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PONCA TRIBE OF NEBRASKA
LAW AND ORDER CODE

TITLE I
GENERAL PROVISIONS

CHAPTER 1
PRELIMINARY PROVISIONS

Section 1-1-1. Constitutional Authority. This Law and Order Code is adopted pursuant to the authority vested in the Ponca Tribal Council under the Constitution of the Ponca Tribe of Nebraska.

Section 1-1-2. Designation of Code.

1. This Law and Order Code shall be the official Code of the Ponca Tribe of Nebraska and shall be composed of all ordinances enacted by the members and/or the Tribal Council of the Tribe and all amendments and supplements thereto.

2. This Law and Order Code shall be known as the Code of the Ponca Tribe of Nebraska and cited as "Ponca Tr. of Neb. Code" followed by the number of the title, the number of the chapter in the title, and the number of the section in the chapter, each separated by a dash. Example: This section shall be cited as "Ponca Tr. of Neb. Code § 1-1-2." This Law and Order Code may also be referred to as the "Code" or "Ponca Tribe of Nebraska Code," and may be abbreviated as PTNC.

3. The matter set forth in the official edition of the Code of the Ponca Tribe of Nebraska current at any time shall, together with any then current supplement, if any, establish prima facie the laws of the Ponca Tribe of Nebraska, general and permanent in their nature. Whenever the titles of this Code or any portion thereof are enacted by resolution or ordinance, the text of such resolution or ordinance and any accompanying enactment shall be legal evidence of the laws therein contained.

Section 1-1-3. Effective Date of Enactments.

1. When a title of this Code or any portion thereof provides by its terms that it shall take effect on a specified time and date, such enactment shall become effective on the date and time therein specified.

2. When a title of this Code or any portion thereof provides by its terms that it shall take effect on a specified day only,

such enactment shall become effective at midnight on the date specified in the enactment.

3. When a title of this Code or any portion thereof does not provide by its terms for an effective date, it shall be deemed to take effect immediately.

Section 1-1-4. Retroactive Effect of Enactments.

1. No title of this Code or any portion thereof is retroactive unless expressly declared therein.

2. When a title of this Code or any portion thereof provides that it will only apply to conduct, acts, transactions or occurrences on or after a certain date, including the effective date, conduct, acts, transactions or occurrences before such date shall be governed by the version of the Code in effect at the time of such conduct, act, transaction or occurrence.

Section 1-1-5. Prior Inconsistent Ordinances Repealed. Any and all ordinances and codifications enacted before November 21, 2015 by the Ponca Tribal Council that are of the same subject matter or conflict in any way with the provisions of this Code are hereby repealed and shall not be cited other than for documenting history or legislative intent; however, this repeal shall not affect the validity of any actions undertaken under previous laws and ordinances.

Section 1-1-6. Amendment of Law and Order Code. This Code may be amended, additions made thereto, or deletions made therefrom, in the manner provided for the adoption of Tribal Council ordinances. Amendments and additions to this Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and/or annexation hereof.

Section 1-1-7. Effective Date. This Code shall become effective upon passage by the Tribal Council in accordance with the Tribal Ordinance governing adoption of Ordinances.

Section 1-1-8. Territorial Applicability. The effective area of this Code shall be the territory of the Tribe, as defined herein.

Section 1-1-9. General Rules of Construction. In construing the provisions of this Code, unless the context otherwise requires, the following shall apply:

1. This Code shall be liberally construed to effect its object and purpose and to promote justice;

2. This Code shall not be construed as waiving or diluting or limiting the sovereignty, authority, or jurisdiction of the Tribe; and

3. Whenever possible, this Code shall be construed as consistent with the common law of the Tribe.

Section 1-1-10. Words and Phrases.

1. Words and phrases shall be construed according to their common and approved meaning and use within the territory of the Tribe and nearby surrounding communities.

2. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.

Section 1-1-11. Tense, Number, and Gender. Unless the context requires otherwise, in this Code:

1. Words in the present tense include the future and the past tense;

2. Words in the singular number include the plural, and words in the plural number include the singular;

3. Words of the masculine gender include masculine and feminine genders and the neuter;

4. Words of the feminine gender include the feminine and masculine genders and the neuter; and

5. Words of the neuter include the neuter and the masculine and feminine genders.

Section 1-1-12. Severability. If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

Section 1-1-13. Definitions. Unless the context requires otherwise or another definition is provided for a particular title, article, chapter, or section, in this Code:

1. "Adult" means a person who is nineteen (19) years of age or older or a child who has been emancipated.

2. "Child" means a person who is under nineteen (19) years of age and has not been emancipated.

3. "Code" means the Code of the Ponca Tribe of Nebraska in its entirety.

4. "Constitution" means the Constitution of the Ponca Tribe of Nebraska.

5. "Includes" and "including" means not limited to and is not a term of exclusion.

6. "Indian" or "Indian Person" means any person of Indian descent who is a member of any federally recognized Tribe.

7. "Laws of the Tribe" means the Constitution and By-Laws of the Ponca Tribe of Nebraska; this Code; any ordinances, rules and regulations of the Tribe, or any of its departments, commissions, boards, or agencies; any orders or decisions of the Tribal Council or any other department, commission, board, agency, court or tribunal of the Tribe; and the common law of the Tribe.

8. "Majority" and "age of majority" as used in reference to the age of persons means the age of nineteen (19) years or more.

9. "Member" means a person whose name appears on the Membership Roll of the Tribe.

10. "Minor" as used in reference to the age of persons means a person under the age of nineteen (19) years.

11. "Person" means any individual, sole proprietorship, partnership, association, company, limited liability company, corporation, foundation, labor organization, firm, society, joint stock company, group of organizations or other organized group of individuals.

12. "Territory of the Tribe" means all territory of the Ponca Tribe of Nebraska, including, but not limited to, those lands and communities defined as Indian Country, by 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Tribe and members of the Tribe, and dependent Indian communities; all lands within any service area of the Tribe as

defined by Public Law 101-484 and any amendments thereto and all lands within the territory to which the Ponca Tribe of Nebraska and its members retain aboriginal right, title or interest, and those lands to which right, title or interest is reserved under the Treaty, March 12, 1858, 12 Stat. 997, and created or reserved under the Treaty of March 10, 1865, 14 Stat. 675.

13. "Tribal Council" means the Ponca Tribal Council as set out in Article IV of the Constitution.

14. "Tribal Court" means the Tribal Court of the Ponca Tribe of Nebraska established by Article VI of the Constitution.

15. "Tribe" means the Ponca Tribe of Nebraska and, unless the context requires otherwise, its Tribal Council, commissions, boards, agencies, departments, divisions, instrumentalities, economic enterprises, Tribal Council members, commissioners, board members, officials, agents, officers and employees.

Section 1-1-14. Principles of Common Law.

1. Except as superseded by the Constitution and By-laws of the Tribe or this Code, the customs and traditions of the Tribe are hereby declared to be the common law of the Tribe and shall be the law applicable within the territory of the Tribe and shall be the rule of decision in all agencies, departments, commissions, courts, and tribunals of the Tribe.

2. The common law of the Tribe expressly does not include the common law of any other Indian tribe, the common law of England, the United States or any other foreign jurisdiction nor any interpretation thereunder of the laws of the Tribe by any courts or tribunals other than the courts and tribunals of the Tribe. Nothing in this subsection shall prevent an agency, department, commission, or tribunal of the Tribe from utilizing the laws of another Indian tribe, the United States, or any other foreign jurisdiction for the purpose of guidance and example when permitted by the laws of the Tribe and when no applicable specific Tribal common law is available.

3. Where possible, the common law of the Tribe shall supplement this Code and this Code shall be interpreted whenever possible as supplementing and not displacing the common law of the Tribe.

Section 1-1-15. Legal Holidays.

1. The following days shall be legal holidays of the Tribe:

a. Sunday of each week;

b. January 1, "New Year's Day;"

c. Third Monday of January, "Martin Luther King Jr. Day;"

d. May 12, "Chief Standing Bear Day: Remembering Our Leaders;"

e. Last Monday in May, "Memorial Day;"

f. July 4, "Independence Day;"

g. First Monday in September, "Labor Day;"

h. October 31, "Northern Ponca Restoration Day – Remembering our Elders;"

i. November 11, "Veterans' Day;"

j. Fourth Thursday in November, "Thanksgiving Day;"

k. Fourth Friday in November, "Native American Day;"

l. December 24, "Christmas Eve;"

m. December 25, "Christmas Day;" and

n. Any other day the Tribal Council may, from time to time, declare to be a legal holiday.

2. With the exception of the holiday enumerated in subsection 1, paragraph a:

a. When any of the holidays enumerated in subsection 1 falls on a Sunday, the following Monday shall be observed as a holiday; and

b. When any of the holidays enumerated in subsection 1 falls on a Saturday, the preceding Friday shall be observed as a holiday.

Section 1-1-16. Closure of Offices.

1. Except as expressly provided elsewhere by the laws of the Tribe, offices, departments and agencies of the Tribe shall

not be open, and no court or tribunal of the Tribe shall be open on a legal holiday.

2. The following entities of the Tribe shall not be subject to this Section:

a. Any law enforcement offices, agencies, and departments of the Tribe, including departments and commissions charged with the regulation of gambling, hunting, or fishing;

b. The Health Services Department; and

c. All economic enterprises of the Tribe.

Section 1-1-17. Computation of Time.

1. Whenever a time is prescribed in this Code, or otherwise provided or agreed upon, for the doing of an act or the occurrence of an event, such time shall be calculated by excluding the first day and including the last day.

2. If the last day in the time prescribed, provided or agreed upon for doing an act is a weekend or legal holiday, it shall be excluded from calculating the time for doing such act and the act may be performed on the next business day as though performed on the appointed day.

CHAPTER 2
ESTABLISHMENT OF COURTS; JUDGES AND OTHER COURT PERSONNEL

Section 1-2-1. Definitions. Unless the context requires otherwise, as used in this Chapter:

1. "Chief Judge" means the Chief Judge of the Trial Court.

2. "Chief Justice" means the Chief Justice of the Court of Appeals.

3. "Court of Appeals" means the Court of Appeals of the Tribal Court established in this Chapter.

4. "Immediate Family" means mother, father, grandparent, child, grandchild, brother, sister, spouse, domestic partner, or individuals residing in the same household, including half, step and in-law relations.

5. "Judge" means a judge of the Trial Court duly appointed by the Tribal Council and includes a justice of the Court of Appeals.

6. "Justice" means a justice of the Court of Appeals of the Tribal Court duly designated pursuant to this Chapter.

7. "Trial Court" means the Trial Court of the Tribal Court established by this Chapter.

Section 1-2-2. Courts Established. There is hereby established a court of general jurisdiction known as the Tribal Court of the Ponca Tribe of Nebraska and consisting of a Court of Appeals, a Trial Court, and such lower or intermediate courts and divisions as the Tribal Council from time-to-time may establish or deem necessary.

Section 1-2-3. Court of Appeals. The Court of Appeals shall be comprised of a Chief Justice and such associate justices as are required. The Chief Justice shall be appointed as provided in this Chapter. In the absence of the appointment of associate justices, the associate justices shall be selected from the judges of the Trial Court, provided that no judge of the Trial Court shall serve on a panel of the Court of Appeals involving an appeal or review of that judge's judgment, order, or decision.

Section 1-2-4. Justices and Judges.

1. There shall be appointed one Chief Justice who shall be called into service when the need arises.

2. There shall be appointed one Chief Judge of the Trial Court.

3. There may be appointed such associate justices and judges as the Tribal Council deems necessary or desired.

4. The appointment, qualification, and compensation to be received by such judges shall be determined by the Tribal Council, provided, however, that once appointed a judge shall not have his compensation decreased during his term of office, and provided further that no judge shall be suspended or removed from office prior to the expiration of his term, except as provided hereinafter.

5. Justices and judges shall be appointed to six year terms and may be appointed to successive terms of office.

Section 1-2-5. Selection of Justices and Judges.

1. Justices and judges shall be selected for appointment by the Tribal Council from nominees received from the Judicial Nominating Committee.

2. The Judicial Nominating Committee shall consist of five members appointed by the Tribal Council, with each district having at least one representative on the Committee.

3. The Judicial Nominating Committee shall nominate from applicants those persons the Committee deems qualified to serve as justices and judges of the Tribal Court and certify those nominations to the Tribal Council for consideration.

4. The Tribal Council shall conduct an open hearing for each nominated person and then select from the candidates the justices or judges to be appointed.

Section 1-2-6. Judges Pro Tempore.

1. In the absence of the appointment of at least two associate justices and/or judges, there shall be appointed at least two judges pro tempore who may be called into service when the need arises, but there may be appointed as many judges pro tempore as the Tribal Council deems necessary or desired. Judges pro tempore shall serve as judges and justices from time to time as provided in this Section.

2. Judges pro tempore shall not serve on the Trial Court or Court of Appeals or perform any duties related to the Tribal Court except when designated or requested to do so by the Chief Justice or the Chief Judge, provided that the Chief Judge may only designate or request the services of a Judge pro tempore for matters before the Trial Court or as otherwise provided by the laws of the Tribe.

3. Judges pro tempore shall meet the same requirements and qualifications applicable to other judges and justices of the Tribal Court.

4. A judge pro tempore may serve as a judge or justice, as the case may be, only under the following circumstances:

a. When necessary to comprise a full Court of Appeals in those cases where there are insufficient judges to serve as justices to hear a particular matter;

b. When necessary to fill the role of a judge due to recusal or other unavailability of a particular judge to hear a particular matter before the Trial Court;

c. When necessary to fill the role of a judge who is unavailable for a duration of time due to vacation, illness, or other similar reason;

d. For the purpose of performing specific duties as may be assigned by the Chief Judge or the Chief Justice, as the case may be; or

e. When necessary to fill a vacancy in the office of the Chief Judge pending appointment of a Chief Judge.

5. When sitting on a Trial Court or Court of Appeals, a judge pro tempore shall perform the duties and functions of a judge of the Trial Court or justice of the Court of Appeals, as the case may be, and shall have all of the prerogatives and authority of office of a judge or justice, as the case may be.

6. The term of a judge pro tempore may be for any period of time not to exceed one year for any one term and a person previously appointed as judge pro tempore may be reappointed by the Tribal Council, provided that the powers and duties of a judge pro tempore shall extend beyond the period of his appointment where necessary to hear and determine any proceeding required for a final determination of a cause heard by him in whole or in part during the period of his appointment.

7. Judges pro tempore shall be compensated based upon the actual performance of duties at a rate and manner set by the Tribal Council. In no event shall a judge pro tempore be compensated for attending Tribal Court proceedings or serving as judge pro tempore except when sitting as a judge or justice or otherwise performing the duties of a judge or justice upon proper request of the Chief Judge or the Chief Justice.

8. The Tribal Council may at any time terminate the term of a judge pro tempore, except that a judge pro tempore shall not be removed from a case, matter, dispute, or proceeding to which he is assigned until the termination or resolution of such case, matter, dispute or proceeding unless the judge pro tempore is removed from office for cause related to or reflecting upon the office of judge pro tempore.

Section 1-2-7. Removal of Judges.

1. During tenure in office, a justice or judge may be removed from office for any one of the following reasons:

a. Habitual neglect of duties of office;

b. Oppression in office for personal gain or advantage; or

c. Conviction in any court of competent jurisdiction of a felony or crime involving moral turpitude.

2. Removal shall be by petition, signed by at least twenty-five percent of the number of votes cast in the last tribal election. The Petition for removal shall be filed with the Tribal Council.

3. Any justice or judge subject to removal shall be entitled to a hearing before the Tribal Council and the right to due process of the law. A two-thirds affirmative vote of the full Tribal Council shall be required to remove the justice or judge from office.

Section 1-2-8. Powers and Duties of Judges.

1. The justices and judges of the Tribal Court shall:

a. Administer justice and discharge all duties imposed upon them by the laws of the Tribe;

b. Bear and decide matters of a judicial nature and enter judgments and orders disposing of such matters; and

c. Conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association or other rules or code of judicial conduct adopted by the Tribal Court in accordance with the laws of the Tribe.

2. All justices and judges shall have the power to:

a. Preserve and enforce order in their immediate presence, and in proceedings before them, when engaged in the performance of their judicial duties;

b. Compel obedience to their lawful orders;

c. Compel the attendance of persons to testify in proceedings before them as provided by the laws of the Tribe;

d. Administer oaths to persons in proceedings before them and in any other case where such shall be necessary in the exercise of their powers and duties; and

e. Impose civil contempt by fine or other means as provided under the laws of the Tribe to assure the effectual exercise of these powers.

3. In the absence of the Tribal Court Administrator, a justice or judge may perform the Tribal Court Administrator's duties in addition to his own.

4. The Chief Judge shall be responsible for the administration of the Trial Court, including assignment of cases and the management of the Trial Court's calendar and business. The Chief Justice shall be responsible for the administration of the Court of Appeals, including the management of the Court of Appeals' calendar and business.

Section 1-2-9. Disqualification of Judges. The following rules shall apply to all judges:

1. A judge shall disqualify himself from hearing any matter where:

a. the judge has been engaged as counsel in the matter prior to appointment as judge;

b. the judge is otherwise interested in the matter;

c. either party to the matter is a member of the judge's immediate family;

d. the judge is a material witness in the matter; or

e. there is cause to believe that on account of bias, prejudice, or interest of the judge he will not be able to provide a fair and impartial trial or render a just decision.

2. Any party to a legal proceedings may request a change of assignment of judges to hear the proceedings by following the rules proscribed in Title 2, Rule 33.

Section 1-2-10. Separation of Powers. There shall be a separation of power between the Tribal Court and the Tribal Council. Decisions of the Trial Court may be appealed to the Court of Appeals, but shall not be subject to review by the Tribal Council.

Section 1-2-11. Oath of Office of Judge. Every judge, prior to taking office or acting in such office, shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support, defend, and uphold the Ponca Tribal Constitution, that I will support, uphold and enforce the Law and Order Code of the Ponca Tribe of Nebraska, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

Said oath shall be administered by the Chairperson of the Tribal Council.

Section 1-2-12. Tribal Court Administrator.

1. There shall be a Tribal Court Administrator of the Tribal Court.

2. The Tribal Court Administrator shall perform the following duties and functions:

a. Supervise and keep all records, files, dockets or other records required to be kept by the laws of the Tribe;

b. Keep a written or electronic record of all proceedings of the Tribal Court;

c. Administer oaths;

d. Collect and account for all fines, fees or other charges which cause money to come to the Tribal Court, deposit and account for all such moneys in the manner prescribed by the Tribal Council, and disburse such moneys as authorized by the laws of the Tribe;

e. Assist the Tribal Court in any way required to facilitate the performance of its duties;

f. Aid the police or private citizens in their dealings with the Tribal Court;

g. Render assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings in the Court.

3. The Tribal Court Administrator may not give legal advice.

Section 1-2-13. Law and Justice Committee.

1. There is hereby established a Law and Justice Committee as a committee of the Tribal Council and composed of an odd number of members all appointed by the Tribal Council. The members of the Law and Justice Committee shall have at least one member of each of the following areas:

a. Legal area such as an attorney or lay advocate designated by the Tribal Court and admitted to practice law before the Tribal Court; an active judge, other than from the Ponca Tribal Court; or a retired judge appointed by the Tribal Council; and Tribal Court staff member;

b. Senior staff members or designee from the different branches of the Tribe; and

c. Members of the Tribe appointed by the Tribal Council.

2. The duties of the Law and Justice Committee shall be as follows:

a. To act as a liaison between the Tribal Court and Tribal Council;

b. To oversee the budget of the Tribal Court and make recommendations to the Tribal Council regarding the same;

c. To provide oversight of the Tribal Court and make recommendations to the Tribal Council relating to the operations and growth of the Court, including additional dispute resolution methods;

d. To review complaints of judicial misconduct or disability under the Code of Judicial Conduct or other applicable rules or statutes of conduct governing the Judges and Justices of the Tribal Court, hold public fact-finding hearings when such complaints are supported by probable cause with the Judge or Justice given a full opportunity to defend and be heard with legal counsel and, if such hearing reveals clear, cogent and convincing

evidence of a violation, to publicly admonish, reprimand or censure the Judge or Justice or recommend suspension or removal from office in accordance with the laws of the Tribe;

e. To make recommendations on amendments to the Rules of Court to the Tribal Council and establish such rules in the absence of Tribal Council action as permitted herein;

f. To approve Rules of Court governing or related to judicial conduct as provided herein;

g. To set filing fees for the Tribal Court as permitted herein;

h. To provide annual evaluations of the Judges and Justices of the Tribal Court and provide the same to the Tribal Council and members of the Tribe;

i. To make recommendations to the Tribal Council regarding amendments, modifications, and additions to this Code; and

j. Such other duties and responsibilities as the Tribal Council may from time designate.

3. The Law and Justice Committee shall designate one of its members to act as the representative of the Committee before the Tribal Council and to communicate the activities of the Committee to the Tribal Council quarterly. In the absence of such designation, the Tribal Court Administrator shall act as the representative of the Committee before the Tribal Council.

4. The Law and Justice Committee shall be authorized to act and conduct business with a majority of its appointed or designated members, so long as at least three (3) positions on the Committee have been filled by designation or appointment.

Section 1-2-14. Locations/Sessions of Court.

1. The Tribal Court may convene for hearing cases in Niobrara, Norfolk, Omaha, or Lincoln, Nebraska, and at such other locations within the territory of the Tribe which may be necessary to provide for the orderly administration of justice.

2. Sessions of the Tribal Court for trial of cases in all courts and divisions, excepting the Court of Appeals, shall be held by the Chief Judge, or in case of his disability, absence or unavailability, by an associate judge, provided that an associate

judge may be called in to hear cases at any time for any reasonable cause by the Chief Judge.

3. In the event no associate judge is appointed, a case may be heard by a Judge pro tempore as provided in this Chapter.

Section 1-2-15. Rules of the Court Procedures.

1. The time and place of sessions of the Tribal Court and all other details of judicial procedure not prescribed by this Code shall be governed by Rules of Court promulgated as herein provided.

2. It shall be the duty of the Law and Justice Committee, in consultation with the Tribal Court, to make recommendations to the Tribal Council for enactment or amendment of such Rules of Court as it believes to be in the interests of improved judicial procedures.

3. In the case of failure of the Tribal Council to establish or approve Rules of Court, the Law and Justice Committee acting jointly with the Chief Judge, Chief Justice, and any associate judges shall have authority to establish such rules.

4. Rules of Court, enacted or amended in the above manner, will be made a part of this Code, but failure to so codify them shall not affect their validity.

Section 1-2-16. Rules of Professional Conduct. The Tribal Court may adopt rules governing the professional conduct of attorneys and judges of the Tribal Court, including amendments thereto, as follows:

1. The Tribal Court, any person admitted to practice before the Tribal Court, or any member of the Tribe may file a petition with the Tribal Court Administrator to adopt, amend, or repeal any rule of professional conduct. The petition shall state the grounds for the adoption, amendment or repeal of the rule, include a draft of the proposed new or amended rule, and may be accompanied by supporting documentation. The form and filing of the petition and supporting documentation shall substantially conform, insofar as practicable, to the filing of complaints and other petitions with the Trial Court.

2. After the filing of a petition, the Chief Judge shall review the petition and any supporting documentation and determine whether to reject it for lack of need, merit, or substance. If the Chief Judge denies the petition for lack of need, merit, or

substance, the Tribal Court Administrator shall promptly notify the petitioner of the decision of the Chief Judge. The petitioner may appeal such denial to the Court of Appeals.

3. If the Chief Judge does not deny the petition, the Tribal Court Administrator shall prepare a request for comment stating that the Court invites written comment on the merits of the petition and indicating the place for filing such comments and the expiration date for filing such comments, which shall be no less than sixty (60) days from the date of service and publication of the request. The Tribal Court Administrator shall serve the request for comment and a copy of the petition on all persons admitted to practice before the Tribal Court and shall also publish the request for comment in the Tribal newsletter or other medium readily available to members of the Tribe.

4. Any person admitted to practice before the Tribal Court and any member of the Tribe may file written comments with the Court on the petition. The form and filing of comments shall substantially conform, insofar as practicable, to the filing of complaints and other petitions with the Court. The Tribal Court Administrator shall serve all comments filed on the petitioner within ten (10) days of the expiration date for filing comments and the petitioner shall have thirty (30) days from the date of service to file any reply to the comments.

5. At any time prior to the expiration of the time allowed for comment on a petition, the Chief Judge, on his own motion or at the request of the petitioner or any person admitted to practice before the Tribal Court or any member of the Tribe, may order that a public hearing be held on the petition. The Court shall determine the method and manner of holding such hearing, which shall be held before the Chief Judge.

6. The Chief Judge shall decide to either grant or deny the petition within thirty (30) days from the expiration of the petitioner's time to reply or any public hearing, whichever is later. The Chief Judge's decision shall be served upon each person admitted to practice before the Tribal Court and published in the same manner as the original petition. If the Chief Judge grants the petition, the Chief Judge shall designate an effective date for the rule change. If the Chief Judge denies the petition, the petitioner may appeal the denial to the Court of Appeals.

7. Any petition which involves the adoption, repeal, or amendment of rules governing or related to judicial conduct shall

also be approved by the Law and Justice Committee prior to being effective.

Section 1-2-17. Tribal court funds. Any funds received by the Court, whether in the form of filing fees, costs, or other fees, shall be deposited into a tribal court account which shall be held and maintained by the Tribe. Such funds may be used for Tribal Court development and expenses as directed by the Tribal Council. The funds shall be disbursed in the manner for disbursing all other Tribal funds.

CHAPTER 3
CONTEMPTS

Section 1-3-1. Acts or Failure to Act Which Constitute Contempt of Court. The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of court:

1. Disorderly, contemptuous, or insulting behavior toward a justice or judge while holding court, which tends to interrupt the course of the proceedings or undermine the dignity of the court.

2. A breach of the peace, or loud, boisterous conduct which tends to interrupt the court in a judicial proceeding.

3. Deceit, or abuse of process or proceedings of the court by a party or counselor to a judicial proceeding.

4. Disobedience to a lawful judgment, order or process of the court.

5. Assuming to be an officer, spokesman or other official of the court and acting as such without authority.

6. Rescuing or taking any person or property from the court or an officer acting under court order, contrary to the order of the court.

7. Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a court proceeding or attending court.

8. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

9. Any other interference with the process, proceeding, or dignity of the court, or of a justice or judge of the Tribal Court while in performance of his official duties.

Section 1-3-2. Civil Contempt. The following rules apply to civil contempt:

1. A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

2. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the court or to the complaining party.

3. Relief for civil contempt shall be in the form of a civil judgment and may be enforced by the court or the complaining party, if relief is payable to the complaining party, through wage garnishment or other means available for the enforcement of civil judgments.

Section 1-3-3. Contempt Procedures. The following rules apply to contempt procedures:

1. A direct contempt is one committed in the presence of the court or so near thereto as to be disruptive of the court proceedings, and such may be adjudged and punished summarily.

2. All other contempts shall be determined by a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER 4
JURISDICTION

Section 1-4-1. Territorial Jurisdiction. The general jurisdiction of the Tribal Court shall be the territory of the Tribe. As to lands ceded to the United States, or to which the Tribe retains right, title or interest, the Court retains original, exclusive jurisdiction over members of the Tribe engaged in hunting, fishing, and gathering for subsistence, ceremonial and religious purposes.

Section 1-4-2. Personal Jurisdiction.

1. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or by express provision elsewhere in the laws of the Tribe, the Trial Court shall have personal jurisdiction over:

a. Any person residing, located or present within the territory of the Tribe for any civil cause of action;

b. Any person who transacts, conducts or performs any business or activity within the territory of the Tribe, either in person or by an agent or representative, for any civil cause of action arising from such business or activity;

c. Any person who owns, uses, leases or possesses any property within the territory of the Tribe for any civil cause of action arising from such ownership, use, lease or possession;

d. Any person who commits a tortious act or engages in tortious conduct within the territory of the Tribe, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct;

e. Any person who commits an act or omission which occurs, wholly or in substantial part, within the territory of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, for any civil cause of action related to such act or omission;

f. Any person who commits an act or omission outside the territory of the Tribe, but has or is intended to have substantial effect within the territory of the Tribe for any civil cause of action involving such act or omission or its effects;

g. Any person who enters into a contract, agreement, or other consensual relationship with the Tribe or any of its members, for any civil cause of action arising from such contract, agreement, or other consensual relationship; and

h. Any licensee or permitee of the Tribe for any civil cause of action arising from such person’s activities as a licensee or permitee of the Tribe.

2. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon anyone or more of them as applicable or upon any independent basis existing at law but not set forth herein.

3. The Trial Court shall not have jurisdiction over the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, without the unequivocal and express consent of the Tribe or an unequivocal and express provision in the laws of the Tribe.

Section 1-4-3. Subject Matter Jurisdiction.

1. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or the Constitution of the Tribe, the Trial Court shall have original jurisdiction over all civil causes of action and over all controversies between any persons, except the Trial Court shall not assume jurisdiction over any matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or member of a federally recognized tribe if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected.

2. The Trial Court shall also have:

a. Jurisdiction to issue injunctions, writs and other orders necessary and proper to the complete exercise of its jurisdiction;

b. Jurisdiction to certify questions of Tribal law to any federal court or questions of Tribal law to any state court which has a procedure for certifying questions of law;

c. Jurisdiction to recognize, but not enforce, valid judgments and orders issued by courts and tribunals of other jurisdictions where the matters subject of the judgment are not otherwise within the jurisdiction of the Trial Court and recognition is proper to assist the Trial Court in a matter otherwise properly within its jurisdiction; and

d. Such other jurisdiction as may be provided by the laws of the Tribe.

3. The Trial Court shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title

shall not be construed to include a waiver of the Tribe's sovereign immunity from suit. Any such grant of jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments, enterprises, officers, agents or employees shall be deemed original and exclusive to the Trial Court.

4. Notwithstanding any other provision of the laws of the Tribe, the Trial Court shall have jurisdiction over all civil causes of actions and over all controversies commenced by the Tribe and nothing in this Section or elsewhere in this Code shall be construed as limiting the jurisdiction of the Trial Court to hear and determine matters commenced by the Tribe, provided that nothing herein shall be construed as granting jurisdiction to the Trial Court to hear or determine any cross-claim or counterclaim against the Tribe or to award any monetary relief, including costs and attorney's fees, against the Tribe in an action commenced by the Tribe.

Section 1-4-4. Concurrent Jurisdiction. The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or government entity in which jurisdiction does not otherwise exist in law.

Section 1-4-5. Jurisdiction of Court of Appeals. The Court of Appeals shall have:

1. Appellate jurisdiction in all actions and proceedings properly before and originating in or permitted by law to be appealed from the Trial Court;

2. Jurisdiction to issue injunctions, writs and other orders necessary and proper to the complete exercise of its jurisdiction;

3. Jurisdiction to certify questions of federal law to any federal court or questions of state law to any state court which has a procedure for certifying questions of law;

4. Jurisdiction to issue opinions to a foreign court or other tribunal upon proper request or certification of a question of Tribal law from such foreign court or other tribunal; and

5. Such other jurisdiction as may be provided by the laws of the Tribe.

CHAPTER 5
COUNSELORS AND PROFESSIONAL ATTORNEYS

Section 1-5-1. Definitions. Unless the context requires otherwise, as used in this Chapter:

1. "Attorney" means an individual professionally trained as an attorney and licensed to practice law in any state, federal, or Tribal jurisdiction.

2. "Lay advocate" means an individual admitted to practice law before the Tribal Court but who is not professionally trained or licensed as an attorney.

3. "Legal counsel" includes both an attorney and lay advocate.

Section 1-5-2. Right to Representation.

1. Any person appearing as a party in any action before the Tribal Court shall have the right to be represented by legal counsel of his own choice at his own expense; provided, however, that the Tribe has no obligation to provide or pay for such legal counsel; provided further, that any such legal counsel appearing before the Tribal Court shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

2. A person who retains the services of a lay advocate in his defense of a criminal charge against him thereby exercises his rights to the assistance of counsel. Any person who retains the services of a lay advocate does so at his own risk regarding the competence of the advocate.

Section 1-5-3. Unlawful Representation and Practice of Law. No person shall represent or attempt to represent any person before the Tribal Court except as permitted by the Tribal Court and this Chapter. No person shall practice law or attempt to practice law within the territory of the Tribe unless such person is also admitted to practice before the Tribal Court in accordance with this Chapter.

Section 1-5-4. Eligibility for Admission.

1. Any attorney who is an active member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States is eligible to be admitted to practice before the Tribal Court as an attorney.

2. Any person who is not an attorney is eligible to be admitted to practice before the Tribal Court as a lay advocate. Lay advocates shall be held to the same standards of knowledge and ability as are expected of attorneys.

Section 1-5-5. Procedure for Admission.

1. Any person desiring to be admitted to practice before the Tribal Court shall apply for admission by certifying under oath, either verbally or in writing, the following:

a. If he is an attorney, that he is an active member in good standing of eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States and he is in good standing in all courts and jurisdictions where admitted;

b. That he has never been disbarred, suspended, censured, or received a reprimand pertaining to his conduct or fitness to practice before any court or administrative body; and

c. That if admitted to practice before the Tribal Court, he consents to the Court's exercise of disciplinary jurisdiction over him related to his admission to and practice before the Tribal Court and will take the required oath as prescribed in the Law and Order Code for legal counsel and be bound thereby.

2. A non-refundable application fee shall be tendered upon submittal of the application unless waived as provided herein.

3. Upon receipt of an application for admission to practice before the Tribal Court, the Chief Judge shall review the application and may investigate the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Chief Judge shall notify such person who may then appear in person to take the oath prescribed herein or may subscribe his signature to such oath and forward it to the Chief Judge.

4. Upon taking of the oath, either orally or in writing, the Chief Judge shall cause a certificate to be issued evidencing

the admission of the legal counsel to practice before the Tribal Court.

5. Any person denied admission shall have a right to appeal and have a due process hearing before the Court of Appeals.

6. The Tribal Court shall retain the right to establish and require the taking of a bar examination for admission to practice before the Tribal Court.

Section 1-5-6. Fees.

1. The Law and Justice Committee, subject to input and recommendations from the Tribal Court, shall determine application fees for admission of legal counsel as well as annual fees to be paid by admitted legal counsel.

2. The Law and Justice Committee, subject to input and recommendations from the Tribal Court, may waive application fees and annual fees for lay advocates.

3. The application fee and any annual fee shall be waived for attorneys employed by the Tribe and for others upon Tribal Council resolution.

4. Application and annual fees may go into a special Bar Admission Fund to be used for training of Tribal Court staff, lay advocates and other officers of the Tribal Court or else shall be deposited into the Tribal Court account in accordance with Section 1-2-17.

Section 1-5-7. Oath of Legal Counsel. Upon admission to practice as provided herein, legal counsel shall take the following oath, either verbally before the Court or, if admitted without personally appearing, by subscribing his signature to such oath:

I do solemnly swear (affirm)that I will support and defend the Constitution and By-Laws, Law and Order Code and all resolutions and ordinances of the Ponca Tribe; that I will maintain the respect due the Courts and Judicial officers of the Ponca Tribe; that I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; that I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement or fact or law; that I will maintain the

confidences and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval; that I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required in justice by the cause with which I am associated; that I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice.

Section 1-5-8. Duties and Standards of Conduct. All legal counsel shall conform their conduct to the Rules of Professional Conduct as adopted by the American Bar Association or other rules of professional conduct adopted by the Court pursuant to the laws of the Tribe. In addition, all legal counsel shall be duty bound to give immediate written notice to the Court of any formal discipline imposed upon him, including dates and terms thereof, by any court, jurisdiction or administrative tribunal.

Section 1-5-9. Disbarment and Discipline.

1. Whenever it is made to appear to the Chief Judge that any legal counsel admitted to practice before the Tribal Court has been disbarred or suspended from practice in any jurisdiction where such legal counsel is admitted to practice, such legal counsel shall immediately be given notice at his last known address that he shall be suspended from practice before the Tribal Court for an indefinite period unless he files a written reply within fourteen business days and shows good cause why such order should not be made. Legal counsel may appeal the Chief Judge's decision to the Court of Appeals.

2. Any judge who finds legal counsel admitted to practice before the Tribal Court to be in contempt of Court may, in addition to any other sanction imposed, order the legal counsel to appear within thirty (30) days or the next scheduled court date and show cause why he should not be suspended from practicing before the Tribal Court.

3. The Chief Judge may, upon receiving a written complaint, signed under oath or affirmation, which indicates that legal counsel admitted to practice before the Tribal Court has acted in an unethical or otherwise improper manner while functioning as legal counsel, order such legal counsel to appear and defend himself at a hearing, to hear all evidence relevant to the matter, and may order the suspension of such legal counsel if such appears

reasonably necessary or appropriate. If the Chief Judge is the complainant, another Judge shall hear and decide the matter.

4. All suspensions from practice before the Tribal Court shall be for an indefinite period unless the Judge specifically orders otherwise. Legal counsel suspended for an indefinite period, or one suspended for a specific period, may petition the Tribal Court for permission to re-apply for permission to practice at the end of one year or the specific period of suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct, that he has been adequately reproved and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

Section 1-5-10. Non-Admitted Attorneys. An attorney who is not admitted to practice before the Tribal Court but who is a member in good standing of and eligible to practice before the bar of any United States court or the highest court in any state, territory, or insular possession of the United States, and who has been retained to appear in a particular case pending in the Tribal Court, may, in the discretion of the Judge before whom the case is pending, be permitted upon written application to appear as legal counsel in such case if legal counsel admitted to practice before the Tribal Court is associated as attorney of record. Absent special circumstances, repeated appearances by any attorney under this Section is a cause for denial of an application.

CHAPTER 6
SUBPOENAS AND SERVICE OF OTHER PAPERS

Section 1-6-1. Issuance of Subpoenas. The Tribal Court Administrator shall issue subpoenas to compel the attendance of witnesses or such other persons as a Judge may direct for a trial, hearing, or other proceedings before the Tribal Court.

Section 1-6-2. Services of Subpoenas; Return of Service.

1. Subpoenas in all cases shall be served by law enforcement officers or other person designated by the Chief Judge.

2. Except by order of the Court based upon good cause shown, no subpoena shall be served between the hours of 10:00 p.m. and 7:00 a.m. or on Sundays or legal holidays.

3. The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service.

4. The person serving a subpoena shall make a return to the Tribal Court Administrator stating the name of the case, the name of the person served, the place, date, and time of service and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

CHAPTER 7
GENERAL PROVISIONS
SOVEREIGN IMMUNITY, LIMITATIONS OF ACTIONS

Section 1-7-1. Adoption by Reference Not a Waiver of Sovereign Power of the Ponca Tribe. The adoption of any law, code or other document by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Tribe.

Section 1-7-2. Sovereign Immunity.

1. Except as required by federal law, or the Constitution of the Tribe, or if specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit in any civil action arising from the performance of their official duties.

2. The Tribe shall not be liable for damages arising from the conduct of any of its employees which is not within the scope of the officer or employee's official duties.

3. In no case shall the Tribe's consent to resolve disputes by arbitration in a contract for goods or services or other matter constitute a waiver of the sovereign immunity of the Tribe or its entities, officers and employees, unless expressly agreed to by the Tribal Council.

Section 1-7-3. Actions By or Against the Tribe or It's Officers or Employees. In any action otherwise authorized by or against

the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply.

1. The periods of time specified for civil cases or appeals in which an answer, reply, or other pleading, or response of any kind shall be required, shall be double the period specified.

2. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses, including attorney's fees, of the opposing party.

3. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

Section 1-7-4. Limitations in Civil Actions.

1. Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions shall apply:

a. Any action against the Tribe or its officers derivative of lease of tribal land must be commenced within six (6) years of the date the cause of action occurred.

b. Any other action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action accrued, provided that any cause of action that is based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting fraud or mistake.

c. Any other action must be commenced within three (3) years of the date the cause of action accrued, provided, however, that the cause of action based on fraud or misrepresentation shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or misrepresentation.

2. None of the above limitations of action shall be construed as a waiver of the Tribe's sovereign immunity.

Section 1-7-5. Recognition of Foreign Court Orders/Judgments. The Tribe shall recognize and enforce valid foreign court judgments and orders if:

1. The foreign court recognizes and enforces judgements and orders of the Tribal Court; and

2. The foreign court judgment is not contrary to the public policy of the Tribe.

3. Nothing in this subsection shall prevent the Tribal Council, by duly executed Tribal Council Resolution, from making the foregoing provisions not applicable to any transaction, agreements, or other matter specified in such Tribal Council Resolution.

CHAPTER 8
WEAPONS ON PONCA TRIBE OF NEBRASKA PROPERTY

Section 1-8-1. Purpose. The purpose of this chapter is to ensure the safety of tribal members and all others on the lands and property of the Tribe by categorically excluding the possession of firearms of any kind on all lands and property and in all buildings and vehicles of the Tribe.

Section 1-8-2. Definitions. Unless the context requires otherwise, as used in this Chapter:

1. "Authorized Individual" means a person specifically authorized under this Chapter to carry weapons on the Tribe's property.

2. "Law Enforcement Officer" means a person who is designated as such by the laws of the Tribe or who otherwise is elected, appointed, or employed by the Tribe or other government and vested with the authority to bear arms and make arrests and whose primary responsibility is the prevention and detection of crime or the enforcement of penal, criminal, traffic, or highway laws, including certified supervisory and command personnel whose duties include the supervision, training, guidance, and management responsibilities of law enforcement officers, but does not include support personnel.

3. "Premises of the Tribe" means lands, grounds or property of the Tribe and any building, facility or vehicle of the Tribe, whether owned, leased, or held in trust for the Tribe.

Section 1-8-3. Prohibition; Exceptions.

1. No person shall go armed with, carry, or transport a firearm, deadly weapon or dangerous instrument of any kind, whether concealed or not, on the premises of the Tribe.

2. The Tribe has and reserves the right to inspect any person entering or found on the premises of the Tribe as well as any articles and property in any person's possession to detect firearms, deadly weapons or dangerous instruments.

3. The Tribe may and reserves the right to confiscate any firearm, deadly weapon, or dangerous instrument found on the premises of the Tribe.

4. This Section shall not apply to:

a. Authorized Individuals being armed with, carrying or transporting firearms, deadly weapons or dangerous instruments which such Authorized Individuals are authorized to carry on the premises of the Tribe in the course of their official or normal duties;

b. Law Enforcement Officers being armed with, carrying or transporting firearms, deadly weapons or dangerous instruments which such Law Enforcement Officers use or are authorized to carry as part of their duties, on the premises of the Tribe in the course of their official duties;

c. A member of the armed forces of the United States or of the national guard, when the person's duties or lawful activities require or permit being armed with, carrying or transporting firearms, deadly weapons or dangerous instruments on the premises of the Tribe; or

d. Any person of at least the age of majority who has in his immediate possession a valid and lawfully issued license or permit to carry a firearm which has been issued under the laws of a state of the United States, provided such person shall carry the handgun in compliance with the laws of the Tribe.

5. This Section shall not apply to lands or property owned by the Tribe and used for the purpose of a private residence when the person armed with, carrying or transporting the firearm, deadly weapon or dangerous instrument is the authorized resident of the land or property and no other law or policy of the Tribe prohibits the person from being armed with, possessing, carrying or transporting the firearm, deadly weapon or dangerous instrument on such land or property.

6. This Section shall not apply to the use of firearms or other weapons while hunting on the Tribe's lands in accordance with the laws of the Tribe.

7. A person who violates this Section may:

a. Immediately be forced to leave the premises of the Tribe and unless and until such person returns without any firearm, deadly weapon or dangerous instrument;

b. Lose services from the Tribe for a time period set by the Tribal Council;

c. Be excluded or banned from the premises of the Tribe for a time period set by the Tribal Council; or

d. May be referred to appropriate law enforcement agencies for possible criminal charges, including trespassing.

Section 1-8-4. Authorization to Carry Weapons.

1. The Tribal Council may authorize individuals to carry firearms, deadly weapons or dangerous instruments on the premises of the Tribe to an individual who:

a. Needs to carry a firearm, deadly weapon or dangerous instrument on the premises of the Tribe as part of the individual's duties as an employee, officer or agent of the Tribe, such as fish and game wardens, security personnel, Tribal Court officers, and individuals specifically authorized to possess weapons on tribal property for ceremonial purposes;

b. Submits to a comprehensive background investigation designated by the Tribal Council, including but not limited to criminal and mental health evaluations;

c. Has not been convicted or pleaded guilty or no contest in any court of a crime punishable by imprisonment for a term exceeding one year;

d. Is not a fugitive from justice;

e. Is not an unlawful user of or addicted to any controlled substance;

f. Has not been adjudicated as mentally ill or been committed to a mental institution;

g. Has not been discharged from the armed forces of the United States or the national guard under dishonorable conditions;

h. Is not subject to a court order issued after a hearing of which such individual received actual notice and had an opportunity to participate that restrains the individual from harassing, stalking, or threatening an intimate partner or child or prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child;

i. Has not been convicted in any court of a misdemeanor crime of domestic violence; and

j. Otherwise meets any standards or conditions required by the Tribal Council.

2. The Tribal Council may revoke an Authorized Individual's authorization to carry firearms, deadly weapons or dangerous instruments on the premises of the Tribe at any time if the individual no longer meets the requirements set forth in this Section. The decision to revoke such authorization shall be final and not subject to appeal or challenge in any court or tribunal.

3. The Emergency Management Office of the Tribe or other staff designated by Tribal Council shall maintain a list of all currently Authorized Individuals which shall be available for review at all times by the Tribal Council, the Tribal Court, Tribal administration officials, directors of Tribal departments, and law enforcement officers of the Tribe.

Section 1-8-5. Savings.

Nothing in this Chapter shall be construed as establishing or creating any right or entitlement to be armed with, carry, or transport a firearm, deadly weapon or dangerous instrument of any kind, concealed or not, on the premises of the Tribe. Any authorization to be armed with, carry, or transport a firearm, deadly weapon or dangerous instrument on the premises of the Tribe shall be deemed a privilege subject to revocation or cancellation at any time.

Approved 11/21/15
Resolution 15-75

Revised 9/29/18

Resolution 18-68

Revised 11/5/18
Resolution 18-79

TITLE II
RULES OF PROCEDURE IN CIVIL ACTIONS

CHAPTER 1
GENERAL PROVISIONS

Rule 1. Scope of Rules; Definitions.

(a) Scope. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in all civil actions and proceedings in the Trial Court of the Ponca Tribe of Nebraska.

(b) Definitions. Unless the context requires otherwise or another definition is provided in these rules, terms used in these rules and defined in Section 1-1-11 of the Code have the meanings set forth in said section of the Code.

Rule 2. One Form of Action. Except for juvenile proceedings, there shall be one form of action known as the "civil action."

Rule 3. Construction. These rules shall be liberally construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.

Rule 4. Collateral References.

(a) Except as may be inconsistent with other provisions of this Code or these rules or otherwise inapplicable because they refer to special federal procedures having no counterpart in the Tribal Court, any procedures or matters not specifically set forth herein shall be handled in accordance with, in the case of the trial court, the Federal Rules of Civil Procedure and, in the case of the court of appeals, the Federal Rules of Appellate Procedure, and with general principles of fairness and justice as prescribed and interpreted by the Court.

(b) When handling matters in accordance with the Federal Rules of Civil Procedure or Federal Rules of Appellate Procedure, terms particular to the United States and its federal courts shall be read as referring to their counterparts under the laws of the Tribe, including, but not limited to the following:

(1) "Attorney General" shall refer to the Attorney for the Tribe;

(2) "Clerk" shall refer to the Tribal Court Administrator;

(3) "Court" shall refer to the trial court or court of appeals, as appropriate;

(4) "Judicial District" shall refer to the territory of the Tribe; and

(5) "United States" shall refer to the Tribe.

Rule 5. Authority of Tribal Court Administrator. The Tribal Court Administrator may delegate any of the Tribal Court Administrator's functions or duties under these rules to the Tribal Court Clerk or other subordinate staff member of the Tribal Court.

Rule 6. Unsworn Declarations under Penalty of Perjury. Wherever, under any of these rules, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn written declaration, verification, certificate, statement, oath, or affidavit of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn written declaration, certificate, verification, or statement, subscribed by such person as true under penalty of perjury, and dated, in substantially the following form:

I declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

Rule 7. Citation. These Rules shall be known as the Ponca Tribe of Nebraska Rules of Civil Procedure and may be abbreviated "P.T.N.R.C.P."

CHAPTER 2
COMMENCEMENT OF ACTION AND SERVICE OF PROCESS

Rule 8. Commencement of Action. A civil action is commenced by filing a written complaint with the Tribal Court Administrator and the payment of all required fees. The Court shall have jurisdiction from the time when both the complaint is filed and it is properly served upon the defendant or respondent.

Rule 9. Summons.

(a) Contents. A summons must:

(1) Name the court and the parties;

(2) Be directed to the defendant or respondent;

(3) State the name and address of the plaintiff's or petitioner's legal counsel or, if unrepresented, the plaintiff or petitioner;

(4) State the time within which the defendant or respondent must respond to the complaint; and

(5) Notify the defendant or respondent that a failure to respond to the complaint or to otherwise appear and defend will result in a default judgment against the defendant or respondent for the relief demanded in the complaint.

(b) Issuance. The summons may be signed and issued by the Tribal Court Administrator with the seal of the court or it may be signed and issued by the legal counsel for the plaintiff or petitioner. A summons or a copy of a summons addressed to multiple defendants or respondents must be issued for each defendant or respondent to be served. Separate additional or amended summons may issue against any defendant or respondent at any time. All other process shall be issued by the Tribal Court Administrator, except as otherwise provided in these rules.

Rule 10. Service of Summons and Complaint.

(a) In General. Service of process shall consist of delivering to the party to be served a copy of the complaint along with the summons.

(b) By Whom Served. Any person who is at least the age of majority and not a party may serve a summons and complaint. At the plaintiff's or petitioner's request, the court may order that service be made by a Tribal law enforcement officer or by a person specially appointed by the court. The court must so order if the plaintiff or petitioner has been authorized to proceed as an indigent.

(c) Personal Service. Personal services shall be as follows:

(1) Upon a natural person whose is the age of majority or older, by:

(i) delivering a copy of the required papers to the person himself;

(ii) leaving a copy of the required papers with a person of suitable discretion over the age of majority at the person's house, principal place of business, or usual workplace; or

(iii) by delivering a copy to a person authorized by appointment or by law to receive service of process.

(2) Upon a natural person who is a minor, by delivering a copy of the required papers to:

(i) the person's parent or guardian;

(ii) any person in whose care or control the person may be; or

(iii) any person with whom the person resides.

(3) Upon a person for whom a guardian or conservator has been appointed, by delivering a copy of the required papers to such guardian or conservator.

(4) Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of the Tribe or of any other jurisdiction, by delivering a copy of the required papers to:

(i) the registered agent for service as set forth in the records of the Secretary of the Tribal Council or of any other jurisdiction or that agent's secretary or assistant;

(ii) An officer, director, manager, partner, agent, shareholder, member, person having an ownership or similar interest in the entity, principal employee, or functional equivalent of any of the foregoing, or their secretary or assistant; or

(iii) A trustee of a trust, or that trustee's secretary or assistant.

(5) Upon the Tribe or any of its departments, agencies, boards, commissions, subdivisions or economic enterprises not subject to suit in their own name under the laws of the Tribe, by delivering a copy of the required papers to the Tribal Council

Secretary and mailing a copy of the required papers to the Attorney for the Tribe;

(6) Upon an officer, agent, or employee of the Tribe acting in an official capacity, by delivering a copy of the required papers to the officer, agent, or employee and mailing a copy of the required papers to the Attorney for the Tribe.

(7) Upon a department, agency, board, commission, subdivision or economic enterprise of the Tribe that is subject to suit in its own name, by delivering a copy of the required papers to the director, principal officer or other executive employee thereof, and mailing a copy to the legal counsel for the department, agency, board, commission or subdivision or, in the absence thereof, the Attorney for the Tribe.

(d) If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

(e) Registered Mail. Any person or party who cannot be located within the territory of the Tribe but whose whereabouts outside the territory of the Tribe is known may be served by depositing a copy of the required papers in the United States Mail, addressed to the person or party to be served, by registered or certified mail with request for a return receipt which shall be filed with the return of service. Service shall be complete on the date of delivery to the person.

(f) Personal Service Outside Territory of Tribe. Service upon a person or party may be made anywhere in the United States and shall be made on the person or party in the same manner as service is made within the territory of the Tribe by any person who is authorized to serve process pursuant to the laws of the jurisdiction wherein such person is found.

(g) Substituted Service. If a party attempting personal service is unable to accomplish service, the party may file a motion, supported by an affidavit of the person attempting service, requesting an order for substituted service. The motion shall state the efforts made to obtain personal service, the reason personal service could not be obtained, and the proposed method of substituted service, including the identity of any alternative person to whom the party wishes to deliver the required papers. If the court is satisfied that due diligence has been used to attempt personal service, that further attempts to obtain personal service would be to no avail, and any alternative person proposed for delivery of the required papers is appropriate under the

circumstances, the court may order substituted service if the proposed method of substituted service is reasonably calculated to give actual notice to the person or party upon whom service is to be effective.

(h) Service by Publication. Service by publication may be made only upon order of the Court. A party may file a motion, supported by an affidavit of the person attempting service, requesting an order of service by publication. The motion shall state the facts authorizing such service, the efforts, if any, made to obtain personal service, and the address, or last known address, of each person to be served or that the address and last known address are unknown. If the court is satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, it may order service by publication. Service by publication may be accomplished by publishing the contents of the summons in a local newspaper of general circulation and by public electronic means, such as the Tribe's website, at least once per week for four (4) consecutive weeks and by leaving an extra copy of the required papers with the Tribal Court Administrator for the party. Service shall be complete on the day of the last publication.

(i) Proof of Service. Proof of service shall be filed with the Tribal Court Administrator and made as follows:

(1) If served personally, by a statement duly acknowledged under oath or affirmation by the person completing the service providing the date, place, and manner of service;

(2) If served by mail, by a statement under oath or affirmation providing the date of the mailing and the address where mailed with the return receipt attached, where required;

(3) If served by publication, by a statement under oath or affirmation providing the dates, newspapers and electronic means of publication with a copy of the last notice published in newspaper showing the date of publication attached;

(4) If served by waiver of service, by the written waiver of service executed by the person served or by their legal counsel;

(5) If served by substituted service, by a statement under oath or affirmation providing the date, place, and manner of service, including any address(es) where service was mailed or provided.

(j) Time Limit for Service. If service of the summons and complaint is not made upon a party to be served within 120 days after the filing of the complaint, the Court, upon motion or on its own initiative after notice to the plaintiff or petitioner, shall dismiss the action without prejudice as to that party or direct that service be effected within a specified time; provided that if the plaintiff or petitioner shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Rule 11. Service of Other Papers.

(a) When Required. Unless these rules provide otherwise, each of the following papers must be served on every party:

(1) Every order stating that service is required;

(2) Every pleading filed after the original complaint;

(3) Every paper relating to discovery required to be served upon a party, unless the court otherwise orders;

(4) Every written motion, except one that may be heard ex parte; and

(5) Every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper.

(b) If a Party Fails to Appear. No service is required on a party who is in default for failing to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 10.

(c) Serving Legal Counsel. If a party is represented by legal counsel, service under this rule must be made on the legal counsel unless the court orders service on the party.

(d) A paper is served under this rule by:

(1) Handing it to the person;

(2) Leaving it at the person’s office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(3) If the person has no office or the office is closed, leaving it at the person’s dwelling or usual place of abode with

a person of suitable discretion over the age of majority who resides there;

(4) Mailing it to the person's last known address, in which case service is complete upon mailing;

(5) Leaving it with the Tribal Court Administrator if the person has no known address;

(6) Sending it by electronic means, including facsimile and electronic mail, if the person does not object thereto, in which case service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

(7) Delivering it by any other means that the person does not object to, in which event service is complete when the person receives the papers.

Rule 12. Filing.

(a) Required Filings. Any paper after the complaint that is required to be served must be filed with a certificate of service within a reasonable time after service.

(b) Papers Not to Be Filed. The following papers shall not be filed separately and may be filed as attachments or exhibits to other documents only when relevant to the determination of an issue before the Court:

(1) Any document used solely for issuance of a subpoena or subpoena duces tecum, a subpoena or subpoena duces tecum, and any affidavit of service of a subpoena;

(2) Notices of deposition; depositions, interrogatories and answers; requests for production, inspection or admission, and responses; requests for physical and mental examination; and notices of service of any discovery or discovery response;

(3) Any proposed pleading, except such pleading may be filed after ruling by the Court if necessary to preserve the record on appeal;

(4) Any paper which previously has been filed in the case. If a party desires to call the Court's attention to anything contained in a previously filed paper, the party shall do so by incorporation by reference;

(5) Copies of authorities cited in memoranda, unless necessary to preserve the record on appeal; and

(6) Offers of judgment.

(c) How Filing Is Made. The filing of pleadings and other papers with the court shall be made by filing them with the Tribal Court Administrator, including by electronic means, except that the judge may permit the papers to be filed with the judge and in that event the judge shall note thereon the filing date and forthwith transmit them to the office of the Tribal Court Administrator.

Rule 13. Constitutional Challenge to Law.

(a) Notice to Tribe. If the parties do not include the Tribe, a party that files a pleading, written motion, or other paper drawing into question the constitutionality of a code, ordinance, rule, regulation or other law of the Tribe must promptly:

(1) File a notice of constitutional question stating the question and identifying the paper that raises it; and

(2) Serve the notice and paper on the Attorney for the Tribe either by certified or registered mail or by sending it to an electronic address designated by the Attorney for the Tribe for this purpose.

(b) Intervention of Tribe. Unless the court sets a later time, the Attorney for the Tribe may intervene within sixty (60) days after the notice is filed. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the law unconstitutional.

Rule 14. Time.

(a) Computation. In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday. Unless the court orders

otherwise, if the Tribal Court Administrator's office is inaccessible on the last day for filing, then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday.

(b) Enlargement. The Court, for good cause shown, may enlarge the prescribed period of time within which any required act may be done.

(c) Motions. Written motions and any notices of hearing thereon, other than one which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for a hearing.

(d) Service by Mail. Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 15. Proceeding in Forma Pauperis.

(a) Motion to Proceed in Forma Pauperis. The Court may authorize the commencement, prosecution or defense of any suit, action or proceeding without prepayment of fees or security therefor, by a person who submits a motion to proceed in forma pauperis and an affidavit that:

(1) shows in explicit detail, the party's inability to pay or to give security for fees and costs;

(2) claims an entitlement to redress; and

(3) states the nature of the action or defense.

(b) Action on Motion. If the Court grants the motion, the party may proceed without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the Court denies the motion, it must state its reasons in writing.

(c) Service by Court. The Tribal Court Administrator shall issue and serve all process and perform all duties in cases where an individual is proceeding in forma pauperis. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by the laws of the Tribe in other cases.

(d) Dismissal of Proceedings. Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss an action in forma pauperis at any time if the court determines that:

(1) the allegation of poverty is untrue; or

(2) the action:

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(e) Award of Costs. Judgment may be rendered for costs at the conclusion of the action as in other proceedings, but the Tribe shall not be liable for any of the costs thus incurred. Such costs shall be taxed in favor of the Court as the fees excused under this Rule. If the Tribe or the Court has paid any costs for the prevailing party, the same shall be taxed in favor of the Tribe or the Court, as appropriate.

(f) In no event shall a person bring a civil action or appeal a judgment in a civil action or proceeding under this Rule if the person has, on three (3) or more prior occasions, brought an action or appeal in a court of the Tribe that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the person is under imminent danger of serious physical injury.

Rule 16. REPEALED – RESOLUTION 16-36

CHAPTER 3
PLEADINGS AND MOTIONS

Rule 17. Pleadings Allowed.

(a) Only these pleadings are allowed:

(1) A complaint or petition;

(2) An answer to a complaint or response to a petition;

(3) An answer to a counterclaim designated as a counterclaim;

(4) An answer to a crossclaim;

(5) A third-party complaint;

(6) An answer to a third-party complaint; and

(7) If the court orders one, a reply to an answer or response.

(b) The Court may grant additional leave to file pleadings in the interest of narrowing and defining issues or as justice may require.

Rule 18. Motions and Orders.

(a) A request for a court order must be made by motion. The motion must:

(1) Be in writing, unless made during a hearing or trial;

(2) State with particularity the grounds for seeking the order; and

(3) State the relief sought.

(b) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c) No court order shall be issued unless a civil action has been commenced as provided in Rule 8.

(d) A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

(e) An order includes every direction of the Court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided in the laws of the Tribe.

Rule 19. General Rules of Pleading.

(a) Claims for relief. A pleading which sets forth a claim for relief must contain:

(1) A short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;

(2) A short, plain statement of the claim showing that the pleader is entitled to relief; and

(3) A demand for the relief sought, which may include relief in the alternative or different types of relief.

(b) Defenses, Admissions and Denials.

(1) In responding to a pleading, a party must:

(i) State in short and plain terms its defenses to each claim asserted against it; and

(ii) Admit or deny the allegations asserted against it by an opposing party.

(2) A denial must fairly respond to the substance of the allegation.

(3) A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

(4) A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must state so, and the statement has the effect of a denial.

(6) An allegation, other than one relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied.

(c) Affirmative Defenses. In responding to a pleading, a party must affirmatively state any avoidance or affirmative

defense. If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.

(d) Pleadings to Be Concise and Direct; Consistency.

(1) Each allegation must be simple, concise, and direct. No technical form is required.

(2) A party may set out 2 or more statements of a claim or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

(3) A party may state as many separate claims or defenses as it has, regardless of consistency.

(e) Construing Pleadings. Pleadings must be construed so as to do justice.

Rule 20. Form of Pleadings.

(a) Caption. Every pleading must have a caption with the court's name, a title, a file number, and a designation as to what kind of pleading it is. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.

(b) Paragraphs. A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence, and each defense other than a denial, must be stated in a separate count or defense.

(c) Exhibits, Adoption by Reference. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.

(d) Preparation of Pleadings.

(1) All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8-1/2 inches x 11 inches, with margins not less than 1 inch.

(2) Notwithstanding the foregoing, exhibits, attachments to pleadings, or pleadings from jurisdictions other than the Tribe which are larger than the specified size shall be folded to the specified size or folded and fastened to pages of the specified size. Exhibits or attachments to pleadings which are smaller than the specified size shall be fastened to pages of the specified size.

(3) All pleadings and other papers filed shall have the pages numbered and shall state the number of the action, the title of the court and action, the nature of the paper filed and the name, address, e-mail address, and telephone number of the legal counsel or the party, if the party is unrepresented, filing the paper.

(4) All pleadings and other papers filed, other than printed forms, shall be clearly handwritten or typewritten on one side of the page only. The body of all documents shall be double spaced, except for headings, quotations and footnotes which may be single spaced.

(5) Substantial compliance with the foregoing requirements will be sufficient for all parties not represented by legal counsel and the court may, on its own motion or on request of any party, waive any of the foregoing requirements or provision.

Rule 21. Signing of Pleadings.

(a) Signature. Every pleading, written motion, and other paper must be signed by at least one legal counsel of record in the legal counsel's name or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or other law of the Tribe specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the legal counsel's or party's attention.

(b) Representations to the Court. By presenting to the court a pleading, written motion, or other paper, whether by signing, filing, submitting, or later advocating it, legal counsel or an unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable legal counsel's fee.

(d) Assistance to Unrepresented Parties. Legal counsel may help to draft a pleading, motion or document filed by an otherwise self-represented person, and legal counsel need not sign that pleading, motion, or document. In providing such drafting assistance, legal counsel may rely on the otherwise self-represented person's representation of facts, unless legal counsel has reason to believe that such representations are false or materially insufficient, in which instance legal counsel shall make an independent reasonable inquiry into the facts.

Rule 22. Defenses and Objections.

(a) When Presented. Unless another time is specified by this rule or a provision of the Code, a defendant, respondent or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

(b) Effect of Motion. Unless the court sets a different time, filing a motion under this rule alters these periods as follows:

(1) If the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 10 days after notice of the court's action; or

(2) If the court grants a motion for a more definite statement, the responsive pleading must be served within 10 days after the more definite statement is served.

(c) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But, a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) insufficient service of process;

(4) failure to state a claim upon which relief can be granted; and

(5) failure to join a party.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(d) Motion for Judgment on the Pleadings. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

(e) Preliminary Hearings. The defenses enumerated in subsection (c) of this rule, whether made in a pleading or by motion, and the motion for judgment on the pleadings in subsection (d) of this rule shall be heard and determined before trial on application of any party.

(f) Result of Presenting Matters Outside the Pleadings. If, on a motion under subsection (c)(4) of this rule or subsection (d) of this rule, matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for

summary judgment. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(g) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(h) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty days after service of the pleading upon the party or upon the court's own initiative at any time, the court may strike from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(i) Joining Motions. A motion under this rule may be joined with any other motion allowed by this rule. Except for lack of subject-matter jurisdiction, failure to state a claim upon which relief can be granted, failure to join a person, and failure to state a legal defense to a claim, a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(j) Waiver or Preservation of Certain Defenses.

(1) A party waives any defense of lack of jurisdiction over the person or insufficiency of service of process by:

(i) Omitting it from a motion in the circumstances described in subdivision (10) of this rule; or

(ii) Failing to either raise it by motion under this rule or include it in a responsive pleading or an amendment allowed by these rules.

(2) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Rule 23. Counterclaim or Crossclaim.

(a) Compulsory Counterclaim. A pleading must state as a counterclaim any claim that, at the time of its service, the pleader has against an opposing party if the claim:

(1) Arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and

(2) Does not require adding another party over whom the court cannot acquire jurisdiction.

(b) The pleader need not state the claim if, when the action was commenced, the claim was the subject of another pending action, or the opposing party sued on its claim by attachment or other process that did not establish personal jurisdiction over the pleader on that claim, and the pleader does not assert any counterclaim under this rule.

(c) Permissive Counterclaim. A pleading may state as a counterclaim against an opposing party any claim that is not compulsory.

(d) Counterclaim Against the Tribe. These rules do not permit any party to assert a counterclaim against the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such unless another law of the Tribe expressly permits such counterclaim.

(e) Counterclaim Acquired After Pleading. The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading.

(f) Crossclaim. A pleading may state as a crossclaim any claim by one party against a coparty if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the coparty is or may be liable to the crossclaimant for all or part of a claim asserted in the action against the crossclaimant.

Rule 24. Third Party Practice.

(a) When a Defending Party May Bring in a Third Party.

(1) At any time after commencement of the action, a defendant, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff. A copy of all previous pleadings that have been filed in the action shall be served together with the third-party complaint or be provided by the third-party plaintiff to the person served promptly after service.

(2) The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 14 days after serving the original answer. Otherwise, the third-party plaintiff must, by motion, obtain the court's leave.

(3) The person served with the summons and third-party complaint, hereinafter called the third-party defendant:

(i) Must assert any defenses to the third-party plaintiff's claim as provided in these rules;

(ii) Must assert any counterclaims against the third-party plaintiff and cross-claims against other third-party defendants;

(iii) May assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim; and

(iv) May assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff.

(4) The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert any defenses and any counterclaims and cross-claims as provided in these rules.

(5) A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When a Plaintiff May Bring in a Third Party. When a claim is asserted against a plaintiff, the plaintiff may bring in a third party if this rule would allow a defendant to do so.

Rule 25. Amendment of Pleadings.

(a) Amendment Before Trial. A party may amend his pleadings once as a matter of course before the opposing party has responded or, if no response is required, within 20 days of serving it. The opposing party may respond, if appropriate, and any trial date rescheduled if necessary. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave.

(b) Amendment During Trial. When issues or evidence not raised in the pleadings are heard at trial, they shall be treated in all respects as if they had been raised in the pleadings and the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

(c) Relation Back of Amendments. An amendment to a pleading relates back to the date of the original pleading when:

(1) The amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out in the original pleading; or

(2) The amendment changes the party or the naming of the party against whom a claim is asserted and if, within the period provided for serving the summons and complaint, the party to be brought in by amendment received such notice of the action that it will not be prejudiced in defending on the merits and knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

CHAPTER 4
PARTIES

Rule 26. Parties.

(a) Real Party in Interest. An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought:

(1) An executor or administrator of an estate;

(2) A guardian;

(3) A trustee of an express trust;

(4) A party with whom or in whose name a contract has been made for another's benefit; and

(5) A party authorized by statute.

(b) Minor or Incompetent. Whenever a minor or incompetent person has a representative, such as a general guardian or similar fiduciary, the representative may sue or defend on behalf of the minor or incompetent person. A minor or an incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court must appoint a guardian ad litem or issue another appropriate order to protect a minor or incompetent person who is unrepresented in an action.

(c) Tribal Officer's Title and Name. A Tribal officer or employee who sues or is sued in an official capacity may be designated by official title rather than by name, but the court may order that the officer's or employee's name be added.

Rule 27. Joinder of Claims.

(a) A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) A party may join two claims even though one of them is contingent on the disposition of the other; but the court may grant relief only in accordance with the parties' relative substantive rights.

Rule 28. Required Joinder of Parties.

(a) A person who is subject to the court's jurisdiction and whose joinder will not deprive the court of subject-matter jurisdiction shall be joined in the action if:

(1) The person claims an interest relating to the subject of the action; or

(2) In that person's absence, the court cannot accord complete relief among existing parties.

(b) Failure to join a party over whom the court has no jurisdiction does not require dismissal of the action unless it would be impossible to reach a just result without such party. The factors for the court to consider include:

(1) The extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) The extent to which any prejudice could be lessened or avoided by protective provisions in the judgment, shaping the relief, or other measures;

(3) Whether a judgment rendered in the person's absence would be adequate; and

(4) Whether the plaintiff or petitioner would have an adequate remedy if the action were dismissed for nonjoinder.

Rule 29. Permissive Joinder of Parties.

(a) Plaintiffs and Petitioners. Persons may join in one action as plaintiffs or petitioners if:

(1) They assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(2) Any question of law or fact common to all plaintiffs or petitioners will arise in the action.

(b) Defendants and Respondents. Persons may be joined in one action as defendants or respondents if:

(1) Any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(2) Any question of law or fact common to all defendants or respondents will arise in the action.

(c) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Rule 30. Intervention.

(a) Intervention as of Right. On timely motion, the court must permit anyone to intervene who:

(1) Is given an unconditional right to intervene by a provision in the Code; or

(2) Claims an interest relating to the subject of the action and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive Intervention. On timely motion, the court may permit anyone to intervene who:

(1) Is given a conditional right to intervene by a provision in the Code; or

(2) Has a claim or defense that shares with the main action a common question of law or fact.

(c) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(d) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 11. The motion must state the grounds for intervention and be accompanied by a pleading that sets out the claim or defense for which intervention is sought.

Rule 31. Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

CHAPTER 5
DISCLOSURE AND DISCOVERY

Rule 32. Prompt Disclosure.

(a) Duty to Disclose, Scope. Within the times set forth in subdivision (b), each party shall disclose in writing to every other party:

(1) The factual basis of the claim or defense. In the event of multiple claims or defenses, the factual basis for each claim or defense.

(2) The legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations of pertinent legal or case authorities.

(3) The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call at trial with a fair description of the substance of each witness' expected testimony.

(4) The names and addresses of all persons whom the party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to the action, and the nature of the knowledge or information each such individual is believed to possess.

(5) The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6) The name and address of each person whom the disclosing party expects to call as an expert witness at trial, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert.

(7) A computation and the measure of damage alleged by the disclosing party and the documents or testimony on which such computation and measure are based and the names, addresses, and telephone numbers of all damage witnesses.

(8) The existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the disclosing party plans to use at trial and relevant insurance agreements.

(9) A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by a party

to exist whether or not in the party's possession, custody or control and which that party believes may be relevant to the subject matter of the action, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection, copying, testing or sampling. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the documents and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

(b) Time for Disclosure; a Continuing Duty.

(1) The parties shall make the initial disclosure required by subsection (a) as fully as then possible within forty (40) days after the filing of a responsive pleading to the complaint, counterclaim, crossclaim or third-party complaint unless the parties otherwise agree, or the Court shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the disclosures shall be served as provided by Rule 11.

(2) The duty prescribed in subdivision (a) shall be a continuing duty, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. Such additional or amended disclosures shall be made seasonably, but in no event more than thirty (30) days after the information is revealed to or discovered by the disclosing party. A party seeking to use information which that party first disclosed later than sixty (60) days before trial shall seek leave of court to extend the time for disclosure.

(3) All disclosures shall include information and data in the possession, custody and control of the parties as well as that which can be ascertained, learned or acquired by reasonable inquiry and investigation.

(c) Signed Disclosure. Each disclosure shall be made in writing under oath, signed by the party making the disclosure.

(d) Claims of Privilege or Protection of Trial Preparation Materials.

(1) When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

(2) If a party contends that information subject to a claim of privilege or of protection as trial-preparation material has been inadvertently disclosed or produced in discovery, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has made and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

Rule 33. Discovery Generally.

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things or permission to enter upon land or other property, for inspection and other purposes;

(4) Physical and mental examinations; and

(5) Requests for admission.

(b) Discovery Scope and Limits. Parties may obtain discovery regarding any matter, not privileged or the work product of a party's legal counsel, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other

tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Protective Order. A party against whom discovery is sought may move the court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the court may order that the discovery cease or proceed only upon specified conditions.

(d) Sequence and Timing of Discovery. Unless the court orders otherwise for the convenience of parties and witnesses and in the interests of justice, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery. A party may not seek discovery from any source before the parties have exchanged disclosure statements as required by Rule 32.

(e) Discovery Requests, Responses, Objections and Sanctions. The court shall assess an appropriate sanction against any party or legal counsel who has engaged in unreasonable, groundless, abusive, or obstructionist conduct.

(f) Discovery Motions. No discovery motion will be considered unless a separate statement of moving counsel is attached thereto certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter.

(g) Use of Discovery. An answer to interrogatories or a deposition may be used in a motion, hearing or at trial to the extent it would otherwise be admissible in accordance with the laws of the Tribe, to impeach or contradict the testimony of the person discovered, or when the person discovered cannot be made available at the hearing or trial.

Rule 34. Oral Depositions.

(a) When Deposition May be Taken. A party may take the oral deposition, under oath or affirmation, of any other party or any expert witness expected to be called upon not less than ten (10) days notice, specifying the time and place where such will occur. No other depositions shall be taken except upon agreement of all

parties or an order of the court following a motion demonstrating good cause.

(b) Length of Deposition. Depositions shall be of reasonable length. The oral deposition of any party or witness, including expert witnesses, whenever taken, shall not exceed four (4) hours in length, except pursuant to stipulation of the parties or by order of the court upon motion and a showing of good cause. The court shall impose sanctions for unreasonable, groundless, abusive or obstructionist conduct.

(c) Manner of Taking Deposition. Examination and cross-examination of witnesses may proceed as permitted at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness.

(d) Objections. All objections made at the time of the deposition to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

Rule 35. Written Depositions.

(a) Serving Questions. A party may take the testimony of any other party or any expert witness expected to be called by deposition upon written questions by serving them on the individual to be deposed and every other party with a notice stating the name and address of the person who is to answer them. Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time. No other depositions shall be taken except upon agreement of all parties or an order of the court following a motion demonstrating good cause.

(b) Length of Deposition. Depositions shall be of reasonable length. The court shall impose sanctions for unreasonable, groundless, abusive or obstructionist conduct.

(c) Manner of Taking Deposition. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated to take the deposition, who shall proceed promptly to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(d) Objections. Objections shall be the same as with oral depositions.

Rule 36. Interrogatories.

(a) Availability and Use. Unless otherwise stipulated or ordered by the court, a party may submit no more than 25 written interrogatories, including all discrete subparts, to be answered by any other party served who shall furnish such information in response as is available to the party. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by legal counsel making them.

(b) Time for Response. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within thirty (30) days after the service of the interrogatories. The court may allow a shorter or longer time.

(c) Option to Produce Records. Where the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Rule 37. Production, Entry, or Inspection.

(a) Scope. A party may serve on any other party a request within the scope of Rule 33(b):

(1) To produce and permit the requesting party or its representative to inspect, copy, test, or sample any designated documents or electronically stored information or any designated tangible things; or

(2) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

(b) Procedure and Limitations. The request:

(1) Must describe with reasonable particularity each item or category of items to be inspected, not to include more than ten (10) distinct items or categories of items without leave of court;

(2) Must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(c) Response to Request. The party upon whom a request is served shall serve a written response within thirty (30) days after the service of the request. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be allowed as requested or identify the reasons for any objection.

Rule 38. Physical and Mental Examinations.

(a) The court may order a party whose mental or physical condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The order may be made only on motion for good cause and on notice to all parties and the person to be examined and must specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who will perform it.

(b) The person to be examined shall have the right to have a representative present during the examination, unless the presence of that representative may adversely affect the outcome of the examination. The person to be examined shall have the right to record by audiotape any physical examination. A mental examination may be recorded by audiotape, unless such recording may adversely affect the outcome of the examination. Upon good

cause shown, a physical or mental examination may be video-recorded. A copy of any record made of a physical or mental examination shall be provided to any party upon request.

(c) The examiner shall issue a report to the requestor which must be in writing and must set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests. The requestor shall serve copies of the report upon all other parties. If the report is not provided, the court may exclude the examiner's testimony at trial.

Rule 39. Requests for Admission.

(a) Scope. A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 33(b) relating to:

(1) Facts, the application of law to fact, or opinions about either; and

(2) The genuineness of any described documents.

(b) Form. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying. Each party shall be entitled to submit no more than twenty-five (25) requests in any case except upon agreement of all parties or an order of the court following a motion demonstrating good cause. Any interrogatories accompanying requests shall be deemed interrogatories under Rule 36.

(c) Time to Respond; Effect of Not Responding. A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its legal counsel. If objection is made, the reasons therefor shall be stated. A shorter or longer time for responding may be stipulated to or ordered by the court.

(d) Answer. If a matter is not admitted, the answer must specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as

a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(e) Objections. The grounds for objecting to a request must be stated. A party must not object solely on the ground that the request presents a genuine issue for trial.

(f) Effect of Admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice that party in maintaining the action or defense on the merits. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

Rule 40. Failure to Make Disclosures or Discovery.

(a) Motion. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery. No motion brought under this rule will be considered unless a separate statement of moving counsel is attached certifying that, after personal consultation and good faith efforts to do so, counsel have been unable to satisfactorily resolve the matter. For purposes of this rule, an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(b) Expenses.

(1) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or legal counsel advising such conduct or both of them to pay the moving party the reasonable expenses incurred in making the motion, including legal counsel’s fees, unless:

(i) The court finds that the motion was filed without the movant’s first making a good faith effort to obtain the disclosure or discovery without court action;

(ii) That the opposing party's nondisclosure, response, or objection was substantially justified; or

(iii) That other circumstances make an award of expenses unjust.

(2) If the motion is denied, the court may enter a protective order under Rule 33(c) and shall, after affording an opportunity to be heard, require the moving party or legal counsel filing the motion or both of them to pay to the party who opposed the motion the reasonable expenses incurred in opposing the motion, including legal counsel's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

(3) If the motion is granted in part and denied in part, the court may enter a protective order under Rule 33(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(c) Sanctions. If a party fails to obey an order to provide or permit discovery, the court may make such orders in regard to the failure as are just, including:

(1) An order that matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the legal counsel advising that party or both to pay the reasonable

expenses, including legal counsel's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(d) Failure to Disclose.

(1) A party who fails to timely disclose information required by Rule 32 shall not, unless such failure is harmless, be permitted to use as evidence at trial, at a hearing, or on a motion, the information or witness not disclosed, except by leave of court for good cause shown. In addition to or in lieu of these sanctions, the court on motion of a party or on the court's own motion, and after affording an opportunity to be heard, may impose other appropriate sanctions, including informing the trier of fact of the failure to make the disclosure.

(2) A party seeking to use information which that party first disclosed later than sixty (60) days before trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) That the information would be allowed under the standards of subsection (d)(1); and

(ii) That the information was disclosed as soon as practicable after its discovery.

(3) A party seeking to use information which that party first disclosed during trial must obtain leave of court by motion, supported by affidavit, to extend the time for disclosure. Such information shall not be used unless the motion establishes and the court finds:

(i) That the information could not have been discovered and disclosed earlier even with due diligence; and

(ii) That the information was disclosed immediately upon its discovery.

(e) Expenses on Failure to Admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 39, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable legal

counsel's fees. The court shall make the order unless it finds that:

(1) The request was held objectionable;

(2) The admission sought was of no substantial importance;

(3) The party failing to admit had reasonable ground to believe that the party might prevail on the matter; or

(4) There was other good reason for the failure to admit.

CHAPTER 6
TRIALS

Rule 41. Assigning Case for Trial.

(a) Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

(b) Postponement. Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

Rule 42. Dismissal of Actions.

(a) Voluntary Dismissal.

(1) Without Court Order.

(i) Subject to any applicable law of the Tribe, a plaintiff or petitioner may dismiss an action without a court order by filing:

(A) A notice of dismissal before the opposing party serves a responsive pleading, a motion under Rule 22 or a motion for summary judgment, or, if there is no responsive pleading, before evidence is introduced at a hearing or trial; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(ii) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff or petitioner previously dismissed any court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order. Except as provided in subsection (a)(1), an action may be dismissed at the plaintiff's or petitioner's request only by court order, on terms that the court considers proper. If a defendant or respondent has pleaded a counterclaim before being served with the plaintiff's or petitioner's motion to dismiss, the action may be dismissed over the defendant's or respondent's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) Involuntary Dismissal.

(1) Grounds. A defendant or respondent may move to dismiss the action or any claim against him based upon any of the following grounds:

(i) Failure of the plaintiff or petitioner to prosecute his claim;

(ii) Failure of the plaintiff or petitioner to comply with these rules or an order of the court;

(iii) At the close of the presentation of the plaintiff's or petitioner's evidence and without prejudicing the defendant's or respondent's own right to present evidence, failure of the plaintiff or petitioner to establish a right to relief based on the facts and law presented; or

(iv) Whenever dismissal appears proper based upon a failure to prove a claim.

(2) Effect. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule, except one for lack of jurisdiction or failure to join a party, operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim.

(d) Costs of a Dismissed Action. If a plaintiff or petitioner moves to dismiss his own claim and the action has progressed beyond the pleading stage, the court may order the plaintiff or petitioner to pay all or part of the costs of the defendant or respondent. The court may also order the payment of costs in other circumstances where such is deemed appropriate.

Rule 43. Consolidation; Separate Trials.

(a) Consolidation. If actions before the court involve a common question of law or fact, the court may:

(1) Join for hearing or trial any or all matters at issue in the actions;

(2) Consolidate the actions; or

(3) Issue any other orders to avoid unnecessary cost or delay.

(b) Separate Trials. For convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

Rule 44. Evidence and Testimony.

(a) Testimony in Open Court. At trial or hearing, the witnesses' testimony must be taken in open court unless a law of the Tribe, these rules, or other rules adopted by the court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

(b) Form of Testimony and Admissibility. The testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All relevant evidence and evidence as specified in this Code is admissible, but the court may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The competency of witnesses to testify shall be similarly determined.

(c) Affirmation Instead of an Oath. When these rules require an oath, a solemn affirmation suffices.

(d) Examination and Cross Examination.

(1) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

(2) A party may use leading questions against the witnesses of an opposing party or a hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses.

(3) Cross examination shall be limited to the general scope of direct examination; provided, however, that full examination of all witnesses shall be allowed to assure complete development of all relevant facts.

(e) Physical Evidence. Written documents and other physical evidence shall be received upon being identified, authenticated, and shown to be relevant to the action.

(f) Official Documents. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

(g) Record of Excluded Evidence. Excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony may be received into the record.

(h) Evidence on a Motion. When a motion relies on facts outside the record, the court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

(i) Supplemental Rules. If the court has not developed rules of evidence or to the extent the court's rules of evidence are insufficient, the court may follow the Federal Rules of Evidence in any action or proceeding so long as they are consistent with the Code. The rules of evidence may be waived at the discretion of the Court, where the parties are unrepresented by counsel.

Rule 45. Subpoenas.

(a) In General.

(1) Form and Contents.

(i) Requirements. Every subpoena must:

(A) State the court from which it issued;

(B) State the title of the action and its case number;

(C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify at a deposition, hearing or trial; produce designated documents or things in that person's possession, custody, or control; or permit the inspection of premises;

(D) Identify the party and the party's legal counsel, if any, who is serving the subpoena;

(E) Identify the names, addresses and phone numbers and email addresses, where known, of legal counsel for each of the parties and of each party who has appeared in the action without legal counsel;

(F) State the method for recording the testimony if the subpoena commands attendance at a deposition; and

(G) Set out the text of subsections (d) and (e) of this rule.

(ii) Combining or Separating a Command to Produce or to Permit Inspection. A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena.

(2) Issued by Whom. The Tribal Court Administrator must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. Legal counsel, as an officer of the court, may also issue and sign a subpoena if the legal counsel is authorized to practice in the court and has entered an appearance in the action.

(3) Notice to Other Parties Before Service. If a subpoena commands the production of documents or things or the inspection of premises, a notice and a copy of the subpoena must be served on each party before it is served on the person to whom it is directed.

(b) Service.

(1) Time for Service. Unless otherwise ordered by the court for good cause:

(i) Service of a subpoena only for testimony in a trial or hearing shall be made no later than five (5) days before the time for appearance set out in the subpoena.

(ii) Service of a subpoena only for testimony in a deposition shall be made not later than fourteen (14) days before compliance is required.

(iii) Service of a subpoena commanding a person to produce documents or things shall be made not later than fourteen (14) days before compliance is required.

(2) How Served. Subpoenas shall be served as provided in Rule 10.

(c) Place of Compliance.

(1) For a Deposition. A subpoena may command a person to attend a deposition only within 100 miles of where the person resides, is employed, or regularly transacts business in person.

(2) For Other Discovery. A subpoena may command:

(i) Production of documents or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(ii) Inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or legal counsel responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction, which may include lost earnings and reasonable legal counsel’s fees, on a party or legal counsel who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(i) Appearance Not Required. A person commanded to produce documents or things or to permit the inspection of premises need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(ii) Objections. A person commanded to produce documents or things or to permit inspection may serve on the party or legal counsel designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises. The objection must be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the party issuing the subpoena is not entitled to receive testimony or to inspect, copy, test or sample materials except pursuant to an order of the court from which the subpoena was issued. If an objection is made, at any time on notice to the subpoenaed person and the other parties, the party issuing the subpoena may move the issuing court for an order compelling production.

(3) Quashing or Modifying a Subpoena.

(i) When Required. On timely motion, the court must quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) Requires a person to comply beyond the geographical limits specified in this rule;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(ii) When Permitted. To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires disclosing a trade secret or other confidential information.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents.

(i) Unless agreed in writing by all parties and the person subpoenaed, production shall not be made until at least fourteen (14) days after service of the subpoena.

(ii) A person responding to a subpoena to produce documents or things need not attend in person at the place of production unless also commanded to attend for a deposition, hearing, or trial.

(iii) A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(2) Claiming Privilege or Protection.

(i) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(ii) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(f) Contempt. The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

(g) Tender of Payment for Mileage. If a subpoena requires a person's attendance, the payment for one (1) day's mileage allowed

by law must be tendered to the subpoenaed person at the time of service of the subpoena or within a reasonable time after service of the subpoena, but in any event prior to the appearance date. Payment for mileage need not be tendered when the subpoena issues on behalf of the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

(h) Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 46. Judgment as a Matter of Law; Motion for New Trial; Conditional Ruling.

(a) Judgment as a Matter of Law.

(1) In General. If a party has been fully heard on an issue and the court finds that a reasonable trier of fact would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:

(i) Resolve the issue against the party; and

(ii) Grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

(2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the trier of fact. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

(b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under subsection (a) of this rule, the action is considered to have been submitted subject to the court's later deciding the legal questions raised by the motion. No later than thirty (30) days after the entry of judgment, the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under these rules. In ruling on the renewed motion, the court may:

(1) Allow judgment as originally decided;

(2) Order a new trial; or

(3) Direct the entry of judgment as a matter of law.

Rule 47. Findings and Conclusions by the Court.

(a) Findings and Conclusions.

(1) In General. In an action tried on the facts, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered in accordance with these rules.

(2) For a Preliminary or Interlocutory Injunction. In granting or refusing a preliminary or interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) For a Motion. The court is not required to state findings or conclusions when ruling on a motion unless these rules provide otherwise.

(b) Amended or Additional Findings. On a party's motion filed no later than ten (10) days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under these rules.

CHAPTER 7
JUDGMENT

Rule 48. Judgments; Costs.

(a) Definition; Form. "Judgment" as used in these rules includes any decree or order finally and conclusively determining the rights of the parties or from which an appeal otherwise lies.

(b) Judgment on Multiple Claims or Involving Multiple Parties. When an action presents more than one claim for relief, whether as a claim, counterclaim, crossclaim, or third-party claim, or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties

does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities. For purposes of this subsection, a claim for legal counsels' fees may be considered a separate claim from the related judgment regarding the merits of a cause.

(c) Demand for Judgment. A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

(d) Costs. Unless a law of the Tribe, these rules, or a court order provides otherwise, costs other than legal counsel's fees should be allowed to the prevailing party. But costs against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such may be imposed only to the extent allowed by the laws of the Tribe. The Tribal Court Administrator may tax costs on five (5) days' notice. On motion served within the next ten (10) days, the court may review the Tribal Court Administrator's action.

(e) Legal counsel's Fees.

(1) When Allowed. The court shall not award legal counsel's fees in a case unless an award of legal counsel's fees:

(i) Is expressly permitted under the laws of the Tribe;

(ii) Has been specifically provided for in a contract or agreement of the parties subject of the case; or

(iii) Is warranted on the grounds that the case was brought for purposes of harassment only or there was no reasonable expectation of success on the part of the plaintiff or petitioner.

(2) Claim to Be by Motion. A claim for legal counsel's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(3) Timing and Contents of the Motion. Unless a law of the Tribe or a court order provides otherwise, the motion must:

(i) Be filed no later than fourteen (14) days after the entry of judgment;

(ii) Specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) State the amount sought or provide a fair estimate of it; and

(iv) Disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

(4) Proceedings. The court must, on a party's request, give an opportunity for adversary submissions on the motion. The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 47(a).

(5) Exceptions. Subsections (1)-(3) do not apply to claims for fees and expenses as sanctions for violating these rules.

Rule 49. Default.

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the Tribal Court Administrator must enter the party's default.

(b) Entering a Default Judgment.

(1) By the Tribal Court Administrator. If the plaintiff's or petitioner's claim is for a sum certain or a sum that can be made certain by computation, the Tribal Court Administrator, on the plaintiff's or petitioner's request with an affidavit showing the amount due, must enter judgment for that amount and costs against a defendant or respondent who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least ten (10) days before the hearing. The court may conduct hearings when, to enter or effectuate judgment, it needs to:

(i) Conduct an accounting;

(ii) Determine the amount of damages;

(iii) Establish the truth of any allegation by evidence; or

(iv) Investigate any other matter.

(c) Setting Aside a Default or a Default Judgment. The court may set aside an entry of default for good cause and may set aside a default judgment under Rule 55(b).

(d) Judgment Against the Tribe. A default judgment may be entered against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

Rule 50. Summary Judgment.

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense, or the part of each claim or defense, on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless the court orders otherwise, a party may file a motion for summary judgment at any time thirty (30) days after from the service of process upon the adverse party, but no sooner than the date on which the answer is due and no later than ninety (90) days prior to the date set for trial.

(c) Motion and Proceedings.

(1) Time for Hearing. Upon timely request by any party, the court shall set a time for hearing on the motion, provided, however, that the court need not conduct a hearing if it determines that the motion should be denied or if the motion is uncontested. If no request for a hearing is made, the court may, in its discretion, set a time for such hearing.

(2) Response and Reply. A party opposing the motion must file its response and any supporting materials within thirty (30)

days after service of the motion. The moving party shall have fifteen (15) days after service of the response in which to serve a reply memorandum and any supporting materials. These time periods may be shortened or enlarged by a filed stipulation of the parties or by court order; provided, however, that court approval is required for any stipulated extensions to a briefing schedule that would purport to make a reply or other memorandum due less than five days before a hearing date previously set by the court, or would require postponement of a scheduled hearing date.

(3) Statement of Facts. Any party filing a motion for summary judgment shall set forth, in a statement separate from the memorandum of law, the specific facts relied upon in support of the motion. The facts shall be stated in concise, numbered paragraphs. As to each fact, the statement shall refer to the specific portion of the record where the fact may be found. Any party opposing a motion for summary judgment shall file a statement in the form prescribed by this rule, specifying those paragraphs in the moving party's statement of facts which are disputed, and also setting forth those facts which establish a genuine issue of material fact or otherwise preclude summary judgment in favor of the moving party. In the alternative, the movant and the party opposing the motion shall file a joint statement in the form prescribed by this rule, setting forth those material facts as to which there is no genuine dispute. The joint statement may provide that any stipulation of fact is not intended to be binding for any purpose other than the motion for summary judgment.

(d) Form of Affidavits and Depositions; Further testimony.

(1) An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a properly authenticated copy shall be attached to or served with the affidavit.

(2) Affidavits may be supplemented or opposed by depositions, answers to interrogatories, additional affidavits or other materials that would be admissible in evidence.

(3) If all or part of a deposition is submitted in support of or in opposition to a motion for summary judgment, the offering party must submit a written transcript of the testimony.

(4) When a motion for summary judgment is made and supported as provided in this rule, an opposing party may not rely merely on

allegations or denials of its own pleading; rather, its response must, by affidavits or as otherwise provided in this rule, set forth specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against that party.

(e) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) Defer considering the motion or deny it;

(2) Allow time to obtain affidavits or declarations or to take discovery; or

(3) Issue any other appropriate order.

Unless otherwise ordered by the court, the filing of a request for relief and affidavit under this subsection does not by itself extend the date by which the party opposing summary judgment must file a memorandum and separate statement of facts as prescribed in section (c) of this rule.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) Grant summary judgment for a nonmovant;

(2) Grant the motion on grounds not raised by a party;or

(3) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Declining to Grant All Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact, including an item of damages or other relief, that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court, after notice and a reasonable time to respond, may order the submitting party to pay the other party the reasonable expenses, including legal counsel’s fees, it incurred as a result. An offending party or

legal counsel may also be held in contempt or subjected to other appropriate sanctions.

Rule 51. Declaratory Judgments. The procedure for obtaining a declaratory judgment shall be in accordance with these rules and the laws of the Tribe applicable to declaratory judgments. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

Rule 52. Entry of Judgment.

(a) Separate Document. Every judgment and amended judgment must be set out in a separate document.

(b) Entering Judgment. All judgments shall be in writing and signed by a judge. The filing with the Tribal Court Administrator of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment nunc pro tunc, and the reasons for such direction shall be entered of record. The Tribal Court Administrator shall immediately make a notation of the judgment in the docket. The entry of the judgment shall not be delayed for taxing costs.

(c) Notice of Entry.

(1) Orders. The Tribal Court Administrator shall distribute, either by U.S. mail, electronic mail, or hand delivery, copies of all orders to all parties.

(2) Judgment. Immediately upon the entry of a judgment as defined in Rule 52(b), the Tribal Court Administrator shall distribute, either by U.S. mail, electronic mail, or hand delivery, a notice of the entry of judgment stating the date of entry, in the manner provided for in Rule 11, to every party who is not in default for failure to appear, and shall make a record of the distribution.

(3) Date of Entry. In the absence of a date of entry stated in a notice of entry, the date of entry shall be the date on which the Tribal Court Administrator affixes a file stamp on the written judgment or order.

(4) Failure of Notice. Lack of notice of the entry by the Tribal Court Administrator does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to

appeal within the time allowed, except as provided in the rules governing appellate procedure.

(5) Form of Notice. Notice of the entry of judgment shall be accomplished by any of the following:

(i) A specifically designated notice form; or

(ii) A conformed copy of the file stamped judgment or order.

(d) Death of a Party. If a party dies after a decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

Rule 53. Satisfaction of Judgment.

(a) Satisfaction by Acknowledgment. When any judgment or decree is satisfied otherwise than by execution, the judgment creditor shall immediately file an acknowledgment of satisfaction. If the satisfaction is for part of the judgment or for fewer than all of the judgment debtors, it shall state the amount paid or name the debtors who are released. Satisfaction may be entered by the judgment creditor, his legal counsel of record, or an agent; if entered by an agent who is not the legal counsel of record, his authority shall be filed.

(b) Satisfaction by Order of Court. The court may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

(c) Entry of Satisfaction. The Tribal Court Administrator shall file all satisfactions of judgment and note the amount thereof in the docket.

(d) Effect of Satisfaction. Satisfaction of a judgment, whether by acknowledgement or order, shall discharge the judgment, and the judgment shall cease to be a lien as to the debtors named and to the extent of the amount paid. A writ of execution or a writ of garnishment issued after partial satisfaction shall include the partial satisfaction and shall direct the officer to collect only the balance of the judgment, or to collect only from the judgment debtors remaining liable.

(e) Period of Limitation. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of

eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter extended once more by the same procedure.

Rule 54. New Trials; Altering or Amending Judgment.

(a) Grounds; Procedure. A decision or judgment may be vacated and a new trial granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:

(1) Irregularity in the proceedings of the court or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial;

(2) Misconduct of the prevailing party;

(3) Accident or surprise which could not have been prevented by ordinary prudence;

(4) Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the trial;

(5) Excessive or insufficient damages;

(6) Error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action;

(7) That the decision, findings of fact, or judgment is the result of passion or prejudice;

(8) That the decision, findings of fact, or judgment is not justified by the evidence or is contrary to law.

(b) Scope. A new trial may be granted to all or any of the parties and on all or part of the issues in an action, for any of the reasons for which new trials are authorized by law or rule of court. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(c) Contents of motion; Amendment; Rulings Reviewable.

(1) The motion for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the court.

(2) Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.

(3) Upon the general ground that the decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.

(d) Time. A motion for new trial shall be filed not later than ten (10) days after entry of the judgment.

(e) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has ten (10) days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(f) On Initiative of Court. Not later than ten (10) days after entry of judgment, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(g) Questions to be Considered in New Trial. A new trial, if granted, shall be only a new trial of the question or questions with respect to which the decision is found erroneous, if separable. If a new trial is ordered because the damages are excessive or inadequate and granted solely for that reason, the decision shall be set aside only in respect of the damages, and shall stand in all other respects.

(h) Motion to Alter or Amend Judgment. A motion to alter or amend the judgment shall be filed not later than ten (10) days after entry of judgment.

(i) Number of New Trials. Not more than two (2) new trials shall be granted to either party in the same action, except when

the trier of fact has been guilty of some misconduct or has erred in matters of law.

(j) Specification of Grounds of New Trial. No order granting a new trial shall be made and entered unless the order specifies with particularity the ground or grounds on which the new trial is granted.

Rule 55. Relief From Judgment or Order.

(a) Clerical Mistakes. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 54;

(3) Fraud (whether intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) When the summons in an action has not been personally served upon the defendant or respondent and the defendant or respondent has failed to appear in said action;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(7) Any other reason that justifies relief.

(c) Reversed Foreign Judgment. When a judgment has been rendered upon the judgment of another jurisdiction, and the foreign

judgment is thereafter reversed or set aside by a court of such other jurisdiction, the court shall set aside, vacate and annul its judgment.

(d) Timing and Effect of Motion.

(1) Timing. A motion under subsection (b) must be made within a reasonable time and for reasons (1), (2), (3) and (4), no more than three (3) months after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(e) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) Entertain an independent action to relieve a party from a judgment, order, or proceeding; or

(2) Set aside a judgment for fraud on the court.

Rule 56. Harmless Error. Unless justice requires otherwise, no error in admitting or excluding evidence or any other error by the court or a party is ground for granting a new trial, for setting aside a decision, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

Rule 57. Stay of Proceedings To Enforce Judgment.

(a) Automatic Stay; Exceptions for Injunctions. Except as stated in this rule or elsewhere in the laws of the Tribe, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until thirty (30) days have passed after its entry. But, unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the

execution of a judgment or any proceedings to enforce it pending disposition of any of the following motions:

(1) For judgment as a matter of law;

(2) To amend the findings or for additional findings;

(3) For a new trial or to alter or amend a judgment;

(4) For relief from a judgment or order; or

(5) When justice so requires in other cases until such time as the court may fix.

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay Upon Appeal. If an appeal is taken, the appellant may obtain a stay by giving a bond, except where such a stay is otherwise prohibited by law or these rules. The bond may be given upon or within ten (10) days after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay in Favor of the Tribe. Judgments against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such are automatically stayed when an appeal is filed. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

(f) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its justices:

(1) To stay proceedings or suspend, modify, restore, or grant an injunction while an appeal is pending; or

(2) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

(g) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment until it enters a later

judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

(h) Waiver of Undertaking. In all cases the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking, or the amount of such undertaking.

(i) Other Relief. No stay, injunction, waiver of undertaking may be granted by the court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

Rule 58. Disability or Disqualification of a Judge.

(a) Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a decision is made or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court may perform those duties, but if such other judge determines that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

(b) Disqualification. Grounds for disqualification of a judge are those set forth in Section 1-2-8 of the Code or any other reason under the laws of the Tribe allowing or requiring disqualification of a judge. Proceedings to disqualify a judge before whom any action or proceeding, civil or criminal, is pending shall be handled as follows:

(1) A party or his legal counsel shall file and serve an affidavit alleging the grounds for disqualification in the same manner as other documents and pleadings are filed in actions before the Court.

(2) The affidavit must be filed and served within twenty days after discovery that grounds exist for disqualification of the judge. No event occurring before such discovery shall constitute waiver of rights to seek disqualification of a judge.

(3) The affidavit shall state the facts and the reasons for the belief that the judge is disqualified with sufficient specificity to allow the matter to be properly determined and shall include a certificate of legal counsel of record, or by the party personally if the party is unrepresented, that such affidavit is

presented in good faith based upon a reasonable investigation of the facts and the law and is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Unsupported or general allegations shall not be considered sufficient to disqualify a judge. No party shall be permitted to file more than one affidavit in any action.

(4) The judge against whom the affidavit is directed may summarily deny the request for disqualification if the affidavit does not include any facts or reasons to support the basis for disqualification. Otherwise, if the judge determines that cause exists to disqualify him, the judge shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge.

(5) If the judge against whom the affidavit is directed does not find that cause exists to disqualify him or otherwise does not find the affidavit sufficient, the judge shall certify the affidavit for assignment to another judge for determination. The Tribal Court Administrator shall then refer the affidavit to another judge for decision. The assigned judge shall decide the issues by the preponderance of the evidence. The sufficiency of any "cause to believe" shall be determined by an objective standard, not by reference to any party's or legal counsel's subjective belief. The assigned judge may conduct or provide for a hearing to determine the issues connected with the affidavit if necessary for proper determination, but shall attempt to decide the matter without hearing so as to preserve the dignity of the Court and avoid the hint or appearance of impropriety. Following determination of the disqualification, the assigned judge shall expeditiously reassign the action to the original judge or make a new assignment, depending on the findings of the assigned judge.

(6) A denial of disqualification may be appealed to the Court of Appeals after final order or judgment in the action.

CHAPTER 8
PROVISIONAL AND FINAL REMEDIES

Rule 59. Injunctions and Restraining Orders.

(a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party.

(2) Consolidating Hearing with Trial on the Merits. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

(3) Motion to Dissolve or Modify. Motions to dissolve or modify a preliminary injunction may be heard after an answer is filed, upon notice to the opposite party. If, upon hearing the motion, it appears that there is not sufficient grounds for the injunction, it shall be dissolved, or if it appears that the injunction is too broad, it shall be modified. A denial of the material allegations of the complaint shall not be sufficient ground for dissolution of a preliminary injunction unless the answer denying the allegations is verified.

(b) Temporary Restraining Order.

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its legal counsel only if:

(i) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(ii) The movant's legal counsel certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents. Every temporary restraining order issued without notice must:

(i) State the date and hour it was issued;

(ii) Describe the injury and state why it is irreparable;

(iii) State why the order was issued without notice; and

(iv) Be promptly filed in the Tribal Court Administrator's office and entered in the record.

(3) Expiration. The order expires at the time after entry, not to exceed ten (10) days, that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(4) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(5) Motion to Dissolve. On two (2) days' notice to the party who obtained the order without notice, or on shorter notice set by the court, the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

(c) Security.

(1) Requirement. The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

(2) Security by Tribe. The Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such are not required to give security.

(3) Consent of Surety. A surety upon a bond or undertaking under this rule submits itself to the jurisdiction of the court and irrevocably appoints the Tribal Court Administrator as its agent upon whom any papers affecting its liability on the bond or undertaking may be served. The surety's liability may be enforced on motion and such notice of the motion may be served on the Tribal Court Administrator who shall forthwith mail copies to the persons giving the security, if their addresses are known.

(d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(i) State the reasons why it issued;

(ii) State its terms specifically; and

(iii) Describe in reasonable detail, and not by referring to the complaint or other document, the act or acts restrained or required.

(2) Persons Bound. The order binds only the following who receive actual notice of it by personal service or otherwise:

(i) The parties;

(ii) The parties' officers, agents, servants, employees, and legal counsel; and

(iii) Other persons who are in active concert or participation with anyone described in subsection (d)(2)(i) or (ii) of this rule.

(e) Grounds for Injunction. An injunction may be granted upon the grounds provided in the laws of the Tribe governing injunctions.

(f) Disobedience of Injunction as Contempt.

(1) Disobedience of an injunction may be punished by the court as a contempt.

(2) When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued is guilty of disobeying the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of the court which issued the injunction.

(3) The order, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable that person to prepare and make return to the order.

(4) If the alleged contemnor is a corporation, an attachment for sequestration of the property of the corporation may be issued upon refusal or failure to appear.

(5) Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the

person enjoined has disobeyed the injunction that person may be held in contempt in accordance with the laws of the Tribe until that person is purged of the contempt as may be directed by the court or until that person is discharged by law.

Rule 60. Extraordinary Writs. Extraordinary writs may be granted by the Court in accordance with the laws of the Tribe.

Rule 61. Offer of Judgment.

(a) Time for Making; Procedure. At any time more than fourteen (14) days before the trial begins, any party may serve upon any other party an offer to allow judgment to be entered in the action.

(b) Contents of Offer. If any portion of an offer made under this rule is for the entry of a monetary judgment, the monetary award to be made shall be set forth in the offer as a specifically stated sum, which shall be inclusive of all damages, taxable court costs, interest, and legal counsel's fees, if any, sought in the case. The offeror may choose to exclude an amount for legal counsel's fees, but must specifically so state in the offer. If the offeror excludes an amount for legal counsel's fees in the offer, and the offeree accepts the offer, then either party may apply to the court for an award of legal counsel's fees, if otherwise allowed by statute, contract or otherwise. The offer need not be apportioned by claim.

(c) Acceptance of Offer; Entry of Judgment. If, while an offer remains effective within the meaning of this rule, the offeree serves written notice that the offer is accepted, then either party may file the offer together with proof of acceptance, and the Tribal Court Administrator shall enter judgment.

(d) Rejection of Offer. An offer that is not accepted while it remains effective within the meaning of this rule shall be deemed rejected. Evidence of the rejected offer shall not be admissible except in a proceeding to determine sanctions under this rule.

(e) Objections to Offer. If the offeree has any objection to the validity of the offer, the offeree must serve upon the offeror, within five (5) days after service of the offer, written notice of any such objections. Unless the offeree notifies the offeror of any objection as provided under this subsection, the offeree waives the right to do so in any proceeding to determine sanctions under this rule.

(f) Subsequent Offers. The fact that an offer has been rejected does not preclude a subsequent offer.

(g) Offers on Damages. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, any party may make an offer of judgment, which shall have the same effect as an offer made before trial. It must be served within a reasonable time, but at least ten (10) days before the date set for a hearing to determine the amount or extent of liability.

(h) Sanctions. If the offeree rejects an offer and does not later obtain a more favorable judgment other than pursuant to this rule, the offeree must pay, as a sanction, reasonable expert witness fees and double the taxable costs incurred by the offeror after making the offer and prejudgment interest to accrue from the date of the offer. If the judgment includes an award of taxable costs or legal counsel's fees, only those taxable costs and legal counsel's fees determined by the court as having been reasonably incurred as of the date the offer was made shall be considered in determining if the judgment is more favorable than the offer.

(i) Effective Period of Offers. An offer of judgment made pursuant to this rule shall remain effective for fourteen (14) days after it is served. If the effective period is enlarged by the court, the offeror may withdraw the offer at any time after expiration of the initial effective period and prior to acceptance of the offer.

Rule 62. Execution.

(a) Grounds. The court may, upon motion, issue a writ of execution against the personal property of a judgment debtor if:

(1) The judgment is for monetary damages, costs, and/or legal counsel's fees;

(2) The judgment debtor has been served notice of entry of judgment; and

(3) The judgment debtor has not paid the judgment amount in full or commenced making installment payments as agreed between the parties, or is not current in such payments.

(b) Time. A party may file a motion under this rule thirty (30) days after entry of final judgment or after the expiration of

the time for appeal has expired, whichever is greater. No motion for a writ of execution may be filed if an appeal or any other motion or action which may affect the judgment has been filed.

(c) Procedure.

(1) The judgment debtor shall be served with the motion and order to appear before the court as provided in Rule 11.

(2) Failure of the judgment debtor to appear may be punished by the court as a contempt.

(3) The judgment debtor shall provide, under oath or affirmation, an accounting of all his personal property, including any exempt property.

(4) In aid of the judgment or execution, the judgment creditor may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or otherwise by law.

(5) The court shall determine which property of the judgment debtor is available for execution and which property, up to the value of the judgment, should be seized to pay the judgment amount.

(6) The court shall issue an order that law enforcement seize the property ordered by the court and sell the same in accordance with this rule.

(d) Sale of Property.

(1) Sale of property seized under this rule shall be at a public auction conducted by law enforcement or others designated by the court.

(2) No auction or sale of the property seized under this rule shall take place until at least ten (10) days public notice has been provided by posting such notice in at least three (3) conspicuous public places near the site of the auction.

(3) The person conducting the auction may postpone the auction and reschedule it upon giving the required notice if there is inadequate response to the auction or the bidding.

(4) Property shall be sold to the highest bidder who shall make payment for property in cash at the time of the sale.

(5) The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the court reciting the details of the sale and the amounts received.

(e) Exempt Property.

(1) The Court shall only order seizure and sale of such property of the judgment debtor necessary to satisfy a money judgment.

(2) Any property ordered seized under this rule shall be of the kind the loss of which will not impose an immediate substantial hardship on the judgment debtor and/or his immediate family and not otherwise exempt from execution under the laws of the Tribe.

(3) Only property of the judgment debtor may be subject to execution. No property of the judgment debtor's family or any other person may be seized or sold, except property conveyed to the debtor's family or other person with the intent of avoiding seizure and execution under this rule.

(f) Redemption From Sale. At any time within six (6) months after sale under this rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property plus eight percent (8%) interest and any expenses actually incurred by the purchaser to maintain property, such as taxes and insurance.

(g) Method Not Exclusive. Nothing in this rule shall be construed as prohibiting or precluding other methods of enforcement of monetary judgments as authorized under the laws of the Tribe, including garnishment.

(h) Against Certain Public Officers. Execution shall not be permitted when a judgment has been entered against the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such.

CHAPTER 9
APPELLATE PROCEDURE

Rule 100. Court of Appeals; Scope; Title.

(a) Appellate Court. All appeals from the trial court shall be heard by the Court of Appeals of the Tribal Court of the Ponca Tribe of Nebraska.

(b) Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the court of appeals the laws of the Tribe.

(c) Scope of Rules. The rules in this Chapter govern procedure in the court of appeals. When these rules provide for filing a motion or other document in the trial court, the procedure must comply with the practice of the trial court.

(d) Title. The rules in this Chapter shall be known as the Ponca Tribe of Nebraska Rules of Appellate Procedure and may be abbreviated as "P.T.N.R.A.P."

Rule 101. Suspension of Rules.

(a) In General. On its own or a party's motion, the court of appeals may, to expedite its decision or for other good cause, suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 112.

(b) Unrepresented Parties. Substantial compliance with these rules will be sufficient for all parties not represented by legal counsel and the court may, on its own motion or on request of any party, waive any requirement or provision of these rules.

Rule 102. Appeal as of Right – How Taken.

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from the trial court to the court of appeals may be taken only by filing a notice of appeal with the Tribal Court Administrator within the time allowed by Rule 103.

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(b) Joint or Consolidated Appeals.

(1) When two or more parties are entitled to appeal from a trial court judgment or order, and their interests make joinder

practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(i) State the name of the case as used in the trial court, except that parties may be designated "appellant" and "respondent," as appropriate.

(ii) Specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but legal counsel representing more than one party may describe those parties with such terms as "all plaintiffs," "all petitioners," "the defendants," "the respondents," "the plaintiffs A, B, et al.," or "all defendants except X"; and

(iii) Designate the judgment, order, or part thereof being appealed.

(2) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

(d) Serving the Notice of Appeal.

(1) The Tribal Court Administrator must serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record, excluding the appellant's, or, if a party is not represented, to the party's last known address. The Tribal Court Administrator must promptly send a copy of the notice of appeal and of the trial court docket entries, and any later trial court docket entries, to the court of appeals. The Tribal Court Administrator must note, on each copy, the date when the notice of appeal was filed.

(2) The Tribal Court Administrator's failure to serve notice does not affect the validity of the appeal. The Tribal Court Administrator must note on the trial court docket the names of the parties to whom the Tribal Court Administrator mails copies, with the date of mailing. Service is sufficient despite the death of a party or the party's counsel.

(e) Payment of Fees. Upon filing a notice of appeal, the appellant must pay the Tribal Court Administrator all required fees, provided that no fees shall be required of the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such.

Rule 103. Appeal as of Right – When Taken.

(a) Time for Filing a Notice of Appeal. Except as provided in this rule, the notice of appeal required by Rule 102 must be filed with the Tribal Court Administrator within thirty (30) days after entry of the judgment or order appealed from.

(b) Filing Before Entry of Judgment. A notice of appeal filed after the trial court announces a decision or order, but before the entry of the judgment or order, is treated as filed on the date of and after the entry.

(c) Multiple Appeals. If one party timely files a notice of appeal, any other party may file a notice of appeal within ten (10) days after the date when the first notice was filed, or within the time otherwise prescribed by this rule, whichever period ends later.

(d) Motion for Extension of Time.

(1) The trial court may extend the time to file a notice of appeal if:

(i) A party so moves no later than thirty (30) days after the time prescribed by subsection (a) of this rule expires; and

(ii) That party shows excusable neglect or good cause.

(2) A motion filed before the expiration of the time prescribed in subsection (a) of this rule may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties.

(3) No extension under this subsection may exceed thirty (30) days after the prescribed time or ten (10) days after the date when the order granting the motion is entered, whichever is later.

Rule 104. Appeal by Permission.

(a) Petition for Permission to Appeal.

(1) To request permission to appeal when an appeal is within the court of appeals' discretion, a party must file a petition for permission to appeal. The petition must be filed with the Tribal Court Administrator with proof of service on all other parties to the trial court action.

(2) The petition must be filed within the time specified by the law or rule authorizing the appeal or, if no such time is specified, within the time provided by Rule 103 for filing a notice of appeal.

(b) Contents of the Petition; Answer or Cross-Petition; Oral Argument.

(1) The petition must include the following:

(i) The facts necessary to understand the question presented;

(ii) The question itself;

(iii) The relief sought;

(iv) The reasons why the appeal should be allowed or why it is authorized by a law of the Tribe; and

(v) An attached copy of the order, decree, or judgment complained of and any related opinion or memorandum.

(2) A party may file an answer in opposition or a cross-petition within ten (10) days after the petition is served.

(3) The petition and answer will be submitted without oral argument unless the court of appeals orders otherwise.

(c) Standard for Granting.

(1) A petition must be granted if the order, decree, or judgment complained of:

(i) Conclusively determines the disputed question;

(ii) Resolves an issue completely separate from the merits of the action; and

(iii) Is effectively unreviewable on appeal from final judgment.

(2) A petition may be granted if hearing the appeal might materially advance the ultimate resolution of the litigation.

(d) Form of Papers; Number of Copies. All papers must conform to the rules governing briefs on appeal. Except by the court's permission, a paper must not exceed twenty (20) pages, exclusive of the disclosure statement, the proof of service, and the accompanying documents required by this rule. An original and three (3) copies must be filed unless the court requires a different number by order in a particular case.

(e) Grant of Permission; Fees; Cost Bond; Filing the Record.

(1) Within ten (10) days after the entry of the order granting permission to appeal, the appellant must:

(i) pay the Tribal Court Administrator all required fees, provided that no fees shall be required of the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such; and

(ii) file a cost bond if required under these rules.

(2) A notice of appeal need not be filed. The date when the order granting permission to appeal is entered serves as the date of the notice of appeal for calculating time under these rules.

(3) The record must be forwarded and filed in accordance with these rules.

Rule 105. Bond for Costs on Appeal. The trial court may require an appellant to file a bond or provide other security in any form and amount necessary to ensure payment of costs on appeal. Rule 106(b) applies to a surety on a bond given under this rule.

Rule 106. Stay or Injunction Pending Appeal.

(a) Initial Motion in the Trial Court. A party must ordinarily move first in the trial court for the following relief:

(1) A stay of the judgment or order of the trial court pending appeal;

(2) Approval of a supersedeas bond; or

(3) An order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(b) Motion in the Court of Appeals; Conditions on Relief. A motion for the relief mentioned in subsection (a)(1) of this rule may be made to the court of appeals or to one of its justices.

(1) The motion must:

(i) Show that moving first in the trial court would be impracticable; or

(ii) State that, a motion having been made, the trial court denied the motion or failed to afford the relief requested and state any reasons given by the trial court for its action.

(iii) Include the reasons for granting the relief requested and the facts relied on;

(iv) Include originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(v) Include relevant parts of the record.

(c) The moving party must give reasonable notice of the motion to all parties.

(d) A motion under this subsection (a)(2) must be filed with the Tribal Court Administrator and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single justice.

(e) The court may condition relief on a party's filing a bond or other appropriate security in the trial court.

(f) The Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such are not required to file a bond or other security.

Rule 107. The Record of Appeal.

(a) Composition of the Record on Appeal. The following items constitute the record on appeal:

(1) The original papers and exhibits filed in the trial court;

(2) The transcript or recording of proceedings, if any; and

(3) A certified copy of the trial court docket entries prepared by the Tribal Court Administrator.

(b) Agreed Statement of Record on Appeal. In place of the record on appeal as defined in subsection (a), the parties may prepare, sign, and submit to the trial court a statement of the case showing how the issues presented by the appeal arose and were decided in the trial court. The statement must set forth only those facts averred and proved or sought to be proved that are essential to the court's resolution of the issues. If the statement is truthful, it, together with any additions that the trial court may consider necessary to a full presentation of the issues on appeal, must be approved by the trial court and must then be certified to the court of appeals as the record on appeal. The Tribal Court Administrator must then send it to the court of appeals within the time provided by this rule.

(c) Forwarding the Record. When the record is complete, but no later than fifteen (15) days after the filing of a notice of appeal, the Tribal Court Administrator must number the documents constituting the record and send them promptly to the court of appeals together with a list of the documents correspondingly numbered and reasonably identified. Unless directed to do so by a party, the Tribal Court Administrator will not send to the court of appeals documents of unusual bulk or weight, or physical exhibits other than documents.

Rule 108. Docketing the Appeal; Filing the Record; Representation.

(a) Docketing the Appeal. Upon receiving a notice of appeal or petition for appeal or writ, the Tribal Court Administrator must docket the appeal, in a separate docket from the trial court docket, under the title of the trial court action and must identify the appellant, adding the appellant's name if necessary.

(b) Filing the Record, Partial Record, or Certificate. Upon forwarding the record or partial record as provided in Rule 107(c), the Tribal Court Administrator must file it and immediately notify all parties of the filing date. Any party may receive a copy of the record as forwarded to the court of appeals by requesting the same from the Tribal Court Administrator and paying any costs of

copying, unless the request is from the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such.

(c) Appearance of Legal Counsel. Legal counsel representing a party before the court of appeals or otherwise appearing before the court of appeals shall enter their appearance by signing and filing a pleading or by filing an entry of appearance.

Rule 109. Writs of Mandamus and Prohibition Against Trial Court.

(a) Mandamus or Prohibition to Trial Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to the trial court must file a petition with the Tribal Court Administrator with proof of service on all parties to the proceeding in the trial court. The party must also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2) The petition must be titled "In re [name of petitioner]" and must include a copy of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition and state:

(i) The relief sought;

(ii) The issues presented;

(iii) The facts necessary to understand the issue presented by the petition; and

(iv) The grounds for issuing the writ under the Code or other law of the Tribe.

(3) Upon receiving the petition, the Tribal Court Administrator must docket the petition and submit it to the court of appeals.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it must order the respondent, if any, to answer within a fixed time.

(2) The Tribal Court Administrator must serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial court judge to address the petition or may invite an amicus curiae to do so. The trial court judge may request permission to address the petition but may not do so unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the Tribal Court Administrator must advise the parties, and when appropriate, the trial court judge or amicus curiae.

(6) The proceeding must be given preference over ordinary civil cases.

(7) The Tribal Court Administrator must send a copy of the final disposition to the trial court judge.

(c) Form of Papers; Number of Copies. All papers must conform to Rule 118(b). Except by the court's permission, a paper must not exceed thirty (30) pages, exclusive of the proof of service and the accompanying order or opinion or parts of the record required by subsection (a)(2). An original and three (3) copies must be filed unless the court requires the filing of a different number by order in a particular case.

Rule 110. Proceeding in Forma Pauperis.

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the Trial Court. Except as stated in subsection (a)(3) of this Rule, a party to a trial court action who desires to appeal in forma pauperis must file a motion in the trial court. The party must attach an affidavit that:

(i) shows, in explicit detail, the party's inability to pay or to give security for fees and costs;

(ii) claims an entitlement to redress; and

(iii) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the trial court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the trial court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the trial court action may proceed on appeal in forma pauperis without further authorization, unless:

(i) the trial court, before or after the notice of appeal is filed, certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(ii) a statute provides otherwise.

(4) Notice of Trial Court's Denial. The Tribal Court Administrator must immediately notify the parties and the court of appeals when the trial court does any of the following:

(i) denies a motion to proceed on appeal in forma pauperis;

(ii) certifies that the appeal is not taken in good faith; or

(iii) finds that the party is not otherwise entitled to proceed in forma pauperis.

(5) Motion in the Court of Appeals. A party may file a motion to proceed on appeal in forma pauperis in the court of appeals within 30 days after service of the notice prescribed in subsection (a)(4) of this Rule. The motion must include a copy of the affidavit filed in the trial court and the trial court's statement of reasons for its action. If no affidavit was filed in the trial court, the party must include the affidavit prescribed by subsection (a)(1) of this Rule.

(b) Leave to Use Original Record. A party allowed to proceed on appeal in forma pauperis may request that the appeal be heard on the original record without reproducing any part.

Rule 111. Filing and Service.

(a) Filing.

(1) Filing with the Tribal Court Administrator. A paper required or permitted to be filed in the court of appeals must be filed with the Tribal Court Administrator.

(2) Method and Timeliness.

(i) In General. Filing may be accomplished by mail, personal delivery or electronic means.

(ii) Time of Filing. Filing is considered to occur when received by the Tribal Court Administrator, except that, in the case of mailing, filing shall be deemed to occur on the date of the postmark.

(3) Filing a Motion with a Justice. If a motion requests relief that may be granted by a single justice, the justice may permit the motion to be filed with the justice; the justice must note the filing date on the motion and give it to the Tribal Court Administrator.

(b) Service of All Papers Required. Unless a rule requires service by the Tribal Court Administrator, a party must, at or before the time of filing a paper, serve a copy on the other parties to the appeal. Service on a party represented by legal counsel must be made on the party's legal counsel.

(c) Manner of Service. Service shall be made in the manner prescribed under Rule 11 of the Ponca Tribe of Nebraska Rules of Civil Procedure.

(d) Proof of Service.

(1) A paper presented for filing must contain a certificate of service consisting of a statement by the person who made service certifying:

(i) The date and manner of service;

(ii) The names of the persons served; and

(iii) Their mail or electronic addresses, facsimile numbers, or the addresses of the places of delivery, as appropriate for the manner of service.

(2) Proof of service may appear on or be affixed to the papers filed.

(e) Number of Copies. When these rules require the filing or furnishing of a number of copies, a court may require a different number by order in a particular case.

Rule 112. Extending Time. For good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file a notice of appeal, except as authorized in these rules, or a petition for permission to appeal.

Rule 113. Motions.

(a) In General.

(1) Application for Relief. An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the court permits otherwise.

(2) Contents of a Motion.

(i) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(ii) Accompanying Documents.

(A) Any affidavit or other paper necessary to support a motion must be served and filed with the motion.

(B) An affidavit must contain only factual information, not legal argument.

(C) A motion seeking substantive relief must include a copy of the trial court's opinion as a separate exhibit.

(3) Response.

(i) Time to file. Any party may file a response to a motion; subsection (a)(2) governs its contents. The response must be filed within ten (10) days after service of the motion unless the court shortens or extends the time. A motion authorized by rule 106 may be granted before the 10-day period runs only if the court gives reasonable notice to the parties that it intends to act sooner.

(ii) Request for Affirmative Relief. A response may include a motion for affirmative relief. The time to respond to the new motion, and to reply to that response, are governed by subsections (a)(3)(i) and (a)(4). The title of the response must alert the court to the request for relief.

(4) Reply to Response. Any reply to a response must be filed within seven (7) days after service of the response. A reply must not present matters that do not relate to the response.

(b) Disposition of a Motion for a Procedural Order. The court may act on a motion for a procedural order, including a motion to extend time, at any time without awaiting a response. A party adversely affected by the court's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.

(c) Power of a Single Justice to Entertain a Motion. A justice may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. The court of appeals may review the action of a single justice.

(d) Form of Papers and Number of Copies.

(1) Format.

(i) Reproduction. A motion, response, or reply may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(ii) Cover. A cover is not required, but there must be a caption that includes the case number, the name of the court, the title of the case, and a brief descriptive title indicating the purpose of the motion and identifying the party or parties for whom it is filed. If a cover is used, it must be white.

(iii) Binding. The document must be bound in any manner that is secure, does not obscure the text, and permits the document to lie reasonably flat when open.

(iv) Paper Size, Line Spacing, and Margins. The document must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins

must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(2) Number of Copies. An original and three (3) copies must be filed unless the court requires a different number by order in a particular case.

(e) Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

Rule 114. Briefs.

(a) Appellant's Brief. The appellant's brief must contain, under appropriate headings and in the order indicated:

(1) A cover page.

(2) A table of contents, with page references;

(3) A table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the brief where they are cited;

(4) A jurisdictional statement, including:

(i) The basis for the trial court's subject-matter jurisdiction, with citations to applicable provisions of the laws of the Tribe and stating relevant facts establishing jurisdiction;

(ii) The basis for the court of appeals' jurisdiction, with citations to applicable provisions of the laws of the Tribe and stating relevant facts establishing jurisdiction;

(iii) The filing dates establishing the timeliness of the appeal; and

(iv) An assertion that the appeal is from a final order or judgment that disposes of all parties' claims or information establishing the court of appeals' jurisdiction on some other basis;

(5) A statement of the issues presented for review;

(6) A concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(7) A request for oral argument, if sought;

(8) A summary of the argument, which must contain a succinct, clear, and accurate statement of the arguments made in the body of the brief, and which must not merely repeat the argument headings;

(9) The argument, which must contain:

(i) Appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and

(ii) For each issue, a concise statement of the applicable standard of review (which may appear in the discussion of the issue or under a separate heading placed before the discussion of the issues); and

(10) A short conclusion stating the precise relief sought.

(b) Respondent's Brief.

(1) The respondent's brief must conform to the requirements of subsections (a)(1)-(9), except that none of the following need appear unless the respondent is dissatisfied with the appellant's statement:

(i) The jurisdictional statement;

(ii) The statement of the issues;

(iii) The statement of the case; and

(iv) The statement of the standard of review.

(2) Argument shall be limited to the argument in appellant's brief.

(c) Reply Brief. The appellant may file a brief in reply to the respondent's brief. Unless the court permits, no further briefs may be filed. A reply brief must contain a table of contents, with page references, and a table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the reply brief where they are cited. Argument shall be limited to the argument in respondent's response brief.

(d) References to Parties. In briefs and at oral argument, legal counsel should minimize use of the terms "appellant" and "respondent." To make briefs clear, legal counsel should use the parties' actual names or the designations used in the trial court proceeding, or such descriptive terms as "the employee," "the injured person," "the taxpayer."

(e) References to the Record. References to the parts of the record must be to the page of the original document. For example:

(1) Answer at 7;

(2) Motion for Judgment at 2;

(3) Transcript at 231.

Only clear abbreviations may be used. A party referring to evidence whose admissibility is in controversy must cite the pages of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Briefs in a Case Involving Multiple Appellants or Respondents. In a case involving more than one appellant or respondent, including consolidated cases, any number of appellants or respondents may join in a brief, and any party may adopt by reference a part of another's brief. Parties may also join in reply briefs.

(g) Intervention by Tribe. If the Tribe intervenes in an appeal raising a constitutional issue as provided in these rules, the Tribe shall be considered a respondent to the appellant raising the constitutional issue for the purposes of filing briefs and presenting oral argument.

(h) Citation of Supplemental Authorities. If pertinent and significant authorities come to a party's attention after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the Tribal Court Administrator by letter, with a copy to all other parties, setting forth the citations. The letter must state the reasons for the supplemental citations, referring either to the page of the brief or to a point argued orally. The body of the letter must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Rule 115. Cross-Appeals.

(a) Applicability. This rule applies to a case in which a cross-appeal is filed.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and Rule 120. If notices are filed on the same day, the plaintiff or petitioner in the proceeding below is the appellant. These designations may be modified by the parties' agreement or by court order.

(c) Briefs. In a case involving a cross-appeal:

(1) Appellant's Principal Brief. The appellant must file a principal brief in the appeal. That brief must comply with Rule 114(a).

(2) Respondent's Principal and Response Brief. The respondent must file a principal brief in the cross-appeal and must, in the same brief, respond to the principal brief in the appeal. That respondent's brief must comply with Rule 114(a), except that the brief need not include a statement of the case unless the respondent is dissatisfied with the appellant's statement.

(3) Appellant's Response and Reply Brief. The appellant must file a brief that responds to the principal brief in the cross-appeal and may, in the same brief, reply to the response in the appeal. That brief must comply with Rule 114(a)(1)-(9), except that none of the following need appear unless the appellant is dissatisfied with the respondent's statement in the cross-appeal:

(i) The jurisdictional statement;

(ii) The statement of the issues;

(iii) The statement of the case; and

(iv) The statement of the standard of review.

(4) Respondent's Reply Brief. The respondent may file a brief in reply to the response in the cross-appeal. That brief must comply with Rule 114(a)(1)-(2) and must be limited to the issues presented by the cross-appeal.

(5) No Further Briefs. Unless the court permits, no further briefs may be filed in a case involving a cross-appeal.

(d) Length. The appellant's principal brief must not exceed thirty (30) pages; the respondent's principal and response brief, thirty-five (35) pages; the appellant's response and reply brief, thirty (30) pages; and the respondent's reply brief, fifteen (15) pages.

(e) Time to Serve and File a Brief. Briefs must be served and filed as follows:

(1) The appellant's principal brief, within thirty (30) days after the record is filed;

(2) The respondent's principal and response brief, within thirty (30) days after the appellant's principal brief is served;

(3) The appellant's response and reply brief, within thirty (30) days after the respondent's principal and response brief is served; and

(4) The respondent's reply brief, within fourteen (14) days after the appellant's response and reply brief is served, but at least seven (7) days before argument unless the court, for good cause, allows a later filing.

Rule 116. Brief of Amicus Curiae.

(a) When Permitted. The Tribe may file an amicus curiae brief without the consent of the parties or leave of court. Any other person who is not a party may file an amicus curiae brief only by leave of court or if the brief states that all parties have consented to its filing.

(b) Motion for Leave to File. The motion must be accompanied by the proposed brief and state:

(1) The movant's interest; and

(2) The reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.

(c) Contents and Form. An amicus brief must comply with Rule 118. In addition to the requirements of Rule 118, the cover must identify the party or parties supported and indicate whether the

brief supports affirmance or reversal. An amicus brief need not comply with Rule 114, but must include the following:

(1) A table of contents, with page references;

(2) A table of authorities, including cases (alphabetically arranged), statutes, codes and other authorities, with references to the pages of the brief where they are cited;

(3) A concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file; and

(4) An argument, which may be preceded by a summary and which need not include a statement of the applicable standard of review.

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief.

(e) Time for Filing. An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than seven (7) days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than seven (7) days after the appellant's principal brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Except by the court's permission, an amicus curiae may not file a reply brief.

(g) Oral Argument.

(1) By the Tribe. The Tribe may present oral argument as amicus curiae by filing a notice to present oral argument. If a party objects to such oral argument, the court may reject the notice if the party shows that such participation will be prejudicial to a party or otherwise impede the court's consideration of the appeal.

(2) Other Amicus Curiae. Any other amicus curiae may participate in oral argument only with the court's permission.

Rule 117. Serving and Filing Briefs.

(a) Time to Serve and File a Brief. The appellant must serve and file a brief within thirty (30) days after the record is filed. The respondent must serve and file a brief within thirty (30) days after the appellant's brief is served. The appellant may serve and file a reply brief within fourteen (14) days after service of the respondent's brief but a reply brief must be filed at least seven (7) days before argument, unless the court, for good cause, allows a later filing.

(b) Number of Copies to be Filed and Served. One (1) original and three (3) copies of each brief must be filed with the Tribal Court Administrator and one (1) copy must be served on each party or its legal counsel. The court may by order in a particular case require the filing or service of a different number.

(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, a respondent may move to dismiss the appeal. A respondent who fails to file a brief will not be heard at oral argument unless the court grants permission.

Rule 118. Form of Briefs and Other Papers.

(a) Form of a Brief.

(1) Reproduction.

(i) A brief may be reproduced by any process that yields a clear black image on light paper. The paper must be opaque and unglazed. Only one side of the paper may be used.

(ii) Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy.

(2) Cover. Except for filings by unrepresented parties, the cover of the appellant's brief must be blue; the respondent's, red; an intervenor's or amicus curiae's, green; any reply brief, gray; and any supplemental brief, tan. The front cover of a brief must contain:

(i) The number of the case centered at the top;

(ii) The name of the court;

(iii) The title of the case;

(iv) The nature of the proceeding (e.g., Appeal, Petition for Review) and the name of the court below;

(v) The title of the brief, identifying the party or parties for whom the brief is filed; and

(vi) The name, office address, and telephone number of legal counsel representing the party for whom the brief is filed.

(3) Binding. The brief must be bound in any manner that is secure, does not obscure the text, and permits the brief to lie reasonably flat when open.

(4) Paper Size, Line Spacing, and Margins. The brief must be on 8 1/2 by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers may be placed in the margins, but no text may appear there.

(5) Length. Appellant's principal brief and respondent's response brief shall not exceed thirty (30) pages. Reply briefs shall not exceed fifteen (15) pages. The page limitations do not include the table of contents, table of authorities and any attachments or exhibits thereto. The page limits may be increased upon motion by any party or on the court's own motion.

(b) Form of Other Papers. Any other paper, excluding a motion governed by Rule 113, including a petition for rehearing, and any response to such a petition, must be reproduced in the manner prescribed by subsection (a), with the following exceptions:

(1) A cover is not necessary if the caption and signature page of the paper together contain the information required by subsection (a)(2). If a cover is used, it must be white.

(2) Subsection (a)(5) does not apply.

(c) Signature. Every brief, motion, or other paper filed with the court must be signed by the party filing the paper or, if the party is represented, by one of the party's legal counsel.

(d) Defective Briefs. When a brief fails to comply with the requirements of these rules, the court, on motion of any party or on its own initiative, and with or without notice may:

(1) Order the brief to be returned for correction and re-filed within a time specified in the order;

(2) Order the brief stricken with leave to file a new brief within a specified time; or

(3) Disregard the defects and consider the brief as if it were properly prepared.

Rule 119. Appeal Conferences. The court may direct legal counsel and, when appropriate, the parties to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A justice or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, legal counsel must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement.

Rule 120. Oral Argument.

(a) In General.

(1) Party's Statement. Any party may file a statement explaining why oral argument should, or need not, be permitted.

(2) Standards. Oral argument will be allowed only when requested or ordered by the court of appeals on its own motion. Oral argument must be allowed in every case where requested unless the court, after examining the briefs and record, unanimously agrees that oral argument is unnecessary for any of the following reasons:

(i) The appeal is frivolous;

(ii) The dispositive issue or issues have been authoritatively decided; or

(iii) The facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The Tribal Court Administrator must advise all parties whether oral argument will be scheduled, and, if so, the date, time, and place for it, and

the time allowed for each side. A motion to postpone the argument or to allow longer argument must be filed no less than five (5) days in advance of the hearing date.

(c) Order and Contents of Argument. The appellant opens and concludes the argument. Legal counsel must not read at length from briefs, records, or authorities.

(d) Cross-Appeals and Separate Appeals. If there is a cross-appeal, Rule 115(b) determines which party is the appellant and which is the respondent for purposes of oral argument. Unless the court directs otherwise, a cross-appeal or separate appeal must be argued when the initial appeal is argued. Separate parties should avoid duplicative argument.

(e) Nonappearance of a Party. If the respondent fails to appear for argument, the court must hear appellant's argument. If the appellant fails to appear for argument, the court may hear the respondent's argument. If neither party appears, the case will be decided on the briefs, unless the court orders otherwise.

(f) Submission on Briefs. The parties may agree to submit a case for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. Legal counsel intending to use physical exhibits other than documents at the argument must arrange to place them in the courtroom on the day of the argument before the court convenes. After the argument, legal counsel must remove the exhibits from the courtroom, unless the court directs otherwise. The Tribal Court Administrator may destroy or dispose of the exhibits if counsel does not reclaim them within a reasonable time after the Tribal Court Administrator gives notice to remove them.

Rule 121. Decision of the Appellate Court.

(a) The court of appeals may not hold any trial, take testimony or receive evidence. The decision shall be based entirely on the record and if any testimony or evidence is required or a new trial needed, the court shall remand the case to the trial court for the same.

(b) The court of appeals decision may:

(1) Affirm, modify, vacate, set aside or reverse any judgment, decree or order of the trial court; or

(2) Remand the case and direct entry of an appropriate judgment, decree or order, or require such further proceedings as may be just and equitable under the circumstances.

(c) The court shall issue its decision within ninety (90) days of the last of the following events:

(1) Oral argument;

(2) Filing of any supplemental brief after oral argument, if the court requests such briefing;

(3) Filing of supplemental authorities and responses pursuant to 111(g); or

(4) Filing of the last reply brief, if the matter is submitted on the briefs without argument.

(d) If the court will not be able to submit a decision within ninety (90) days, the court shall notify the parties of such delay and state the time when it will issue a decision.

(e) The decision of the court of appeals shall be final and not subject to further review or appeal, except for rehearing permitted under these rules.

Rule 122. Entry of Judgment; Notice.

(a) Entry. A judgment is entered when it is noted on the docket. The Tribal Court Administrator must prepare, sign, and enter the judgment:

(1) After receiving the court's opinion, but if settlement of the judgment's form is required, after final settlement; or

(2) If a judgment is rendered without an opinion, as the court instructs.

(b) Notice. On the date when judgment is entered, the Tribal Court Administrator must serve on all parties a copy of the opinion, or the judgment if no opinion was written, and a notice of the date when the judgment was entered.

Rule 123. Interest on Judgment.

(a) When the Court Affirms. Unless the laws of the Tribe provide otherwise, if a money judgment is affirmed, whatever interest is allowed by the laws of the Tribe is payable from the date when the trial court's judgment was entered.

(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the trial court, the mandate must contain instructions about the allowance of interest.

Rule 124. Frivolous Appeal. If a court of appeals determines that an appeal is frivolous or that it has been taken for improper purpose, including delay, harassment or causing undue expense to a non-appealing party, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, sanction the appellant and award just damages, legal counsel's fees, and single or double costs to the respondent.

Rule 125. Costs.

(a) Against Whom Assessed. The following rules apply unless the laws of the Tribe provide, or the court orders, otherwise:

(1) If an appeal is dismissed, costs are taxed against the appellant, unless the parties agree otherwise;

(2) If a judgment is affirmed, costs are taxed against the appellant;

(3) If a judgment is reversed, costs are taxed against the respondent;

(4) If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as the court orders.

(b) Costs Against the Tribe. Costs against the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such will be assessed under subsection (a) only if expressly authorized by the laws of the Tribe.

(c) Bill of Costs: Objections; Insertion in Mandate.

(1) A party who wants costs taxed must, within ten (10) days after entry of judgment, file with the Tribal Court Administrator, with proof of service, an itemized and verified bill of costs.

(2) Objections must be filed within ten (10) days after service of the bill of costs, unless the court extends the time.

(3) The Tribal Court Administrator must prepare and certify an itemized statement of costs for insertion in the mandate, but issuance of the mandate must not be delayed for taxing costs. If the mandate issues before costs are finally determined, the Tribal Court Administrator must add the statement of costs, or any amendment of it, to the mandate.

(d) Costs on Appeal Taxable in the Trial Court. The following costs on appeal are taxable in the trial court for the benefit of the party entitled to costs under this rule:

(1) The preparation and transmission of the record;

(2) The reporter's transcript, if needed to determine the appeal;

(3) Premiums paid for a supersedeas bond or other bond to preserve rights pending appeal; and

(4) Any fee for filing the notice of appeal.

Rule 126. Petition for Rehearing.

(a) Time to File; Contents; Answer; Action by the Court if Granted.

(1) Time. Unless the time is shortened or extended by order or local rule, a petition for rehearing may be filed within ten (10) days after entry of judgment. But, the Tribe, its departments, agencies, commissions, instrumentalities, economic enterprises, officers and employees in their capacities as such may file a petition within thirty (30) days after entry of judgment.

(2) Contents. The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapplied and must argue in support of the petition. Oral argument is not permitted.

(3) Answer. Unless the court requests, no answer to a petition for panel rehearing is permitted.

(4) Action by the Court. If a petition for panel rehearing is granted, the court may do any of the following:

(i) Make a final disposition of the case without re-argument;

(ii) Restore the case to the calendar for re-argument or resubmission; or

(iii) Issue any other appropriate order.

(b) Form of Petition; Length. The petition must comply in form with Rule 118. Copies must be served and filed as Rule 111 prescribes. Unless the court permits otherwise, a petition for panel rehearing must not exceed fifteen (15) pages.

(c) Court's Inherent Power to Correct Orders. If the court at any time determines that there has been a change of law or an error in consideration of existing law or facts that warrants reconsideration of a prior order, it may do so on its own motion and enter a new or different order.

Rule 127. Mandate.

(a) Contents. Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.

(b) When Issued. The court's mandate must issue seven (7) days after the time to file a petition for rehearing expires, or seven (7) days after entry of an order denying a timely petition for rehearing or motion for stay of mandate, whichever is later. The court may shorten or extend the time.

(c) Effective Date. The mandate is effective when issued.

(d) Staying the Mandate. The timely filing of a petition for rehearing or motion for stay of mandate, stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

Rule 128. Voluntary Dismissal of Appeal.

(a) Dismissal in the Trial Court. Before an appeal has been docketed by the Tribal Court Administrator, the trial court may dismiss the appeal on the filing of a stipulation signed by all parties or on the appellant's motion with notice to all parties.

(b) Dismissal in the Court of Appeals. The Tribal Court Administrator may dismiss a docketed appeal if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. But no mandate or other process may issue without a court order. An appeal may be dismissed on the appellant's motion on terms agreed to by the parties or fixed by the court.

Rule 129. Case Involving a Constitutional Question When the Tribe is Not a Party.

(a) Constitutional Challenge to Tribal Law. If a party questions the constitutionality, or validity under the Indian Civil Rights Act, of a law of the Tribe or of an action of the Tribal Council or the Tribe or any of its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such in a proceeding in which the Tribe or one its departments, agencies, commissions, instrumentalities, economic enterprises, officers or employees in their capacities as such is not a party, the questioning party must give written notice to the Tribal Court Administrator immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The Tribal Court Administrator must then notify the Attorney for the Tribe.

(b) Intervention of Tribe. Unless the court sets a later time, the Attorney for the Tribe may intervene in the appeal within thirty (30) days after the notice is received. The Tribe shall file a brief as intervenor no later than (30) days after intervening.

Approved 5/15/16
Resolution 16-36

TITLE III
CHILDREN AND WELFARE

CHAPTER 1
GENERAL PROVISIONS

Section 3-1-1. Purpose. The purpose of this Title is to provide for the protection and welfare of children and other individuals under the jurisdiction of the Tribe and to secure the care and guidance, preferably in his or her own home, which will serve the spiritual, emotional, mental, and physical welfare of such persons and the best interests of the Tribe. The primary objectives of this Title are:

1. To provide for the welfare, care and protection of the members, children, and families of the Tribe and others within the jurisdiction of the Tribe;

2. To preserve unity of the family, preferably by separating the child from his or her parents only when necessary;

3. To strengthen family ties;

4. To preserve and strengthen the cultural and Tribal identity of Ponca children;

5. To secure for every child removed from his or her home that care, control, and guidance as nearly equivalent to that which he or she should be given by his or her parents to help the child develop into a responsible, well-adjusted adult;

6. To improve any conditions or home environment which may be contributing to any danger or problem with the child's welfare;

7. To secure the rights of and ensure fairness to the children, wards, parents, guardians, custodians or other parties who come before the Court under the provisions of this Title;

8. To protect the peace and security of the Tribal community and its individual residents from child abuse and neglect; and

9. To provide procedures for securing the Tribe's jurisdiction over children who are members or eligible to be members in the Tribe and who are the subject of a child custody proceeding in another jurisdiction.

Section 3-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Abandoned" means the failure of the parent or legal custodian of a child, while being able, to provide reasonable support and maintain regular contact with his or her child, including providing normal supervision when such failure is intended by the parent or legal custodian to continue for an indefinite period in the future. Either voluntarily surrendering a child in accordance with Section 3-6-4 of this Title or failing to provide reasonable support and maintain regular contact with a child without just cause for a period of six (6) consecutive months shall constitute prima facie evidence of abandonment. For purposes of abandonment, "provide reasonable support and maintain regular contact" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to provide reasonable support and maintain regular contact with a child. Physical custody with relatives or voluntary consent to placement does not constitute abandonment.

2. "Adoption" means:

a. An adoption completed pursuant to Chapter 10 of this Title;

b. An adoption completed pursuant to the laws of another jurisdiction; or

c. An adoption in accordance with the customs and traditions of the Tribe which gives a child a permanent parent-child relationship with someone other than the child's biological parents without any Court involvement, regardless of whether the parental rights of the biological parents have been terminated and regardless of whether a decree recognizing the adoption has been issued under Chapter 10 of this Title.

3. "Child in need of assistance" means a child as defined in Chapter 6 of this Title.

4. "Child offender" means a child as defined in Chapter 7 of this Title.

5. "Child's tribe" means the federally recognized Indian tribe in which a child is a member or eligible to be a member.

6. "Clear and convincing evidence" means evidence that produces a firm belief or conviction as to the truth of the allegations sought to be established; evidence so clear, direct, weighty and convincing as to enable a person to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it has been contradicted.

7. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court acting as the juvenile court of the Tribe.

8. "Custodian" means any person who has legal custody of a child or to whom temporary physical custody, care, and control has been transferred by the child's parent or guardian.

9. "Department" means the Ponca Tribe of Nebraska Department of Social Services.

10. "Extended family" and "relative" mean a person who is, whether by blood, marriage, foster care, adoption or recognition as such by Tribal custom or tradition, another person's:

a. Parent;

b. Step-parent;

c. Grandparent;

d. Aunt or uncle;

e. Brother or sister, whether by the half or the whole blood;

f. Brother-in-law or sister-in-law;

g. Niece or nephew;

h. Cousin;

i. Parent of the person's brother or sister, whether by the half or the whole blood;

j. Significant family friend identified by the family or the Tribe; or

k. Extended family member or relative recognized as such by Tribal custom or tradition.

11. "Foster care" means any action removing a child from his or her parents or custodian for temporary placement in a foster home or institution or in the home of a guardian or where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

12. "Good cause" means adequate or substantial grounds or reason to take or fail to take an action.

13. "Guardian" means a person who is by law responsible for an adult or a minor, other than the minor's parent, and includes a person appointed as a guardian for a minor or adult.

14. "Least restrictive," "least restrictive placement" and "least restrictive setting" mean the least drastic method of achieving the best interests of a child; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of feasibly achieving that objective.

15. "Parent" means a person who has a legal parent-child relationship with another person and includes a biological parent of a person, a person for who parentage is presumed or established pursuant to the laws of the Tribe, and a person who has lawfully adopted another person, including adoptions under the laws of the Tribe.

16. "Placement" means the temporary placement of a child in the physical, but not legal, custody of an individual or agency pending a final determination of where the child shall reside on a permanent basis. A placement is considered involuntary if it is done without the consent of the child's parent, guardian or custodian.

17. "Preponderance of the evidence" means evidence that is just enough to make it more likely than not that the allegations sought to be established are true; the preponderance is based on the more convincing evidence and its probable truth or accuracy, and not on the amount of evidence.

18. "Reasonable and active efforts" means the exercise of reasonable and active diligence and care by the Department or other responsible agency to use and provide services to accomplish the goal required that are:

a. Culturally appropriate;

b. Accessible to the family;

c. Consistent and timely;

d. Realistic under the circumstances;

e. Relevant to the problems of the family and safety and protection of the child;

f. Adequate to meet the needs of the child and family; and

g. Available or could be made available within the resources of the Department and without undue financial burden on the Department.

19. "Termination of parental rights" means any action resulting in the termination of the parent-child relationship, whether voluntary or involuntary.

20. "Tribal Attorney" means an attorney employed by the Tribe to handle legal matters in the Court on behalf of the Tribe.

21. "Voluntary placement" means the placement of a child in the physical, but not legal, custody of an individual or agency with consent of the child's parent, guardian or custodian.

CHAPTER 2
DEPARTMENT OF SOCIAL SERVICES

Section 3-2-1. Establishment.

1. There is hereby established a Department of Social Services as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of a Director and such other personnel and employees as may be required.

Section 3-2-2. General Authority. The Department shall have the following powers, duties and responsibilities:

1. To assist in the enforcement of all laws of the Tribe relating to the welfare of children, families and others, including laws related to abuse and neglect and all other laws of the Tribe designed to protect and assist children, families and others, and take the initiative in securing enforcement of laws for the protection of children and others where no adequate provision is made for such enforcement;

2. To work with families in a way that is characteristic of the Tribe's cultural traditions, customs, and values and address the well-being and protection of children, families and communities of the Tribe and the Tribe itself as well as others within the territory of the Tribe;

3. To make resources available for Tribal members to make decisions and choices affecting their present and future economic and social stability;

4. To promote family unity and well-being through protection of children, families, other persons, communities and the Tribe;

5. To take temporary or permanent custody of a child when ordered to do so by a court exercising jurisdiction over the child; and

6. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as are necessary to achieve the purposes of this Title and other laws of the Tribe administered by the Department.

Section 3-2-3. Child Services Workers. The Department may employ case managers and other child services workers who shall have the authority, within and subject to the resources of the Department, to:

1. Receive reports of neglected, abused or abandoned children and adults;

2. Receive from any source, oral or written information regarding a child who may be in need of services;

3. Immediately conduct or have conducted an investigation in accordance with the provisions of this Title upon receipt of any report or information that a child is in imminent danger or harm;

4. Evaluate and assess the home environment of children and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent;

5. Determine whether any child is a child in need of assistance or child offender;

6. Make every effort to provide services to families to ensure the safety of children and others in their home;

7. Offer to the family of any child found to be a child in need of assistance or child offender appropriate services which may include, but shall not be restricted to, protective services;

8. Conduct such investigations and provide services as provided in this Title; and

9. Perform such other duties and responsibilities designated by the Director of the Department.

Section 3-2-4. Rules and Regulations. The Department shall promulgate rules and regulations for the enforcement of child welfare laws including, but not limited to:

1. Standards for child care agencies;

2. Foster care standards and licensing requirements;

3. Group home standards and licensing requirements;

4. Adoption services;

5. Substance abuse counseling services;

6. Foster care payments;

7. Confidentiality and requests for information; and

8. Any other rules, consistent with the laws of the Tribe, which are necessary for carrying out the purposes of this Title or any other law administered by the Department.

Section 3-2-5. Foster Care Licensing. The Department may issue licenses for foster care homes in accordance with the rules and regulations of the Department governing the same. The Department's licensing requirements and standards shall, at a minimum, include:

1. Cleanliness standards;

2. Water and light standards;

3. Health standards;

4. Occupancy standards;

5. Provisions for medical, dental, psychological, psychiatric, and pharmaceutical care;

6. Provisions for food, furnishings, clothing, and necessities;

7. Standards for individuals licensed as foster care parents, which shall include appropriate background checks;

8. Fire and safety standards;

9. Emergency standards;

10. Ponca cultural standards; and

11. Educational standards.

Section 3-2-6. Group Home Licensing. The Department may issue licenses for group homes for the care of children in accordance with the rules and regulations of the Department governing the same. The Department's licensing requirements and standards shall, at a minimum, include:

1. Cleanliness standards;

2. Water and light standards;

3. Health standards;

4. Occupancy standards;

5. Provisions for medical and dental care;

6. Provisions for food, furnishings, clothing, and necessities;

7. Employee records standards;

8. Standards for quantity and sufficiency of personnel;

9. Living space standards;

10. Fire and safety standards;

11. Emergency standards;

12. Discipline and behavior management standards;

13. Ponca cultural standards; and

14. Educational standards.

Section 3-2-7. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, names, records and other information concerning persons applying for or receiving services from the Department shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person applying for or receiving services and their legal counsel or, in the case of a child, the child's parent, guardian or custodian and guardian ad litem or legal counsel;

b. Persons directly connected with the administration of the Department or the services applied for or provided to the person;

c. Other Tribal departments and agencies, the Tribal Attorney, agencies of other governments, and private agencies directly involved in the services applied for or provided to the person;

d. Institutions and agencies that have legal responsibility or authorization to care for, treat or

supervise the person applying for or receiving services and have a need for the information; and

e. To others when the person applying for or receiving services has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department;

b. In a proceeding in a court to which the Department is a party, participating, or representing the Tribe;

c. To the Tribal Attorney, law enforcement agencies, protective service workers, other Tribal departments and agencies, agencies of other governments, and others as necessary in order to protect a person from abuse or neglect or self-harm;

d. For the purpose of assisting in finding a placement or home for a child, including a child in need of assistance or child offender, provided that such release of information is limited to the minimal information necessary to find such placement or home; or

e. When a person applying for or receiving services authorizes the release of information or otherwise waives confidentiality expressly in writing.

Section 3-2-8. Voluntary Placement Agreements. The Department may enter into agreements providing for the voluntary placement of children with individuals approved by the Department, subject to the following:

1. The Department shall promulgate standards and minimum requirements for such agreements;

2. The Department shall use its best efforts to ensure that voluntary placements are in accordance with the placement preferences set forth in this Title; and

3. No voluntary placement under this Section may be for more than 180 days unless the Department determines that continued placement after 180 days is in the best interests of the child.

When necessary, the Department may file a petition in the Court to confirm that continued placement after 180 days is in the best interests of the child and the Court shall confirm the Department's determination unless that determination is unreasonable or arbitrary.

Section 3-2-9. Permanency Planning.

1. The Department shall set a permanency goal for the Tribe of the maximum number or percentage of children in the custody of the Department and placed in foster care who will remain in foster care for twenty-four (24) months or more. The Department may modify such goal on an annual basis.

2. In working to achieve the permanency goal for the Tribe, the Department will strive to:

a. Locate a permanent home for any child who has been in its custody and placed in foster care for more than one (1) year;

b. Identify priorities in placement alternatives;

c. Develop strategies to place children in permanent homes; and

d. Work to eliminate barriers to its identified strategies.

Section 3-2-10. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department shall use psychiatric, psychological, and therapeutic counseling and other services available to the Tribe, both from internal and external;

2. The Department may refer matters, including reports of abuse and neglect, for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation, including any determinations therein, as its own, which the Court shall then treat as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation, including any determinations therein, made by another investigating agency or authority, including investigations of

abuse and neglect, as its own and the Court shall treat such investigation as though conducted directly by the Department.

CHAPTER 3
TRIBAL COURT

Section 3-3-1. Subject Matter Jurisdiction.

1. The Court shall act as the juvenile court and probate court of the Tribe and, subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, shall have original subject matter jurisdiction over all matters under this Title.

2. In any matter arising under this Title, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individual, the Court shall decline to assert original subject matter jurisdiction unless and until the prior action is dismissed. But, if the matter is subject to transfer to the Court, the Court may direct the appropriate parties to determine whether the case may or should be transferred to the Court in accordance with the provisions of this Title.

3. In any matter arising under this Title which requires the participation of the Department and involves an individual subject of the matter that is not a member or eligible to be a member of the Tribe and is not a child of an enrolled member of the Tribe, the Court shall only exercise jurisdiction over the matter if:

a. The Department determines that it has the resources and capability to serve the individual and family involved; or

b. There is an agreement between the Tribe and a state where the Tribe agrees to exercise jurisdiction over individuals who are not members or eligible to be members of the Tribe.

Section 3-3-2. Personal Jurisdiction. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or the Constitution of the Tribe, the Court shall have jurisdiction over the following persons under this Title:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Children of enrolled members of the Tribe, including adopted children, regardless of residence or domicile;

3. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

4. Children of members of another federally recognized Indian tribe:

a. Who are not members or eligible to be members of a federally recognized Indian tribe;

b. Who reside or are domiciled within the territory of the Tribe; and

c. When the parents, guardian or custodian consent to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

6. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings;

7. Where the Court asserts jurisdiction over a child under this Section, the parents, guardian or custodian of the child; and

8. Where the Court asserts jurisdiction over an individual under this Section, the individual's extended family whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

Section 3-3-3. Transfer from Other Courts. The Court may accept or decline, under the procedures set forth in Chapter 4 of this Title, transfers of proceedings subject to this Title from other federal, state or tribal courts or tribunals.

Section 3-3-4. Transfer to Other Court.

1. The Tribe, the child's tribe or the child's parents may move the Court to transfer any proceeding before the Court under this Title involving a child who is not a member or eligible to be a member of the Tribe where such child:

a. Is an alleged or adjudicated child in need of assistance;

b. May or will be subject to an involuntary foster care placement;

c. May or will be subject to an involuntary termination of parental rights to such child; or

d. Is not an incapacitated person and may or will be subject to an involuntary guardianship.

2. In the case of a child who is not a member or eligible to be a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, the Court shall transfer the proceedings involving that child to the jurisdiction of that child's tribe unless:

a. A parent, guardian or custodian of the child objects to the transfer;

b. A party objecting to the transfer demonstrates that the evidence necessary to decide the case cannot be presented in the jurisdiction of the child's tribe without undue hardship to the parties or the witnesses and the child's tribe is unable to mitigate the hardship;

c. A party objecting to the transfer demonstrates good cause not to transfer, provided that good cause shall not include:

i. Whether the case is at an advanced stage;

ii. Whether transfer would result in a change in placement of the child;

iii. The child's contacts with his or her tribe;

iv. The socio-economic conditions or any perceived inadequacy of the tribe's social services; or

v. The tribe's prospective placement for the child;

d. The federally recognized Indian tribe lacks a court or other tribunal which can hear the proceeding; or

e. The federally recognized Indian tribe which would exercise jurisdiction over the proceeding, or its court or other tribunal, declines the transfer.

3. In the case of any other child who is not a member or eligible to be a member of the Tribe, the Court may transfer the proceedings to an appropriate state court or court or other tribunal of another federally recognized Indian tribe where:

a. The state or other tribe has a significant interest in the child;

b. The transfer would be in the best interest of the child;

c. No party objecting to the transfer demonstrates good cause not to transfer; and

d. The state or other tribe, or their court or other tribunal, accepts the transfer of the proceedings.

4. Jurisdiction of the Court over a proceeding transferred pursuant this Section shall be terminated when the other court accepts the transfer.

Section 3-3-5. Proceedings in Best Interests. Proceedings under this Title shall be in the best interests of the child or the ward, as the case may be, but with due regard for the purposes of this Title and the child's or ward's parents, guardian or custodian and others directly interested in the proceedings.

Section 3-3-6. Procedure.

1. The procedures in the Court under this Title shall be governed by the rules of procedure for the Court which are not in conflict with this Title.

2. The Court may issue orders under this Title by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 3-3-7. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

a. To be represented by legal counsel at their own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter;

e. To examine witnesses; and

f. To be informed of any possible consequences if the allegations of a petition filed under this Title are found to be true.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

Section 3-3-8. Conduct of Hearings. All hearings involving proceedings under this Title shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Written reports and other material and information relating to a party's mental, physical and social history may be

received and considered by the Court, provided that the Court may require the person who prepared the reports or material to appear as a witness and be subject to direct and cross-examination if:

a. Requested by the party, a parent, guardian or custodian of the party, or other interested party in the proceeding; or

b. The Court finds that the interests of the party, the parents, guardian or custodian of the party, or any other party to the proceedings so require;

5. A verbatim record shall be taken of all hearings;

6. The general public shall be excluded from all hearings;

7. Only the parties, their legal counsel, and witnesses shall be allowed to be present in the hearings;

8. The extended family of a child or ward subject of the proceedings and other persons determined to be appropriate by the Court, in its discretion, may be allowed to be present in the hearings; and

9. A child or ward may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child or ward.

Section 3-3-9. Continuance.

1. Upon request of a child or ward subject of a proceeding under this Title, the Court may continue any hearing under this Title beyond the time limit within which the hearing is otherwise required to be held.

2. Upon request of the Tribe, a parent, guardian or custodian of a child or ward subject of a proceeding under this Title, or any other party to a proceeding under this Title, the Court may for good cause continue any hearing under this Title for such period of time as is necessary.

3. In no event may any hearing under this Title be postponed or continued for more than one hundred eighty (180) days.

Section 3-3-10. Witness Lists and Subpoenas.

1. In a proceeding under this Title, each party shall provide to each other party in the proceeding or their respective legal counsel, including the child or ward subject of a proceeding under this Title, with a list of names of all witnesses that will be called at any hearing under this Title. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of the Tribe, the child or the child's parent, guardian or custodian, or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Title.

3. The name, picture, place of residence or identity of any person appearing as a witness in proceedings under this Title shall not be published or broadcast in any news media or given any other publicity.

Section 3-3-11. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Title:

a. Any party to the proceedings, including the petitioner, or their legal counsel;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian or custodian of any child subject of the proceedings or their legal counsel;

d. Legal counsel, guardian ad litem or advocate for a child subject of the proceedings, if any;

e. Foster parents and relatives providing care for a child subject of the proceedings;

f. A ward subject of the proceedings or his or her legal counsel, guardian ad litem or advocate, if any;

g. The Tribal Attorney, if the Tribe is a party to the proceedings or he or she is representing the Department in the proceedings;

h. The Department, if it is involved in the proceedings or acting on behalf of the Tribe in the proceedings; and

i. Any other person the Court may direct to be notified.

2. Any person required to be notified under this Section who is a minor and not represented by legal counsel, guardian ad litem, or advocate shall be notified by providing notice to the parent, guardian, or custodian of the minor.

3. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Section 3-3-12. Use of Social Services. The Court may utilize such services as may be furnished by any tribal, federal, or state agency, provided that it is economically administered without unnecessary duplication and expense and that, in the case of the an agency of the Tribe, the agency determines that it has the resources and authority to furnish such services to the parties in the matter.

Section 3-3-13. Appointment of Personnel for Children and Wards.

1. At any stage of proceedings conducted under this Title, the Court may appoint separate legal counsel or spokesperson for a child or ward subject of the proceedings to act as guardian ad litem representing the child's or ward's best interests, without affecting the right to legal counsel of the parents, guardian or custodian of the child. The guardian ad litem shall be an officer of the Court for the purpose of representing the child's or ward's best interests and shall investigate the circumstances of each case where the guardian ad litem is appointed, including contacting family members, school officials, and other individuals having pertinent information regarding the child or ward.

2. At any stage of proceedings conducted under this Title, the Court may also appoint additional personnel such as court appointed special advocates (CASAs), juvenile court advocates, and/or referees whenever the Court decides that it is appropriate to do so.

Section 3-3-14. Confidentiality of Court Records.

1. The Court record of proceedings under this Title shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Title, the Court record of proceedings under this Title involving a child as well as fingerprints, photograph, name, address or other information concerning the identity of a child shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The child;

b. The child's parent, guardian or custodian;

c. The prospective adoptive parents of the child;

d. The child's legal counsel or guardian ad litem;

e. Personnel appointed by the Court in the case, such as court appointed special advocates;

f. The Department;

g. The Tribal Attorney;

h. Any department or agency having custody of the child; or

i. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

CHAPTER 4
INDIAN CHILD WELFARE ACT REQUIREMENTS

Section 3-4-1. Purpose. The purpose of this Chapter is:

1. To ensure that the requirements and purposes of the Indian Child Welfare Act are followed whenever a Ponca child is the subject of a state court child custody proceeding;

2. To ensure that the Tribe's rights under the Indian Child Welfare Act are protected and carried into effect;

3. To set forth the manners and procedures the Tribe will follow in the handling of state court child custody proceedings involving Ponca children and subject to the Indian Child Welfare Act; and

4. To set forth and specify the Tribe's specific standards and preferences to be applied in state court child custody proceedings involving Ponca children and subject to the Indian Child Welfare Act.

Section 3-4-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "ICWA Specialist" means the staff member of the Department responsible for the monitoring and handling of state court proceedings subject to the Indian Child Welfare Act.

2. "State court child custody proceeding" means a child custody proceeding as defined in the Indian Child Welfare Act which has been filed in or is otherwise being heard in a state court.

Section 3-4-3. Enforcement.

1. Enforcement of this chapter will be the responsibility of the Tribal Attorney, the Department, and the Tribe.

2. Any person responsible for enforcement of this Chapter shall follow the laws of the Tribe, the Indian Child Welfare Act and any of its implementing regulations, including provisions therein governing notice, motions, transfers, and intervention requirements.

Section 3-4-4. Receipt of ICWA Notices. The ICWA Specialist shall be the official of the Tribe to whom notices of Indian Child Welfare Act proceedings shall be provided.

Section 3-4-5. Indian Child Welfare Advisory Board.

1. There is hereby established an Indian Child Welfare Advisory Board which shall consist of eight (8) members appointed by the Tribal Council as follows:

a. One (1) individual from staff of the Department;

b. One (1) individual from staff of the behavioral health program of the Health Department;

c. One (1) individual from staff of the Culture Department;

d. One (1) individual who is the director or deputy director of Tribal administration;

e. Two (2) individuals who are members of the Tribe, preferably who have received services from the Department's Indian Child Welfare Act program or are otherwise determined to be qualified, who will serve for a term of two (2) years; and

f. Two (2) Tribal Council members, who will serve for a term of two (2) years.

2. Any member of the Board may resign from his or her position by delivering a written resignation to the Tribal Council. Any member of the Board serving based on their position or office in the Tribe shall automatically be removed from the Board upon the member's resignation or removal from the position or office which causes them to serve on the Board. The Tribal Council may, by majority vote, remove any member of the Board at any time either with or without cause or reason.

3. The duties of the Board shall be as follows:

a. To advise the Department on how it should proceed in state court child custody proceedings involving children who are members or eligible to be members of the Tribe, including determining whether to intervene or seek transfer in accordance with the provisions of this Chapter;

b. To advise the Tribal Council and provide the Tribal Council input and a recommendation to determine whether extraordinary circumstances exist to not intervene in a state

court child custody proceeding involving a child who is a member or eligible to be a member of the Tribe;

c. To assist the Department in identifying services that the Tribe can provide or make available or should request that the state provide or make available to children and families subject of state court child custody proceedings where the Tribe has intervened;

d. Report to the Tribal Council on the Board's advice and determinations to the Department;

e. To hear complaints and grievances regarding how state court child custody proceedings involving children who are members or eligible to be members of the Tribe in accordance with the rules and regulations of the Department setting forth procedures for the same; and

f. Such other duties as the Tribal Council may from time to time assign the Board.

Section 3-4-6. Qualified Expert Witnesses. The Department shall maintain a list of qualified expert witnesses, subject to approval of the Tribal Council, to be used in Indian Child Welfare Act proceedings and provide training to such qualified expert witnesses.

Section 3-4-7. Placement Preferences. In any state court child custody proceeding, preference for foster care placement of the child shall be in accordance with the preferences established in Chapter 6 of this Title and preference for adoptive placement of the child shall be in accordance with the preferences established in Chapter 10 of this Title.

Section 3-4-8. Release of Information for Placement.

1. Notwithstanding any other provision of the laws of the Tribe and without any other authorization to release information or waiver of confidentiality, for the purpose of assisting in finding a placement for a child subject of a state court child custody proceeding, the Department shall have the authority to release to other social service agencies involved in the proceeding:

a. The names and contact information of relatives of the child;

b. The names and contact information of other members of the Tribe who may be considered as a placement for the child; and

c. The names and contact information of foster homes licensed by the Tribe.

2. Notwithstanding any other provision of the laws of the Tribe and without any other authorization to release information or waiver of confidentiality, for the purpose of assisting in finding a placement for a child subject of a state court child custody proceeding, the Department shall have the authority to release to relatives of such child, other members who may be considered as a placement for such child, and foster homes licensed by the Tribe:

a. The name of the child;

b. The name of the child's parent, guardian or custodian; and

c. Such other minimum amount of information necessary for such relative or member to identify the child subject of such proceeding and understand any needs of the child.

3. The Department shall have the authority to release information pursuant to this Section regardless of the original source of the information, including enrollment records.

Section 3-4-9. Intervention.

1. Whenever a child who is a member or eligible to be a member of the Tribe or is the biological child of a member of the Tribe is the subject of a state court child custody proceeding or a child custody proceeding in another court where the Tribe has the right to intervene and the case is not transferred to the Court, the Tribe may file a motion to intervene in the state court proceeding.

2. The motion to intervene shall be filed on behalf of the Tribe by the Department's ICWA Specialist, other staff member of the Department or the Tribal Attorney, as the Department may direct, and such designated individual shall have the authority to fully participate and otherwise represent the Tribe in the state child custody proceeding.

3. The purposes of the Tribe's intervention include, but are not limited to:

a. Protecting the Tribe's rights and interests in the case and the child;

b. Ensuring that the placement preferences of this Chapter and the Indian Child Welfare Act are followed;

c. To monitor the proceedings and ensure compliance with the Indian Child Welfare Act; and

d. To ensure that any disposition of the child is culturally and socially appropriate for the child's needs and in the best interests of the child and the Tribe.

4. The Tribe may choose not to intervene under this Section if extraordinary circumstances exist advising against such intervention. Extraordinary circumstances include, but are not limited to, excessive costs to the Tribe in intervening. The Tribal Council shall determine when such extraordinary circumstances exist based on the input and recommendation from the Indian Child Welfare Advisory Board established in this Chapter.

Section 3-4-10. Seeking Transfer from Other Court.

1. Whenever a child who is a member or eligible to be a member of the Tribe or is the biological child of a member of the Tribe is the subject of a state court child custody proceeding or a child custody proceeding in another court where the Tribe has the ability to request transfer, the Tribe may file a motion to transfer jurisdiction to the Court. If the motion is denied, the case may be appealed at the discretion of the Tribal Council.

2. The guidelines for determining whether to file a motion to transfer jurisdiction may include, but are not limited to:

a. The child's ties, if any, with the Tribe;

b. Whether the child is a resident or domiciled within the territory of the Tribe or was previously a resident within the territory of the Tribe;

c. Whether the child has been abandoned by his or her parents, guardian or custodian;

d. Whether the parents have requested or objected to a transfer of jurisdiction to Court;

e. Whether the child, if of sufficient age or maturity, has requested or objected to a transfer of jurisdiction to Court;

f. Whether the child has family residing within the territory of the Tribe and the stability of that family;

g. The ability of the Department to provide services that may be needed for the family and the child, including an appropriate placement, if needed;

h. Whether there would be excessive costs to the Tribe in transferring the case to Court;

i. Whether it is in the best interests of the Tribe and the child to transfer jurisdiction to Court;

j. Whether the child is receiving Ponca culturally appropriate services from the State Court;

k. Whether the State is complying with the Indian Child Welfare Act, including its placement preferences.

Section 3-4-11. Transfer from Other Court. The Court shall have the authority to accept or decline, under the procedures set forth in this Chapter, the transfer of any child custody proceeding from any state court or other court or tribunal.

Section 3-4-12. Procedures for Transfer from Other Court. Whenever transfer of a case to the Court is being sought:

1. If the Court receives an order of transfer or notice of request for transfer or that a request for transfer has been filed, the Court shall forward the order or notice to the Department and the Tribal Attorney for action in accordance with this Chapter;

2. The Department shall conduct a review of the case, in consultation with the Tribal Attorney and, if necessary, the Indian Child Welfare Advisory Board and Tribal Council, and determine whether the Tribe should recommend accepting or declining the transfer;

3. Based on the Department's review, the Department or the Tribal Attorney, as the Department may direct, on behalf of the

Tribe and the Department, shall file with the Court a petition to accept transfer or a recommendation to decline transfer; and

4. The Court shall enter an order accepting or declining transfer of jurisdiction, provided that the Court shall not accept a transfer unless the Tribe recommends acceptance of the transfer.

Section 3-4-13. Contents of Petitions to Accept Transfer. A petition to accept transfer of jurisdiction from another court shall be filed in accordance with the requirements of a petition alleging a child in need of assistance under Chapter 6 of this Title and shall also include, to the extent known or available:

1. The membership status of the child and his or her parents;

2. A summary of the grounds for the child custody proceeding in the transferring court;

3. The manner in which transfer was initiated from the transferring court, such as the filing of a motion to transfer;

4. The party who sought transfer in the transferring court;

5. Whether any party objected to the transfer in the transferring court;

6. The entry of any order of transfer from the transferring court and, if such order has been made, a copy of the order attached as an exhibit to the petition;

7. The current custody and placement status of the child;

8. The recommended custody and placement of the child upon acceptance of transfer, including whether the child will be made a ward of the Court or remain a ward of the transferring court;

9. The current and recommended permanency and case plans for the child, if available;

10. A statement that acceptance of the transfer is in the best interests of the child;

11. Whether any orders of the transferring court should be modified by the Court in its order accepting transfer; and

12. Any other pertinent or necessary information related to the transfer and the Tribe's recommendation.

Section 3-4-14. Contents of Recommendation to Decline Transfer. A recommendation to decline transfer of jurisdiction from another court shall include, to the extent known or available:

1. The membership status of the child and his or her parents;

2. A summary of the grounds for the child custody proceeding in the transferring court;

3. The manner in which transfer was initiated from the transferring court, such as the filing of a motion to transfer;

4. The party who sought transfer in the transferring court;

5. Whether any party objected to the transfer in the transferring court;

6. The entry of any order of transfer from the transferring court and, if such order has been made, a copy of the order attached as an exhibit to the petition;

7. The current custody and placement status of the child;

8. The Tribe's basis for recommending declining the transfer; and

9. Any other pertinent or necessary information related to declining the transfer.

Section 3-4-15. Order Accepting Transfer.

1. In addition to any other matters necessary for an order of the Court, an order accepting transfer of jurisdiction from another court shall include:

   a. A finding regarding the membership status of the child and that the child has been returned to the jurisdiction of the Court;

   b. A finding regarding the membership status of the child's parents;

c. A determination of the Court's subject matter and personal jurisdiction;

d. A determination of whether the child is a child in need of assistance as defined by the laws of the Tribe;

e. A determination of whether it is in the best interests of the child that the Court accept transfer of jurisdiction;

f. An order accepting jurisdiction over the child custody proceeding;

g. An order regarding the legal custody and physical placement of the child until a hearing can be conducted to further determine custody;

h. Any modifications or exceptions to the transferring court's orders; and

i. Any other findings or orders the Court deems necessary or desirable.

2. Unless the Court's order accepting transfer provides otherwise and to the extent not inconsistent with such order, all orders of the transferring court which were effective as of the date of transfer shall remain in effect and shall be treated as if issued by the Court until the issuance of an order from the first hearing on the petition to transfer.

3. Upon entry of an order accepting transfer, the Court shall proceed with the case under the procedures provided in Chapter 6 of this Title.

4. An order issued under this Section may be made contingent upon receipt or entry of an order of transfer from the transferring court if such order was not made or entered at the time of the filing of the petition to accept transfer.

Section 3-4-16. Order Declining Transfer.

1. In addition to any other matters necessary for an order of the Court, an order declining transfer of jurisdiction from another court shall include:

a. The basis for declining jurisdiction as provided in the Tribe's recommendation to decline transfer;

b. An order declining jurisdiction over the child custody proceeding; and

c. Any other findings or orders the Court deems necessary or desirable.

2. Unless the Court's order declining transfer provides otherwise based on specific findings therefore, a declination of transfer shall not preclude transfer of the same proceeding later in the transferring court's proceedings.

3. A declination of transfer shall not have any relevance, force or effect regarding the transfer of any other child custody proceeding to the Court.

Section 3-4-17. Recognition of Transferring Court Proceedings.

1. If the transferring court is the court of another federally recognized Indian tribe, the Court shall give full faith and credit to the findings, orders and other proceedings of the transferring court applicable to the transferred child custody proceeding and recognize and enforce the same provided that:

a. The transferring court properly asserted jurisdiction over the child; and

b. The finding or order at issue was not obtained fraudulently or dishonestly.

2. If the transferring court is not a court of another federally recognized Indian tribe, the Court may accept any adjudication, disposition or finding of the transferring court, including any plea of the parents, guardian or custodian of the child, and adopt such adjudication or disposition as its own and proceed accordingly, provided that the Court shall not accept any adjudication, disposition or finding that is repugnant to the laws of the Tribe or the Indian Child Welfare Act.

CHAPTER 5
REPORTING AND INVESTIGATING ABUSE AND NEGLECT

Section 3-5-1. Reporting of Abuse or Neglect.

1. The following persons are mandated to report abuse and neglect under the circumstances set forth in this Section:

a. Physicians, hospital interns or residents, surgeons, physician's assistants, religious practitioners, osteopaths, chiropractors, and podiatrists;

b. Registered nurses, licensed practical nurses, nurse practitioners, nurse's aides, and midwives;

c. Dentists, dental assistants, and hygienists;

d. Coroners;

e. Psychiatrists and other mental health professionals or counselors;

f. Social workers and substance abuse counselors;

g. Teachers, school counselors or other school personnel;

h. Law enforcement officers;

i. Licensed or registered child care providers and residential care or institutional personnel; and

j. Any other person having substantial responsibility for the care of children.

2. Any person who is mandated to report under this Section whose observation or examination of any child discloses evidence of injury, sexual molestation, abuse, or physical neglect which appears to have been inflicted upon such child by other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately report or cause reports to be made of such information to the Tribal Attorney, the Department, law enforcement officials, or such other agency of the Tribe with jurisdiction over child abuse and neglect.

3. Any other person who has knowledge of or observes a child whom he or she reasonably suspects has been a victim of child abuse or neglect may report such suspected instances of child abuse or neglect in the manner provided in this Section. Persons reporting under this subsection, except those mandated to report under subsection 1 of this Section, may remain anonymous.

4. A report under this Section shall be made by telephone or in person, and shall be followed by a written report. The report shall include:

a. The names, addresses and tribal affiliation, if any, of the child and his or her parents or the person having custody of such child, if known;

b. The child's age and sex;

c. The nature and extent of the child's abuse or neglect;

d. Previous abuse or neglect of the child or his or her siblings, if known;

e. The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known;

f. The name and address of the person or agency making the report, unless anonymous as permitted in this Section; and

g. Any other information that such person believes might be helpful in establishing the cause of the injury, molestation, abuse or physical neglect.

5. Any person making a report pursuant to this Section may take or cause to be taken photographs or x-rays of the child and the vicinity involved and such photographs or x-rays may be introduced into evidence at a hearing.

6. The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Chapter.

Section 3-5-2. Immunity From Liability.

1. Any person making a report or providing information pursuant to this Chapter, including the submission of copies of medical examination, treatment or hospitalization records, pursuant to this Chapter shall be immune from any civil or criminal

liability by reason of such action unless such person acted with malice and without reasonable cause.

2. Any person involved in the investigation or treatment of child abuse or neglect or who makes a temporary placement of a child pursuant to this Title or who in good faith cooperates with the Department or other agency or official in investigation, placement or treatment plan shall also be immune from any civil or criminal liability by reason of such action.

3. The provisions of this Section shall not extend to any person alleged to have committed an act or acts of child abuse or neglect which is the subject of the report or investigation.

Section 3-5-3. Fine for Not Reporting.

1. Any person mandated to report a case of known or suspected abuse or neglect under this Chapter who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil fine not to exceed $500.00.

2. Any person who refuses to provide any information which is required to be furnished under this Chapter shall be subject to civil fines not to exceed $500.00 per day for each day that such information is not furnished after it is first requested.

Section 3-5-4. Central Registry.

1. The Department shall maintain a central registry of reports, investigations and evaluations made under this Chapter.

2. The registry shall contain the information furnished by all persons. Data shall be kept in the central registry until the child concerned reaches the age of eighteen (18) years (unless the Court orders that individual records shall be kept on file beyond that date in order to protect other siblings).

3. Data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Court, other social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

4. The Department may enter into agreements with other jurisdictions to share and aggregate data and information in the central registry.

Section 3-5-5. Investigation of Reports.

1. Within thirty (30) days of receiving a report under this Chapter or any other notice or report of child abuse or neglect, the Department and law enforcement officers shall complete an investigation of the report or refer the report to other appropriate authorities for investigation.

2. Investigating personnel shall have the authority, without the consent of or advanced notice to and out of the presence of the parent, guardian or custodian, to:

a. Interview a child;

b. Take photographs of the areas of trauma visible on the child; and

c. Conduct or have conducted medical and psychological examinations or testing of the child.

3. Upon completion of an investigation, including a referred investigation, the Department shall make a determination as to whether evidence exists to substantiate the allegation of abuse or neglect. If the report is substantiated, the information shall be added to the central registry for child abuse and neglect and forwarded to the Tribal Attorney for appropriate action. If the allegations are not substantiated by the evidence, the Department shall close the case and it will not be recorded into any child abuse or neglect registry. If the Department is unsure whether the allegations are substantiated, it may request the input of the Tribal Attorney or other appropriate professionals or authorities to attempt to make a determination.

4. Upon receipt of a report and investigation from the Department, the Tribal Attorney shall make a determination, based on the report and investigation, whether further action is warranted, including whether to pursue an action under this Title or to refer the matter to other social services or law enforcement agencies.

Section 3-5-6. Confidentiality.

1. All records, files and information relating to reports of child abuse or neglect, including investigations thereof, shall be confidential and shall not be disclosed except as expressly authorized in this Title.

2. Any party receiving records, files and information relating to a report of abuse or neglect, including investigations thereof, shall hold such records, files and information confidential and not disclose the same to any third party unless the Court orders the release of the information or a portion of such information when necessary for determination of an issue before the Court.

3. No person may claim any privilege of confidentiality in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving of, or causing the giving of, a report pursuant to this Chapter.

4. Any person who knowingly violates this Section shall be subject to a civil fine not to exceed $500.00.

Section 3-5-7. Release of Information. The Department shall release records, files or other information relating to a report of child abuse or neglect, including investigations thereof to the following parties upon receipt by the Department of a request for such information and a showing that it is necessary for the person to have such information in the performance of the person's official functions related to child abuse or neglect:

1. The Tribal Attorney, law enforcement agencies, protective service workers, and others investigating reports of known or suspected child abuse or neglect;

2. The legal counsel or guardian ad litem of the child who is the subject of the information;

3. Institutions and agencies that have legal responsibility or authorization to care for, treat or supervise the child who is the subject of the information or report;

4. A licensed psychiatrist, psychologist or mental health counselor treating the child who is the subject of the information or report; and

5. A physician who has before him or her the child who is the subject of the information or report.

CHAPTER 6
CHILDREN IN NEED OF ASSISTANCE

Section 3-6-1. Purpose. The purpose of this Chapter is to protect children from abuse and neglect and otherwise assist children and families who need services or assistance. Adjudication of a child as a child in need of assistance is an adjudication of the status or condition of the child.

Section 3-6-2. Child in Need of Assistance Defined. For purposes of this Chapter, a child in need of assistance shall include, but not be limited to, a child:

1. Whose parent, guardian or custodian has abandoned the child or has subjected the child to mistreatment or physical battering;

2. Who lacks proper parental care through the actions or omissions of the child's parent, guardian or custodian;

3. Whose environment is injurious to the child's welfare;

4. Whose parent, guardian or custodian fails or refuses to provide necessary subsistence, supervision, education, medical care or any other care necessary for the child's health, guidance or well-being;

5. Who is homeless, without proper care or not domiciled with the child's parent, guardian or custodian through no fault of the child's parent, guardian or custodian;

6. Who is threatened with substantial harm;

7. Who has sustained emotional harm or mental injury as indicated by the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;

8. Who is subject to sexual abuse, sexual molestation or sexual exploitation by the child's parent, guardian, custodian or any other person;

9. Who is left unattended or unsupervised for extended periods of time in circumstances that pose a risk of substantial harm to the child;

10. Who is absent from attendance at school without valid excuse:

a. If the child is in elementary school, for seven (7) school days per school year; or

b. If the child is in middle school, junior high school, or high school, for one (1) or more class periods on seven (7) school days per school year;

11. Who has run away from home or is otherwise absent from home for an unreasonable period of time without permission of a parent, guardian or custodian;

12. Who is otherwise beyond the control of his or her parents, guardian or custodian; or

13. Whose behavior or condition endangers the child's own welfare or the welfare of others.

Section 3-6-3. Best Interests of Child Defined. For purposes of this Chapter, the best interests of a child shall be determined in accordance with the following principles:

1. A child must have a sense of belonging with the child's family and tribe;

2. A child must develop self-identity and awareness of his or her unique role within the larger community, including the child's cultural community by participation in cultural activities, speaking one's native language, and having opportunities and encouragement to pursue education and enrichment;

3. A child must establish, develop, and maintain political, cultural, social, and spiritual relationships with the child's tribe and tribal community;

4. A child must have connection to loving family members for guidance and nurturing;

5. A child must have a safe and nurturing home environment offering emotional support and comfort, the basic needs of food,

clothing and shelter, reasonable medical care and protection from danger, violence, or exposure to harmful conduct including drug or alcohol abuse; and

6. A child cannot be happy unless his or her primary needs are met, but a child also needs opportunities for play and recreation, leisure time and other activities the child enjoys, and possession of toys and other personal items of importance to the child.

Section 3-6-4. Voluntary Surrender of Infant Child.

1. A child shall not be considered a child in need of assistance under this Chapter and it otherwise shall not be a violation of this Chapter for a parent to leave a child who is ninety (90) days of age or younger at a Ponca Tribal Office during operating hours or at a hospital.

2. Should a child be left with personnel at a Ponca Tribal Office or a hospital, the Department or other appropriate Tribal or state authorities will be notified for proper care of the child.

Section 3-6-5. Child Protection Teams.

1. The Department may establish a child protection team whose goal shall be, through the involvement and coordination of various agencies, to prevent children from being abused or neglected or otherwise becoming children in need of assistance under this Chapter. The child protection team may include licensed or certified medical and health professionals, representatives of the Department, representatives of the Culture Department, mental health professionals, representatives of public schools, attorneys and lay counsel, and representatives of the Tribal community.

2. The child protection team shall be technical and advisory in nature. It shall in no manner undermine the authorities and responsibilities of individual agencies.

3. The child protection team shall conduct its activities in accordance with the following:

a. Emphasizing the prevention of child abuse and neglect;

b. The promotion of cooperation, communication, and consistency among agencies;

c. The facilitation of the identification of danger signs which will prompt immediate intervention and/or preventive actions to be taken;

d. Debating what actions would best promote the well-being of a child and provide relevant information and advice to decision-making agencies;

e. The facilitation and not hindrance of the decision-making process; and

f. The maintenance of confidentiality by all child protection team members.

4. The Department may refer any case involving a child in need of assistance to the child protection team. When a child whose welfare is before the child protection team is found to be endangered or abused or neglected, the child protection team should:

a. Initiate protective services as promptly, efficiently, and effectively as possible so as to ensure the child's immediate safety and health;

b. To the extent possible, correct the problems which caused the abuse or neglect and prevent it from occurring again;

c. Facilitate the development and implementation of a plan to promote the long-term well-being of a child in need of assistance and the appropriate family members; and

d. Stabilize the circumstances for the long-term benefit of the children and, to the extent possible, their family members.

5. The child protection team may develop and implement procedures and standards for:

a. Reviewing and tracking all child in need of assistance cases which the Department refers to it;

b. Monitoring child in need of assistance activities to ensure that adequate preventive, protective, and corrective services are provided;

c. Investigating cases the Department refers to it to determine whether the best interests of the child are being met;

d. Reviewing case plans for their adequacy;

e. Maintaining confidentiality of information;

f. Preventing and handling conflicts of interest involving members of the child protection team;

g. Receiving child in need of assistance referrals from the Department, provided that the determination of which cases should be referred to the child protection team shall at all times remain with the Department;

h. Identifying available community resources, programs and services;

i. Providing recommendations to various pertinent agencies;

j. Promoting cooperation, communication, and consistency among agencies;

k. Providing a forum for debating what actions would best promote the well-being of children;

l. Responding to inquiries from the community and other individuals and groups consistent with the requirements of confidentiality of matters involving children and families;

m. Providing efficient preventive, protective, and corrective child abuse and neglect services;

n. Providing information and technical recommendations to decision-making agencies;

o. Educating communities about child abuse and neglect problems and solutions;

p. Identifying danger signs which prompt intervention and/or preventive actions;

q. Assisting in the development and implementation of plans to promote the long-term well-being of children and their families; and

r. Assisting in the development and implementation of strategies by communities to create environments which provide opportunities for community members to lead meaningful, productive, self-fulfilling, and rewarding lives which promote the dignity, self-worth, self-respect, and self-sufficiency of community members.

6. The Department may promulgate rules and regulations for the development and operation of the child protection team.

Section 3-6-6. Tribal Attorney to Represent the Tribe. The Tribal Attorney shall represent the Tribe and the Department in all proceedings brought under this Chapter.

Section 3-6-7. Proceedings of a Civil Nature.

1. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

2. Nothing in this Chapter shall preclude or prevent a child in need of assistance from also being the subject of a child offender proceeding under Chapter 7 of this Title if the circumstances warrant.

Section 3-6-8. Continuing Jurisdiction.

1. Jurisdiction of the Court over a child under this Chapter is retained until terminated by any of the following situations:

a. The child becomes an adult;

b. The case is transferred by the Court to another court and the other court accepts the transfer; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

Section 3-6-9. Proceedings Involving Child of Another Tribe. In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it;

2. The child's tribe shall have a right to intervene at any point in the proceedings; and

3. No foster care placement or termination of parental rights proceeding shall be held until at least ten (10) days after receipt of notice of the proceedings by the child's tribe.

Section 3-6-10. Standards for Involuntary Removal.

1. Except for emergency removal as provided in this Chapter, no child shall be removed from the physical custody of his or her parents, guardian or custodian unless the Court finds by clear and convincing evidence that:

a. Remaining in the home is contrary to the welfare of the child; and

b. Except as provided in this Section, reasonable and active efforts have been made to prevent or eliminate the need for removal of the child.

2. Reasonable and active efforts to prevent or eliminate the need for removal of the child shall not be required when:

a. The child has been abandoned by the parents, guardian or custodian;

b. The parent, guardian or custodian is unwilling to have physical custody of the child;

c. The child has been subject to chronic abuse or sexual abuse by the parents, guardian or custodian;

d. The parents previously had parental rights involuntarily terminated to a sibling of the child;

e. The parents, guardian or custodian has committed or aided, abetted, attempted, conspired or solicited to commit murder or voluntary manslaughter of the child or another child of the parent, guardian or custodian; or

f. The parents, guardian or custodian has committed a felony assault that resulted in serious bodily injury to the child or another child of the parent, guardian or custodian.

3. Whenever the Court orders a child removed from the physical custody of his or her parents, guardian or custodian under this Chapter, the Court shall include in the order a written determination establishing that the standards of this Section have been met.

Section 3-6-11. Placement Preferences.

1. In any foster care, guardianship, or pre-adoptive placement, temporary or permanent, preference shall be given to placement in the following order:

a. A relative or extended family member of the child who is a member of the child's tribe;

b. A relative or extended family member of the child who is not a member of the child's tribe;

c. A non-relative member of the child's tribe and approved by the Tribe or the child's tribe;

d. A member of a federally recognized Indian tribe approved by the Tribe or the child's tribe;

e. An Indian home approved by the Tribe or the child's tribe;

f. A foster home of a member of the child's tribe licensed by the Tribe or by a state;

g. A non-Indian foster home licensed by the Tribe;

h. A foster home specially licensed by a state for Indian children;

i. A non-Indian foster home licensed by a state within whose geographical boundaries the territory of the Tribe may lie; or

j. An institution for children approved by the Tribe.

2. If a child who is a member or eligible to be a member of the Tribe is placed with a non-Ponca family, the following placement conditions, when reasonable, should be imposed:

a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;

b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, the Department must be notified so that appropriate arrangements can be made;

c. The child's name cannot be changed;

d. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted;

e. The Tribe must be kept informed of all address changes;

f. The Department must be allowed to conduct reviews at least two (2) times per year, upon adequate advance notice from the Tribe; and

g. If the non-Ponca family placement or parental rights are at risk, the Department must be notified immediately.

3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

Section 3-6-12. Placement of Children Outside of Home.

1. Subject to the preferences in Section 3-6-11, when any child is placed outside of the home of his or her parents, guardian or custodian, the child shall be placed in a home:

a. Which is the least restrictive placement which most approximates a family;

b. In which the child's needs may be met;

c. That facilitates and encourages visitation and reunification; and

d. That is in close proximity to the home of the child's parents, guardian or custodian, unless the best interests or special needs of the child require otherwise.

2. Siblings shall be placed together whenever possible, unless it is contrary to their best interests.

Section 3-6-13. Emergency Removal of Children.

1. No child shall be removed from the home of the child's parent, guardian or custodian absent a specific order of the Court, except as follows:

a. When the child has been relinquished to the Department or the parent, guardian or custodian has consented to such removal;

b. When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm to the child; or

c. When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his or her own basic necessities of life, and that no satisfactory arrangements have been made by the parent, guardian or custodian to provide for such necessities.

2. If a person investigating a report of child abuse or neglect under Chapter 5 finds that grounds for removal as provided in this Section have been met, such person may remove or direct Tribal law enforcement or the Department to remove the child from the home in which the child is residing and place the child in a temporary home or other appropriate placement.

3. Tribal law enforcement officers and/or authorized personnel from the Department shall have the power to remove a child pursuant to this Section provided that:

a. Reasonable grounds existed at the time of the removal to believe the removal was necessary;

b. The person removing the child ensures the safety and well-being of the child until such time as the Court assumes control over the matter; and

c. The person removing the child complies with the notice provisions of this Section.

4. If a child is removed from his or her home pursuant to this Section, the person who removed the child shall:

a. Attempt to contact the Court within six (6) hours of the removal and document the attempt to contact the Court;

b. Provide actual notice to the Court no later than 12:00 p.m. (noon) the next business day after the removal;

c. Make all reasonable efforts to notify the parents, guardian or custodian within twelve (12) hours of the removal, including by personal, telephone and written contacts at their residence, place of employment, or other location where the parent, guardian or custodian is known to frequent with regularity;

d. If the parent, guardian or custodian cannot be found, give notice to adult members of the extended family of the parent, guardian or custodian and/or the adult extended family of the child;

e. If the Tribal Attorney was not involved or notified of the removal, notify the Tribal Attorney of the removal within twenty-four (24) hours of the removal and provide the Tribal Attorney with all necessary information to file an application for temporary custody and a petition under this Chapter.

Section 3-6-14. Hearings on Emergency Removal.

1. When a child has been removed pursuant to Section 3-6-13, the Tribal Attorney shall file an application for a temporary

custody order with the Court approving the removal no later than 12:00 p.m. (noon) of the third business day following the removal.

2. The Court may issue a temporary custody order under this Section ex parte without a hearing if it appears from the face of the application and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. The removal complied with Section 3-6-13, including the notice provisions thereof;

b. There is good cause to believe that the removal of the child was permissible as provided under Section 3-6-13; and

c. There is probable cause to believe that continued removal from the custody of the parent, guardian or custodian is in the best interest of the child.

3. A temporary custody order issued under this Section shall:

a. Retroactively approve of the removal;

b. Order the continued removal of the child, if appropriate;

c. If the child is not returned to his or her parents, guardian or custodian, grant temporary legal custody of the child to the Department and authorize the Department to place the child in foster care in accordance with the placement preferences set forth in this Chapter; and

d. Require the Department to promptly notify the Tribal Attorney of the child's placement.

4. No child may be held in temporary custody pursuant to this Section longer than forty-eight (48) hours, excluding Saturdays and legal holidays, unless:

a. The parents, guardian or custodian from whom the child was removed voluntarily consent in writing to extend the temporary custody; or

b. A petition has been filed under this Chapter and the Court orders longer custody during a hearing where all parties are provided an opportunity to appear and be heard.

5. The Court may at any time order the release of a child from temporary custody under this Section, with or without restriction regarding the care and protection of the child.

Section 3-6-15. Initiation of Proceedings.

1. Proceedings in the Court to declare a child in need of assistance shall be initiated by the filing of a petition.

2. Petitions may be filed by the Tribal Attorney, or in the absence of the Tribal Attorney, the Department and shall be captioned: "In Re the Matter of (child's or children's name(s)), [A] Child[ren] in Need of Assistance".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

b. The names, last known addresses and tribal membership of the child's parents, guardian or custodians or the reasons that such information is unavailable;

c. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

d. The basis for the Court's jurisdiction;

e. An allegation that the child is a child in need of assistance along with a specific reference to one or more of the definitions of a child in need of assistance given in this Chapter;

f. A plain and concise statement of facts upon which the allegations of a child in need of assistance are based, including the dates and locations of the alleged acts; and

g. A request that the Court adjudicate the child to be a child in need of assistance.

4. The petition shall be brought by the Tribe on behalf of the child and the child's parents, guardian or custodian, as applicable, shall be included as named respondents.

5. Affidavits of staff of the Department or law enforcement officers may be incorporated by reference as part of the petition.

6. Two (2) or more children having one (1) or more common parent, guardian or custodian and a common home environment may be included in the same petition.

7. When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition and appears from the facts to be appropriate, the Court may on a motion by the Tribal Attorney or legal counsel for the child amend the petition and proceed to hear and determine the additional or other issues as though originally and properly brought.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 3-6-16. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued to all named respondents to the petition in accordance with the general rules governing the issuance of summons by the Court, except that, if the petition declares the parties are unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though the parties had been described by their proper names.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that:

a. The respondents and the child who is the subject of the petition have the right to legal counsel at their own expense at all stages in the proceedings; and

b. Termination of parental rights is a possible remedy under the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 3-6-17. Responsive Pleading.

1. Any respondent may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the adjudicatory hearing, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-6-18. Support for Child Placed Outside of Home. Whenever a child is placed outside of the home of his or her parents, guardian or custodian, the Court may order the child's parent, guardian or custodian to contribute to the financial support of the child where it appears the child's parents, guardian or custodian is financially able to do so.

Section 3-6-19. Testimonial Privileges Abrogated. The physician-patient privilege, spousal privileges, or any other privilege except the attorney-client privilege, both as they relate to witnesses and to the exclusion of confidential communications, shall not pertain in any proceeding in which a child's status as a child in need of assistance is an issue.

Section 3-6-20. Orders for Examinations.

1. In any proceeding under this Chapter, on motion of the Tribe, the child, any interested party or on the Court's own motion, the Court may order:

a. A child subject of the proceeding to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the child;

b. The child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child to submit to a psychological, psychiatric or mental

examination and evaluation by a qualified mental health professional and follow any recommendations of such examination and evaluation;

c. The child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child to submit to a substance abuse evaluation if there is good cause to believe the individual is abusing or dependent upon alcohol or drugs and follow any recommendations of such evaluation; and

d. Homestudy investigations of the home of the child's parents, guardian, custodian or any individual who has or is being considered as a placement for the child.

2. An order issued under this Section may provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, the Department, legal counsel of record for the parties, and any representatives of the child.

3. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered under this Section as it would consider all other evidence regardless of whether the report, any matter contained therein, or any exhibit attached thereto is formally introduced as evidence.

4. If the individual being ordered to submit to an evaluation or examination is eligible for services from the Health Services Department and the Health Services Department possesses the capability to perform or have performed such evaluation or examination, the exam may be conducted by the Health Services Department and, unless otherwise ordered by the Court, the Tribe may bear the costs of the examination unless otherwise ordered by the Court.

Section 3-6-21. Protective Orders.

1. The Court may issue a protective order in any proceeding under this Chapter if:

a. A child, previously placed by an order of the Court, runs from his or her placement;

b. If the Court finds that such order is necessary to prevent violent or threatening acts or harassment against the child or the individual with whom the child is placed; or

c. If the Court otherwise determines such order is necessary.

2. A protective order issued under this Chapter shall set forth reasonable conditions of behavior to be observed for a specified period by any person who is a party to such proceedings and may require any person or party:

a. To stay away from the child or the child's home;

b. To permit a parent or other person to visit a child at stated periods and places, with or without supervision;

c. To abstain from offensive conduct against a child or the child's parents, guardian, custodian or other person having custody or temporary care of the child;

d. To give proper care and maintenance of the child's home;

e. To refrain from any acts that tend to make a home an improper place for a child; or

f. To cooperate with and participate in any physical or mental examination and evaluation, counseling, treatment, therapy or childcare or parenting classes considered necessary by the Court for the benefit of the child.

3. After a scheduled hearing where the parties subject to the order appear or are provided notice to appear, a protective order may be terminated, modified, or extended if the Court finds it in the best interests of the child.

Section 3-6-22. Proceeding on Petition. Except as otherwise provided in this Title, the Court may adopt any mode of proceeding on a petition filed under this Chapter as it deems appropriate in its discretion that will best serve the purposes of this Title and assist in an amicable resolution that assists the child and family and promotes reunification and avoids termination of parental rights, including, by way of example but not limitation:

1. Informal resolution or problem-solving practices;

2. Adjudication by trial;

3. Adjudication by stipulation with or without admission of grounds;

4. Conducting a dispositional hearing without adjudication of the merits of the petition;

5. Informal court review; or

6. Voluntary permanent or temporary transfer of custody.

Section 3-6-23. Reports to Court.

1. To aid the Court in its decision, prior to any hearing in a proceeding under this Chapter except for an adjudicatory hearing or hearing to terminate parental rights, the Tribe shall file a report to the court on behalf of the Department and the Tribe consisting of a written evaluation of matters relevant to the resolution of the case.

2. The Tribe's report to the court shall include:

a. A summary of the immediately preceding hearing and order, if any;

b. If appropriate, a summary of the status and progress of the child and family since the last hearing, including:

i. Compliance with prior orders of the Court;

ii. What steps, if any, the child's parent, guardian or custodian or Department personnel have taken to correct the problems which lead to the filing of the petition;

iii. What services could be of benefit to the parent, guardian or custodian; and

iv. A summary of how the child is doing in his or her current placement and, if there have been any changes in placement, the reason for such changes;

c. Any other information the Tribe deems appropriate; and

d. Recommendations for the child, family and proceedings to be included in an order of the Court.

3. The Tribe's report to the court shall be based upon reports and input from the Department, including any contacts with the child and his or her parents, guardian or custodian. The Tribe may attach the Department's report to its report to the court as an exhibit or may include the necessary information from the Department's report directly in the Tribe's report to the court. The Tribe may also attach any homestudy investigations or other reports and documents as exhibits to its report to the court. Subject to objection from any party, the Court shall receive and accept any exhibit attached to the Tribe's report to the court and consider such exhibit as it would any other evidence presented.

4. In addition to the Tribe's report to the court, a foster parent, relative or other individual providing care for a child may also submit a report to the court regarding the child's adjustment, progress, and condition.

5. The Tribe's and any other report to the court, including any exhibits, shall be filed with the Court and served on the child, if represented, and all other parties at least five (5) days prior to the date set for the hearing. The Tribe and any other person who files a timely report to the court may also file and serve a supplement or modification to their report to the court based on new information within three (3) calendar days prior to the hearing. Any other supplementation or modification shall be made during the hearing.

6. During any hearing where a report to the court has been filed, any party to the proceedings shall be permitted to object or request modification or addition to the report to the court. Objections or requests for modification or addition may be made by filing the same with the Court or orally during the hearing. If the person who filed the report does not agree to any such objection, modification or addition, the Court shall determine whether the objection, modification or addition will be accepted. The Court shall accept the report to the court as altered due to any accepted objection, modification or addition.

7. The Court shall review and consider reports to the court, any information contained therein, and any attached exhibits as it would consider all other evidence regardless of whether the report to the court, any matter therein or any exhibit attached thereto is formally introduced as evidence.

Section 3-6-24. Advisory Hearing.

1. An advisory hearing shall be held as soon as practicably possible following the filing of a petition under this Chapter.

2. The primary purpose of the advisory hearing is to inform the parties of the allegations of the petition and the possible consequences if the allegations are admitted or proven true as well as to receive the response of the respondents to the petition.

3. During the advisory hearing, the Court shall first:

a. Ascertain the need for any joinder or deletion of parties;

b. Determine the true names, addresses and tribal affiliation of the parties and their relationship to the child;

c. Determine the true name, date and place of birth, address, tribal affiliation and custodial status of the child;

d. Advise the parties of the reason for the hearing, the nature of the proceedings, the allegations contained in the petition, and the burden of proof of the Tribe; and

e. Advise the parties of their basic rights under Section 3-3-7 of this Title.

4. The Court shall then receive the answer, response, denial or admission of the respondents. The respondents may admit or plead no contest to any or all of the allegations contained in the petition and the Court may accept the admission if the Court is satisfied there is a factual basis for the allegations. If the parties do not admit or plead no contest to any of the allegations contained in the petition, such allegations shall be deemed denied.

5. If any party who received actual notice of the advisory hearing fails to appear or fails to answer or otherwise respond to the petition, the party shall be deemed by the Court to be in default and the petition shall be taken as admitted to by that party.

Section 3-6-25. Order After Advisory Hearing. After an advisory hearing, the Court shall enter a written order based on the results of said hearing. The order shall:

1. State the appearances of all parties and failures to appear;

2. If the advisory hearing is continued, set a new date for the advisory hearing;

3. If all respondents admit the allegations contained in the petition and the Court accepts the admission:

a. Declare the child to be in need of assistance as admitted to by the respondents; and

b. Set the matter for a dispositional hearing and prescribe for the provision of notice of the hearing;

4. If one or more of the respondents deny one or more of the allegations contained in the petition, set the matter for an adjudicatory hearing as to those respondents who deny the allegations of the petition for those allegations denied and prescribe for the provision of notice of the hearing;

5. Provide for the custody, care and placement of the child pending the next hearing;

6. Make any appointments of guardians ad litem or other personnel pursuant to Chapter 3 of this Title; and

7. Order any other matters the Court deems necessary or appropriate.

Section 3-6-26. Adjudicatory Hearing.

1. Following the advisory hearing where any of the respondents deny any of the allegations of the petition, an adjudicatory hearing shall be held for those respondents that denied any allegations of the petition on such denied allegations.

2. The primary purpose of the adjudicatory hearing is to determine whether the child is a child in need of assistance under this Chapter.

3. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.

4. The allegations of the petition must be supported by clear and convincing evidence, provided that evidence that child abuse has occurred shall be prima facie evidence that the child is a child in need of assistance regardless of the allegations in the petition and such evidence shall be sufficient by itself to support a determination that the child is a child in need of assistance.

Section 3-6-27. Order After Adjudicatory Hearing.

1. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that the child is a child in need of assistance under this Chapter:

i. State that the child is a child in need of assistance by clear and convincing evidence;

ii. Set the matter for a dispositional hearing approximately thirty (30) days from the date of the adjudicatory hearing and prescribe for the provision of notice of the hearing; and

iii. Provide for the custody, care and placement of the child pending the next hearing;

b. If the Court determines that the allegations of the petition are not supported by clear and convincing evidence or otherwise that the child is not a child in need of assistance under this Chapter:

i. Release the child, the child's parents, guardian or custodian, and other respondents from any restrictions, custody or placement orders previously entered;

ii. Return the child to the custody and placement of the child's parents, guardian or custodian from whom the child was removed or identify who will have the legal and physical custody of the child until such order is modified by further order of the Court; and

iii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. An order of adjudication is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-6-28. Dispositional Report. After the entry of the Court's order after the advisory hearing where all allegations of the petition are admitted or after the adjudicatory hearing where the allegations of the petition are proven and prior to the dispositional hearing:

1. The Department shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. The report shall contain:

a. A plan for care of and assistance to the child which is calculated to resolve the problems presented in the petition;

b. An explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan;

c. If placement with the child's parents, guardian or custodian is not recommended, specific and detailed reasons why such recommendation is not made and a specific plan for reunification or an explanation for the lack of such plan;

d. Whether an action to terminate parental rights appears to be advisable; and

e. Such other information the Department determines relevant to the disposition of the child;

2. The Tribe's report to the court filed for the dispositional hearing shall be based on the dispositional report required by this Section. In addition to any other matters generally included in the Tribe's report to the court, the Tribe shall state its recommended disposition of the child.

Section 3-6-29. Dispositional Hearing.

1. Following the adjudicatory hearing and entry of an order from said hearing, a dispositional hearing shall be held.

2. The primary purpose of the dispositional hearing is to determine whether the child needs assistance and, if so, what services will be provided to the child and family.

3. The disposition of the child shall be made in accordance with the following:

a. The disposition shall be consistent with the allegations of the petition and the problems or issues that resulted in the filing of the petition and the basis for adjudication of the child as a child in need of assistance;

b. The child's placement shall be the least restrictive placement that meets the needs of the child;

c. The disposition shall be consistent with the best interests of the child;

d. The disposition shall give due regard to the rights and interests of the child's parents, guardian, custodian, other respondents, and the Tribe.

4. If the disposition of a child includes the involuntary placement of the child out of the physical custody of his or her parents, guardian or custodian, the Court shall ensure that the standards under Section 3-6-10 of this Chapter have been met.

Section 3-6-30. Order After Dispositional Hearing.

1. After a dispositional hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. State the disposition of the child, including any terms, conditions, and limitations of the disposition;

b. State the permanency plan for the child and the services to be provided to achieve the permanency plan;

c. When appropriate, provide for the stability and appropriateness of the child's education;

d. When appropriate, address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatments needed;

e. Provide for the custody, care and placement of the child by:

i. Placing the child in the custody of one or both parents, guardian or custodian of the child;

ii. Placing the child in the custody or guardianship of another individual, including for long term foster care, according to the placement preferences set forth in this Chapter; or

iii. Placing the child in the custody of the Department for placement in accordance with the placement preferences set forth in this Chapter;

f. Provide for any visitation by the child's parents, guardian or custodian and extended family members, including a visitation schedule and any limitations, if necessary;

g. Require any evaluations, tests, counseling, or treatments the Court finds necessary; and

h. Set the matter for a review hearing no more than six (6) months from the date of the dispositional hearing and prescribe for the provision of notice of the hearing; and

i. Order any other matters the Court deems necessary or appropriate.

2. A dispositional order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-6-31. Review Hearings.

1. Following the dispositional hearing, a review hearing shall be held no less than every six (6) months after entry of the dispositional order until the jurisdiction of the Court over the child is terminated.

2. The primary purpose of a review hearing is to evaluate the progress of the child and family and determine whether court intervention should continue.

3. The Court shall consider the efforts or progress demonstrated by the child's parents, guardian or custodian and the extent to which they cooperated and availed themselves of services

provided and, based on the Court's findings, do any of the following:

a. If there has been no material change of circumstances, continue the dispositional order in effect;

b. Order removal of the child from the physical custody of his or her parents, guardian or custodian if current facts justify such a removal under the standards set forth in Section 3-6-10 of this Chapter;

c. Order any additional services reasonably believed to be necessary;

d. Modify the dispositional order in effect, including revising the permanency plan for the child;

e. Order a child returned to the physical custody of his or her parents, guardian or custodian with any limitations, conditions or supervision the Court finds appropriate;

f. If the conduct of the child or the basis for finding the child to be a child in need of assistance may also make the child a child offender under Chapter 7 of this Title, refer the matter to the appropriate officials for consideration of initiating proceedings under Chapter 7 of this Title;

g. Provide for the permanent placement of the child or set the matter for a permanency hearing; or

h. Terminate the child's status as a child in need of assistance and order the child immediately returned to the legal and physical custody of his or her parents, guardian or custodian.

Section 3-6-32. Order After Review Hearing. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

1. State whether the permanency plan is best suited to the safety, protection, and physical, mental, and moral welfare of the child;

2. Reflect the determination made pursuant to Section 3-6-31;

3. If the Court decides to transfer custody or placement of the child:

a. State the name of the person who will have custody or with whom the child will be placed, unless disclosure is prohibited by order of the Court; and

b. Provide for any visitation by the child's parents, guardian or custodian and any extended family members, including a visitation schedule and any limitations, if necessary; and

4. Order any other matters the Court deems necessary or appropriate.

Section 3-6-33. Permanency Hearing.

1. In any proceeding where a child has been involuntarily removed from the home of the child's parents, guardian or custodian and placed in foster care, a permanency hearing shall be held no less than every twelve (12) months from the date the child is first placed in foster care until the jurisdiction of the Court over the child is terminated, provided that, in proceedings where the Court has determined that reasonable and active efforts to prevent the breakup of the family are not required, the first permanency hearing shall be held within thirty (30) days from the date the child is first placed in foster care. A permanency hearing may be combined with a review hearing conducted under this Chapter.

2. The primary purpose of a permanency hearing is to review the status of the child and the progress being made toward the child's return to his or her parents, guardian or custodian or to some other permanent home.

3. In conducting a permanency hearing, the Court shall determine:

a. Whether the current permanency plan is in the best interests of the child;

b. Whether the Department has made reasonable and active efforts to finalize the permanency plan, including making reasonable and active efforts toward reunification, if reunification is part of the permanency plan;

c. Other steps the Department needs to take to effectuate the terms of the permanency plan; and

d. Whether termination of parental rights is in the best interests of the child and justifiable in accordance with the provisions of this Title.

4. A child shall be considered in a permanent placement and no hearing under this Section shall be required if:

a. The child is returned to his or her parents, guardian or custodian;

b. A guardian, other than a respondent, is appointed for the child;

c. The child is adopted;

d. The child is placed with a relative of the child and is intended to remain with the relative; or

e. The Tribe has identified another planned permanent living situation for the child.

Section 3-6-34. Order After Permanency Hearing.

1. After a permanency hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing.

2. If parental rights to the child have not been terminated and the Court determines at the permanency hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health or mental well-being, the Court shall order the child returned to his or her parents, guardian or custodian. In determining whether the return of the child would cause a substantial risk or harm to the child, the Court shall view the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional order as evidence that return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health or mental well-being.

Section 3-6-35. Modification or Setting Aside Order or Decree.

1. A child, his or her parents, guardian or custodian or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be in need of assistance, request the Court to change or set aside any previous order, including an order removing custody from the parents, guardian or custodian, or to terminate the child's status as a ward of the Court or a child in need of assistance on the grounds of change of circumstances or new evidence.

2. A motion made under this Section shall identify the person making the motion and his or her relationship to or interest in the child and shall set forth in clear and concise terms any change of circumstances or new evidence which is alleged as grounds for such change or order or termination of status.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the child, the Tribe, and the child's parents, guardian or custodian.

4. The Court may grant a motion made under this Section if it is in the best interests of the child and the Tribe and otherwise justified, except that, if the motion is based upon new evidence related to adjudication or disposition, the Court shall order a new adjudicatory or dispositional hearing, as appropriate, unless the Tribe agrees to the relief requested in the motion or the parties agree to alternative relief without a new hearing.

CHAPTER 7
CHILD OFFENDERS

Section 3-7-1. Purpose. The purpose of this Chapter is to establish an effective system for child offenders that removes the legal consequences of criminal behavior from children committing juvenile offenses and to substitute a program of supervision, care, and rehabilitation consistent with the protection of the Tribe.

Section 3-7-2. Definition of Child Offender.

1. For purposes of this Chapter, a child offender shall be a child:

   a. Who commits an act which, if committed by an adult, would be a crime under the laws of the Tribe, the laws of the state within whose boundaries the act was committed, or the laws of the United States; or

b. Who commits a status offense as defined in Section 3-7-3 of this Chapter.

2. To the extent possible, a child offender shall be treated as a child in need of assistance under Chapter 6 of this Title when:

a. The child has committed a status offense as defined in Section 3-7-3 of this Chapter; or

b. The child is under the age of ten (10) years.

Section 3-7-3. Status Offenses.

1. A child commits habitual truancy if he or she is required to attend middle school, junior high school, or high school and is absent from attendance at such school without valid excuse for one (1) or more class periods on seven (7) school days per school year.

2. A child commits running away if he or she is absent from home for an unreasonable period of time without a compelling reason or without permission of a parent, guardian or custodian.

3. A child commits underage consumption of alcohol if he or she consumes any alcoholic beverage unless the child consumed the alcoholic beverage in the household of his or her parent, guardian or custodian and with the consent of the parent, guardian or custodian.

4. A child commits underage possession of alcohol if he or she possesses any alcoholic beverage with the intent to consume it at a place other than the household of the child's parent, guardian or custodian.

Section 3-7-4. Tribal Attorney to Represent the Tribe. The Tribal Attorney shall represent the Tribe and the Department in all proceedings brought under this Chapter, unless the Tribe hires a separate prosecutor to conduct proceedings under this Chapter.

Section 3-7-5. Proceedings of a Civil Nature.

1. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

2. Nothing in this Chapter shall preclude or prevent a child offender from also being the subject of a child in need of assistance proceeding under Chapter 6 of this Title.

Section 3-7-6. Continuing Jurisdiction.

1. Jurisdiction of the Court over a child under this Chapter is retained until the Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

Section 3-7-7. Standards for Involuntary Removal.

1. No child shall be removed from the physical custody of his or her parents, guardian or custodian under this Chapter unless the Court finds by clear and convincing evidence that:

a. There is a substantial danger to the physical or emotional health of the child and there are no acceptable and reasonable means by which the child's well-being can be protected without removal of the child from the physical custody of the parent, guardian or custodian;

b. The child poses a substantial threat of danger to the persons or property of others and there are no acceptable and reasonable means by which such threat can be guarded against without removal of the child from the physical custody of the parent, guardian or custodian;

c. The child is unwilling to return to the home of his or her parents, guardian or custodian;

d. The parent, guardian or custodian is unavailable, unwilling, or unable to have physical custody of the child;

e. The parent, guardian or custodian is incapable of providing or has failed or neglected to provide proper supervision and care for the child;

f. The child has demonstrated a propensity to run away from the home of his or her parents, guardian or custodian; or

g. The child has in the past been placed under supervision in his or her home and rehabilitation has failed.

2. A child may be referred to a shelter or halfway house for the care and treatment of children with regard to alcohol and/or substance abuse problems only if the basis for the child being found to be a child offender is related to an alcohol or substance abuse offense.

Section 3-7-8. Placement Preferences.

1. If a child is removed from the physical custody of his or her parents, guardian or custodian under this Chapter, preference shall be given to placement in the following order:

a. A relative of the child who is a member of the tribe in which the child is a member or eligible to be a member;

b. A relative of the child who is not a member of the tribe in which the child is a member or eligible to be a member;

c. A friend of the family;

d. A non-relative member of the tribe in which the child is a member or eligible to be a member and approved by the Tribe or the child's tribe;

e. A member of a federally recognized Indian tribe approved by the Tribe or the child's tribe;

f. An Indian home approved by the Tribe or the child's tribe;

g. An Indian foster home licensed by the Tribe or by a state;

h. A non-Indian foster home licensed by the Tribe;

i. A foster home specially licensed by a state for Indian children;

j. A non-Indian foster home licensed by a state within whose geographical boundaries the territory of the Tribe may lie;

k. A group boarding home; or

l. An institution for children approved by the Tribe.

2. If a child who is a member or eligible to be a member of the Tribe is placed with a non-Ponca family, the following placement conditions, when reasonable, should be imposed:

a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;

b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, the Department must be notified so that appropriate arrangements can be made;

c. The child's name cannot be changed;

d. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted;

e. The Tribe must be kept informed of all address changes;

f. The Department must be allowed to conduct reviews at least two (2) times per year, upon adequate advance notice from the Tribe; and

g. If the non-Ponca family placement or parental rights are at risk, the Department must be notified immediately.

3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

Section 3-7-9. Initiation of Proceedings.

1. Proceedings in the Court to declare a child to be a child offender shall be initiated by the filing of a petition.

2. Petitions may be filed by the Tribal Attorney, or in the absence of the Tribal Attorney, the Department, and shall be captioned: "In Re the Matter of (child's or children's name(s)), [A] Child Offender[s]".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

b. The names, last known addresses and tribal membership of the child's parents, guardian or custodians or the reasons that such information is unavailable;

c. The basis for the Court's jurisdiction;

d. An allegation that the child is a child offender along with a specific reference to one or more of the definitions of a child offender given in this Chapter and any criminal provisions of law alleged to have been violated;

e. A plain and concise statement of facts upon which the allegations of a child offender are based, including the dates and locations of the alleged acts; and

f. A request that the Court adjudicate the child to be a child offender.

4. The petition shall be brought by the Tribe and the child shall be the named respondent.

5. Affidavits of staff of the Department or law enforcement officers may be incorporated by reference as part of the petition.

6. When it appears during the course of any proceeding under this Chapter that an issue has been omitted from the petition and appears from the facts to be appropriate, the Court may on a motion by the Tribal Attorney amend the petition and proceed to hear and determine the additional or other issues, as though originally and properly brought.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 3-7-10. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued to the child as respondent to the petition and the child's parents,

guardian or custodian in accordance with the general rules governing the issuance of summons by the Court.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the child who is a respondent and the child's parents, guardian or custodian have the right to legal counsel at all stages in the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 3-7-11. Responsive Pleading.

1. The child, or the child's parents, guardian or custodian on behalf of the child, may file a responsive pleading admitting or denying allegations in the petition.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the adjudicatory hearing, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-7-12. Support for Child Placed Outside of Home. Whenever a child is placed outside of the home of his or her parents, guardian or custodian, the Court may order the child's parent, guardian or custodian to contribute to the financial support of the child where it appears the child's parents, guardian or custodian is financially able to do so.

Section 3-7-13. Orders for Examinations.

1. In any proceeding under this Chapter, on motion of the Tribe, the child, any interested party or on the Court's own motion, the Court may order:

    a. An alleged or adjudicated child offender to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the child;

b. An alleged or adjudicated child offender to submit to a substance abuse evaluation if there is good cause to believe the child is abusing or dependent upon alcohol or drugs and follow any recommendations of such evaluation; and

c. Homestudy investigations of the home of the child's parents, guardian or custodian.

2. An order issued under this Section may provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, the Department, legal counsel of record for the parties, and any representatives of the child.

3. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered under this Section as it would consider all other evidence regardless of whether the report, any matter therein or any exhibit attached thereto is formally introduced as evidence.

4. If the individual being ordered to submit to an evaluation or examination is eligible for services from the Health Services Department and the Health Services Department possesses the capability to perform or have performed such evaluation or examination, the exam may be conducted by the Health Services Department and, unless otherwise ordered by the Court, the Tribe may bear the costs of the examination unless otherwise ordered by the Court.

Section 3-7-14. Proceeding on Petition. Except as otherwise provided in this Title, the Court may adopt any mode of proceeding on a petition filed under this Chapter as it deems appropriate in its discretion that will best serve the purposes of this Title and assist in an amicable resolution that assists the child and family, including, by way of example but not limitation:

1. Informal resolution or problem-solving practices;

2. Adjudication by trial;

3. Adjudication by stipulation with or without admission of grounds;

4. Conducting a dispositional hearing without adjudication of the merits of the petition; or

5. Informal court review.

Section 3-7-15. Informal Conference.

1. The Tribal Attorney and/or the Department may, at any time before or after a petition is filed and prior to disposition, hold an informal conference with the child and the child's parents, guardian or custodian to discuss alternative courses of action in the particular case, or otherwise propose alternative courses of action to the child and the child's parents, guardian or custodian which may be accepted or rejected by the child and the child's parents.

2. Statements made by the child at an informal conference may or may not be used against the child in determining the truth of the allegations in the petition. The Court shall make the determination whether or not a statement is admissible.

3. At the informal conference or as a result of a proposal, the Tribe may enter into a written agreement with the child and the child's parents, guardian or custodian specifying particular conditions to be observed and/or programs to be completed. The agreement may also include a stipulated adjudication of the child as a child offender. The Court shall accept the agreement as a consent decree under this Chapter in lieu of a disposition of the child, subject to compliance with the agreement. The child and the child's parents, guardian or custodian shall enter into the agreement with the knowledge that consent is voluntary and that they may refuse to enter into the agreement and proceed through hearings in the proceeding before the Court.

4. The child may be represented by legal counsel at his or her own expense at any informal conference.

5. Upon the successful completion of the terms of a written agreement entered into under this Section, the case shall be dismissed and no further action taken in the case.

6. If the child fails to successfully complete the terms of the agreement, it shall be treated as a failure to fulfill the terms of a consent decree.

Section 3-7-16. Consent Decree.

1. At any time after the filing of a petition under this Chapter and before the entry of a judgment, the Court may, on motion of the Tribe or the child, suspend the proceedings under terms and conditions negotiated with the Tribe and agreed to by

all the parties affected. The Court's order continuing the child under this Section shall be known as a consent decree.

2. Upon the successful completion of the terms of a consent decree, the case shall be dismissed and no further action taken in the case.

3. If, either prior to a discharge by the Court or expiration of the consent decree, the child fails to fulfill the terms of the decree, the Tribe may file a motion to revoke the consent decree. If the child is found to have violated the terms of the consent decree, the Court may:

a. Extend the period of the consent decree; or

b. Proceed with further formal proceedings on the petition in accordance with this Chapter, except that if the consent decree included any admission or plea of no contest in lieu of adjudication, the Court may accept such admission or plea as though given at an advisory hearing on the petition.

Section 3-7-17. Reports to Court.

1. To aid the Court in its decision, prior to any hearing in a proceeding under this Chapter except for an adjudicatory hearing, the Tribe shall file a report to the court on behalf of the Department and the Tribe consisting of a written evaluation of matters relevant to the resolution of the case.

2. The Tribe's report to the court shall include:

a. A summary of the immediately preceding hearing and order, if any;

b. If appropriate, a summary of the status and progress of the child and family since the last hearing, including:

i. Compliance with prior orders of the Court;

ii. What steps, if any, the child and the child's parent, guardian or custodian or Department personnel have taken to correct the problems which lead to the filing of the petition; and

iii. What services could be of benefit to the child and his or her parent, guardian or custodian;

c. Any other information the Tribe deems appropriate; and

d. Recommendations for the child, family and proceedings to be included in an order of the Court.

3. The Tribe's report to the court shall be based upon reports and input from the Department, including any contacts with the child and his or her parents, guardian or custodian. The Tribe may attach the Department's report to its report to the court as an exhibit or may include the necessary information from the Department's report directly in the Tribe's report to the court. The Tribe may also attach any other reports and documents as exhibits to its report to the court. Subject to objection from any party, the Court shall receive and accept any exhibit attached to the Tribe's report to the court and consider such exhibit as it would any other evidence presented.

4. In addition to the Tribe's report to the court, the child and his or her parents, guardian or custodian may also submit a report to the court regarding the child's progress and condition.

5. The Tribe's and any other report to the court, including any exhibits, shall be filed with the Court and served on the child, if represented, and all other parties at least five (5) days prior to the date set for the hearing. The Tribe and any other person who files a timely report to the court may also file and serve a supplement or modification to their report to the court based on new information within three (3) calendar days prior to the hearing. Any other supplementation or modification shall be made during the hearing.

6. During any hearing where a report to the court has been filed, any party to the proceedings shall be permitted to object or request modification or addition to the report to the court. Objections or requests for modification or addition may be made by filing the same with the Court or orally during the hearing. If the person who filed the report does not agree to any such objection, modification or addition, the Court shall determine whether the objection, modification or addition will be accepted. The Court shall accept the report to the court as altered due to any accepted objection, modification or addition.

7. The Court shall review and consider reports to the court, any information contained therein, and any attached exhibits as it would consider all other evidence regardless of whether the report to the court, any matter therein or any exhibit attached thereto is formally introduced as evidence.

Section 3-7-18. Advisory Hearing.

1. An advisory hearing shall be held as soon as practicably possible following the filing of a petition under this Chapter.

2. The primary purpose of the advisory hearing is to inform the child and his or her parents, guardian or custodian of the allegations of the petition and the possible consequences if the allegations are admitted or proven true as well as to receive the response of the respondents to the petition.

3. During the advisory hearing, the Court shall first:

a. Ascertain the need for any joinder or deletion of parties;

b. Determine the true names, addresses and tribal affiliation of the parties and their relationship to the child;

c. Determine the true name, date and place of birth, address, tribal affiliation and custodial status of the child;

d. Advise the child and his or her parents, guardian or custodian of the reason for the hearing, the nature of the proceedings, the allegations contained in the petition, and the burden of proof of the Tribe; and

e. Advise the child and his or her parents, guardian or custodian of their basic rights under Section 3-3-7 of this Title.

4. The Court shall then receive the answer, response, denial or admission of the child. The child may admit or plead no contest to any or all of the allegations contained in the petition and the Court may accept the admission if the Court is satisfied there is a factual basis for the allegations. If the child does not admit or plead no contest to any of the allegations contained in the petition, such allegations shall be deemed denied.

5. If the child received actual notice of the advisory hearing and fails to appear or fails to answer or otherwise respond to the petition, the child shall be deemed by the Court to be in default and the petition shall be taken as admitted to by the child.

Section 3-7-19. Order After Advisory Hearing. After an advisory hearing, the Court shall enter a written order based on the results of said hearing. The order shall:

1. State the appearances of all parties and failures to appear;

2. If the advisory hearing is continued, set a new date for the advisory hearing;

3. If the child admits the allegations contained in the petition and the Court accepts the admission:

a. Declare the child to be a child offender as admitted to by the child; and

b. Set the matter for a dispositional hearing and prescribe for the provision of notice of the hearing;

4. If the child denies one or more of the allegations contained in the petition, set the matter for an adjudicatory hearing as to the allegations of the petition denied and prescribe for the provision of notice of the hearing;

5. If appropriate, provide for the out-of-home placement of the child pending the next hearing;

6. Make any appointments of guardians ad litem or other personnel pursuant to Chapter 3 of this Title; and

7. Order any other matters the Court deems necessary or appropriate.

Section 3-7-20. Adjudicatory Hearing.

1. Following the advisory hearing where the child denies any of the allegations of the petition, an adjudicatory hearing shall be held on the allegations of the petition denied.

2. The sole purpose of the adjudicatory hearing is to determine whether the child is a child offender under this Chapter.

3. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.

4. The allegations of the petition must be supported by clear and convincing evidence.

Section 3-7-21. Order After Adjudicatory Hearing.

1. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that the child is a child offender under this Chapter:

i. State that the child is a child offender by clear and convincing evidence;

ii. Set the matter for a dispositional hearing approximately thirty (30) from the date of the adjudicatory hearing and prescribe for the provision of notice of the hearing;

iii. If appropriate, declared the child a ward of the Court; and

iv. If appropriate, provide for the out-of-home placement of the child;

b. If the Court determines that the allegations of the petition are not supported by clear and convincing evidence or otherwise that the child is not a child offender under this Chapter:

i. Release the child, the child's parents, guardian or custodian, and other respondents from any orders previously entered; and

ii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. An order of adjudication is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-7-22. Dispositional Report. After the entry of the Court's order after the advisory hearing where all allegations of the petition are admitted or after the adjudicatory hearing where the allegations of the petition are proven and prior to the dispositional hearing:

1. The Department shall prepare a written report describing all reasonably appropriate alternative dispositions of the child. The report shall contain:

a. A specific plan for care of and assistance to the child which is calculated to resolve the problems presented in the petition;

b. A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan;

c. If placement with the child's parents, guardian or custodian is not recommended, specific and detailed reasons why such recommendation is not made and is authorized under this Chapter; and

d. Such other information the Department determines relevant to the disposition of the child.

2. The Tribe's report to the court filed for the dispositional hearing shall be based on the dispositional report required by this Section. In addition to any other matters generally included in the Tribe's report to the court, the Tribe shall state its recommended disposition of the child.

Section 3-7-23. Dispositional Hearing.

1. Following the adjudicatory hearing and entry of an order from said hearing, a dispositional hearing shall be held.

2. The primary purpose of the dispositional hearing is to determine how to resolve the case once the child has been determined to be a child offender.

3. The disposition of the child shall be made in accordance with the following:

a. The disposition shall be consistent with the allegations of the petition and the problems or issues that resulted in the filing of the petition and the basis for adjudication of the child as a child offender;

b. Preference shall be given to dispositional alternatives which are least restrictive of the child's freedom, resolve problems and issues the child may have which resulted in the filing of the petition, otherwise lead to the rehabilitation of the child, and are consistent with the purposes of this Chapter and the interests of the Tribe; and

c. The disposition shall be consistent with the best interests of the child.

4. If the disposition of a child includes the involuntary placement of the child out of the physical custody of his or her parents, guardian or custodian, the Court shall ensure that the standards under Section 3-7-7 of this Chapter have been met.

Section 3-7-24. Order After Dispositional Hearing.

1. After a dispositional hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. State the disposition of the child, including any terms, conditions, and limitations of the disposition;

b. When appropriate, provide for the maintenance and support of the child, including medical treatment;

c. When appropriate, provide for the stability and appropriateness of the child's education;

d. When appropriate, address the child's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed;

e. Provide for the custody, care and placement of the child by:

i. Placing the child in the custody of one or both parents, guardian or custodian of the child,

subject to such conditions and limitations as the Court may prescribe;

ii. Placing the child in the custody or guardianship of a relative or other suitable individual according to the preferences set out in Section 3-7-8, subject to such conditions and limitations as the Court may prescribe; or

iii. Place the child in a facility designated by the Court according to the preferences set out in Section 3-7-8, including a licensed and supervised shelter or halfway house for the care and treatment of children with regard to alcohol and/or substance abuse problems, foster home, group home, or residential home;

f. Provide for any visitation by the child's parents, guardian or custodian and extended family members, including a visitation schedule and any limitations, if necessary;

g. Require any evaluations, tests, counseling, or treatments the Court finds necessary; and

h. Set the matter for a review hearing no more than six (6) months from the date of the dispositional hearing and prescribe for the provision of notice of the hearing; and

i. Order any other matters the Court deems necessary or appropriate.

2. In addition to any other matters required in the Court's dispositional order, the Court's order may also, as appropriate:

a. Order the Department, within its resources and capabilities, to supervise and assist the child and his or her parents, guardian or custodian so as to rectify the conditions that resulted in child offender adjudication;

b. Order the child to obtain services available through the Tribe, including youth programs and behavioral programs;

c. Order the child to obtain traditional and/or cultural forms of treatment or care which may be appropriate for the child's needs, provided that the child's parents, guardian or custodian consents;

d. Require the child to participate in a constructive program of service or education designed to impress upon the child a sense of responsibility for the injuries caused to the person or property of another or otherwise to resolve the issues that resulted in the filing of the petition;

e. Order the child to perform community service;

f. Require the child to pay restitution in an amount not to exceed the actual damage caused by the child, to be paid from his or her earnings or those of his or her parents, guardian or custodian or by performance of services acceptable to the victim which are reasonable and capable of being performed within one (1) year;

g. Require the child to participate in appropriate counseling programs available through social services or mental health agencies;

h. Place the child under the supervision and assistance of the Court, the Department, or other health or social services agency designated by the Court under such limitations as the Court may prescribe;

i. Order the child to pay a civil fine in an amount appropriate to the offense committed, but not to exceed $100.00 for each offense;

j. Order the parents, guardian or custodian of the child to:

i. Stay home and monitor child;

ii. Submit to drug and alcohol testing when there is a reasonable suspicion of drug and/or alcohol use;

iii. Attend and successfully complete alcohol and drug education, treatment and/or other counseling services;

iv. Attend and successfully complete parenting education, treatment and/or other counseling services; or

v. Order any other term and condition that is reasonable and in the best interests of the child's rehabilitation.

3. If the basis for the child being found to be a child offender is due to the commission of an act which, if committed by an adult, would be a crime, a dispositional order shall remain in force no longer than the maximum period of confinement or probation that an adult could receive for the offense committed.

4. A dispositional order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-7-25. Review Hearings.

1. Following the dispositional hearing, a review hearing shall be held no less than every six (6) months after entry of the dispositional order until the jurisdiction of the Court over the child is terminated.

2. The primary purpose of a review hearing is to evaluate the progress of the child and family and determine whether court intervention should continue.

3. The Court shall consider the efforts or progress demonstrated by the child and, if appropriate, the child's parents, guardian or custodian and the extent to which they cooperated and availed themselves of services provided and, based on the Court's findings, do any of the following:

a. If there has been no material change of circumstances, continue the dispositional order in effect;

b. Order removal of the child from the physical custody of his or her parents, guardian or custodian if current facts justify such a removal under the standards set forth in Section 3-7-7 of this Chapter;

c. Order any additional services reasonably believed to be necessary;

d. Modify the dispositional order in effect in accordance with Section 3-7-24 of this Chapter;

e. Order a child returned to the physical custody of his or her parents, guardian or custodian with any limitations, conditions or supervision authorized by Section 3-7-24 of this Chapter;

f. Make any order otherwise authorized under Section 3-7-24 of this Chapter;

g. If the child is subject to specific terms and conditions and has satisfactorily complied with such terms and conditions, release the child from such terms and conditions; or

h. Terminate the child's status as a child offender and order the child immediately returned to the legal and physical custody of his or her parents, guardian or custodian.

Section 3-7-26. Order After Review Hearing. After an adjudicatory hearing, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

1. State whether the current disposition of the child is best suited to the safety, protection, and physical, mental, and moral welfare of the child;

2. Reflect the determination made pursuant to Section 3-7-25;

3. If the Court decides to transfer custody or placement of the child:

a. State the name of the person who will have custody or with whom the child will be placed, unless disclosure is prohibited by order of the Court; and

b. Provide for any visitation by the child's parents, guardian or custodian and any extended family members, including a visitation schedule and any limitations, if necessary; and

4. Order any other matters the Court deems necessary or appropriate.

Section 3-7-27. Modification or Setting Aside Order or Decree.

1. A child, his or her parents, guardian or custodian, or any other person having a legitimate interest in the child may, by motion in the same action in which the child was declared to be a child offender, request the Court to change or set aside any previous order, including an order removing custody from the parents, guardian or custodian, or to terminate the child's status

as a ward of the Court or a child offender on the grounds of change of circumstances or new evidence.

2. A motion made under this Section shall identify the person making the motion and his or her relationship to or interest in the child and shall set forth in clear and concise terms any change of circumstance or new evidence which is alleged as grounds for such change or order or termination of status.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the child, the Tribe, and the child's parents, guardian or custodian.

4. The Court may grant a motion made under this Section if it is in the best interests of the child and the Tribe and otherwise justified, except that, if the motion is based upon new evidence related to adjudication or disposition, the Court shall order a new adjudicatory or dispositional hearing, as appropriate, unless the Tribe agrees to the relief requested in the motion or the parties agree to alternative relief without a new hearing.

Section 3-7-28. Prohibition on Subsequent Petition. A child who is subject to a petition under this Chapter shall not again be subject of a petition under this Chapter based upon the same conduct and any such petition shall be dismissed with prejudice, unless the first petition was dismissed voluntarily by the Tribe prior to the entry of a dispositional order. Nothing in this Section precludes a civil suit against the child for damages arising from such conduct.

CHAPTER 8
TERMINATION OF PARENTAL RIGHTS

Section 3-8-1. Purpose. The purpose of this Chapter is to provide for the voluntary and involuntary termination of the parent-child relationship. This Chapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the Tribe, community, and the individual family members when that unit remains united and together, and that the parent-child relationship is of such vital importance that it should be terminated only as a last resort when all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this Chapter.

Section 3-8-2. Voluntary Termination of Parental Rights.

1. A child's parent may voluntarily consent to termination or relinquishment of parental rights in accordance with the following:

a. The consent shall be executed in writing and recorded under oath during a hearing of the Court, including a telephonic hearing;

b. The writing shall be dated and positively identify the party giving the consent and the child subject of the voluntary termination; and

c. The Court shall ensure, and the consent shall acknowledge in writing, that the terms and consequences of the voluntary termination are fully understood by the parent.

2. The parent may withdraw consent at any time and for any reason prior to the entry of a final decree of termination and request return of the child.

Section 3-8-3. Retention of Privileges.

1. A parent who consents to voluntary termination of parental rights under this Chapter may retain privileges with respect to the child, including the ability to have future contact, communication, and visitation with the child.

2. A retained privilege must be in writing and stated with specificity. The Court shall include a retained privilege in:

a. The Court's order terminating parental rights under this Chapter; and

b. Except as provided in this Section, any subsequent decree of adoption or order of guardianship involving the child.

3. After an order terminating parental rights under this Chapter is entered and before the entry of a decree of adoption or guardianship order involving the child, a prospective adoptive parent or guardian, as the case may be, may request that the Court decline to incorporate a privilege retained in an order terminating parental rights under this Section. The request may only be considered by the Court after providing at least twenty (20) days notice to the person who retained the privilege. The notice must:

a. Describe the request;

b. Explain that the recipient of the notice may submit a written statement to the Court that the recipient either agrees with or opposes the request; and

c. Include the deadline for submitting the statement and the mailing address of the Court.

The Court may decline to incorporate a retained privilege if the person who retained the privilege agrees with the request or if the Court finds that it is in the child's best interest.

4. An order terminating parental rights may not be vacated on the ground that a retained privilege has been withheld from the parent or that the parent has been unable, for any reason, to act on a retained privilege. However, after an order terminating parental rights is entered, a person who has retained a privilege under this Section may request a review hearing, upon a showing of good cause, to seek enforcement or modification of or to vacate a privilege retained. The Court may modify, enforce, or vacate the retained privilege if the Court finds, by clear and convincing evidence, that it is in the best interest of the child to do so.

Section 3-8-4. Involuntary Termination of Parental Rights.

1. The Court may terminate the parental rights of a child's parent in accordance with the provisions of this Chapter if the Court finds such termination is in the best interests of the child and the Tribe and, by clear and convincing evidence, one or more of the following:

a. The parent, including a parent who is unidentifiable, has abandoned the child for at least six (6) months and, during this period, while being able, the parent has made no attempt to resume physical custody of the child or make suitable arrangements for the child;

b. The parent, including a parent who is unidentifiable, has voluntarily surrendered a child in accordance with Section 3-6-4 of this Title or other equivalent law in another jurisdiction

c. The child has been adjudicated a child in need of assistance under Chapter 6 of this Title and:

i. The child has been involuntarily removed from the care and custody of his or her parent;

ii. Twelve (12) or more months have elapsed since the issuance of an initial disposition order or removal of the child;

iii. There is no court-approved plan for long-term placement or care of the child or the child otherwise is not in a permanent placement;

iv. All required reasonable and active efforts have been made to rehabilitate the family;

v. The conditions which led to the removal of the child from the custody of his or her parent still exist;

vi. There is little likelihood that the conditions which led to removal will be remedied so that the child can be returned to the custody of the child's parent;

vii. Custody of the child with the child's parent would likely result in serious emotional or physical harm to the child; and

viii. Termination of parental rights is in the best interests of the child and the Tribe;

d. The child has been adjudicated a child in need of assistance under Chapter 6 of this Title and the child has been in foster care for fifteen (15) of the last twenty-two (22) months, provided such foster care does not constitute not a permanent placement under Chapter 6 of this Title or a guardianship;

e. The parent has willfully or recklessly subjected the child to sexual abuse;

f. The parent, without regards to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the age of the child;

g. The parent has committed murder, voluntary manslaughter or felony assault that led to serious bodily injury against the child or another child of the parent;

h. The parent committed an act of rape or sexual assault against the other parent of the child and the child was conceived as a result of the act of rape or sexual assault, provided that the Court shall accept a guilty plea or conviction of rape, sexual assault or comparable offense under the laws of the Tribe or other jurisdiction where the offense occurred against the other parent as conclusive proof that the parent committed the act of rape or sexual assault; or

i. Parental rights to one (1) or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

2. Involuntary termination of parental rights shall be considered only as a matter of last resort. Involuntary termination of parental rights shall only be granted:

a. In the most egregious situations; or

b. When it is clear that long-term guardianship or other placement away from the parent's physical custody is insufficient to meet the child's needs and an adoption has been arranged.

3. The fact that a child cannot be returned to his or her parent shall not by itself constitute grounds for the involuntary termination of parental rights if there is no proposed adoptive placement.

4. Termination of parental rights shall not be sought or granted for the purpose of punishment or penalization of the parent.

Section 3-8-5. Continuing Jurisdiction.

1. Jurisdiction of the Court over a proceeding and a child under this Chapter is retained after entry of an order terminating parental rights for purposes of reviewing the status of the child until such jurisdiction is terminated by any of the following situations:

a. The child is adopted;

b. The child becomes an adult; or

c. The Court enters an order closing the matter and removing it from its continuing jurisdiction.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over children and their extended family members who leave the territory of the Tribe.

Section 3-8-6. Proceedings Involving Child of Another Tribe. In any proceeding under this Chapter involving termination of parental rights to a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it;

2. The child's tribe shall have a right to intervene at any point in the proceedings; and

3. No termination of parental rights shall be ordered until at least ten (10) days after receipt of notice of the proceedings by the child's tribe.

Section 3-8-7. Initiation of Proceedings.

1. Proceedings in the Court to terminate the parent-child relationship shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. Either parent when termination is sought with respect to the other parent;

b. A parent when seeking the voluntary termination of his or her parental rights;

c. The Tribal Attorney, or in the absence of the Tribal Attorney, the Department on behalf of the Tribe; or

d. Any other person possessing a legitimate interest in the matter.

3. Other than proceedings to terminate parental rights in a proceeding under Chapter 6 or Chapter 10 of this Title, petitions to terminate parental rights, shall be captioned: "In Re the Matter of (child's or children's name(s)) and concerning (parent's name(s))". Proceedings to terminate parental rights in a child in need of assistance proceeding under Chapter 6 of this Title may be filed as a motion in, brought in, and captioned as the pending child in need of assistance proceeding. Petitions to terminate parental rights in an adoption proceeding under Chapter 10 of this Title may be combined with the petition for adoption, captioned as the adoption proceeding, and conducted as part of the adoption proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name and address of the petitioner;

b. The child's name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

c. Unless the petitioner is the Tribe, the relationship of the petitioner to the child, or the fact that no relationship exists;

d. The names, last known addresses and tribal membership of the child's parents or the reasons that such information is unavailable;

e. Where the child's parent is also a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

f. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

g. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The grounds upon which termination of parental rights is sought under this Chapter; and

j. A request that the Court terminate the parental rights of the child's parent.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children having one (1) or more common parent may be included in the same petition.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section, provided that the Court shall maintain the authority to sanction any petitioner, other than the Tribe, pursuant to the Court's rules governing the same, including sanctions for filing petitions that are unreasonable, groundless, abusive or obstructionist.

Section 3-8-8. When Proceedings Mandated.

1. Except as provided in this Section, the Tribe shall seek termination of parental rights when:

a. A child has been adjudicated a child in need of assistance under Chapter 6 of this Title and has been in foster care for fifteen (15) of the last twenty-two (22) months;

b. The child has been abandoned; or

c. The parent has committed murder, voluntary manslaughter or felony assault as defined by the laws of the

Tribe or other jurisdiction where the act occurred that led to serious bodily injury against the child or another child of the parent.

2. The Tribe shall not be required to file a petition for termination of parental rights under any circumstances when:

a. The child has been placed with or is being cared for by a relative of the child;

b. The Department has determined that filing the petition would not be in the best interests of the child and the Tribe, including when the legal standard required for termination of parental rights under this Chapter cannot be met; or

c. Reasonable and active efforts to return the child to his or her parents are required, but have not been made or completed.

Section 3-8-9. Pre-Termination Report. In any proceeding under this Chapter not brought by the Tribe and seeking the involuntary termination of parental rights:

1. Upon the filing of the petition, the Court shall immediately notify the Department in writing;

2. The Department shall investigate the circumstances of the petition, the social history, the present condition of the child and parent, proposed plans for the child and other such facts as may be pertinent;

3. No later than fifteen (15) days before the hearing on the petition, the Department shall file with the Court a written report of the investigation with a recommendation, and the reasons therefore, as to whether parental rights should be terminated for grounds defined in this Chapter; and

4. Copies of the Department's report shall provided to all parties no later than ten (10) days before the hearing on the petition.

Section 3-8-10. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued to all named respondents to the petition in accordance with the general rules governing the issuance of summons by the Court,

except that, if the petition declares the parties are unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though the parties had been described by their proper names.

2. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the respondents and the child who is the subject of the petition have the right to legal counsel at all stages in the proceedings.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 3-8-11. Responsive Pleading.

1. Any respondent may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-8-12. Hearing on Petition.

1. At the beginning of the hearing on the petition, the Court shall first:

a. Read the petition to the child's parents;

b. Explain to the parents and to the child the effect of the granting of the petition; and

c. Advise the parties of their basic rights under Section 3-3-7 of this Title;

2. The Court shall consider any and all reports required by this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at the hearing.

3. Except in the case of voluntary termination of parental rights, the burden of proof shall lie with the petitioner to prove that the allegations in the petition are supported by clear and convincing evidence and that the best interests of the child and the Tribe will be served by termination of parental rights.

Section 3-8-13. Order Terminating Parental Rights.

1. Every order terminating parental rights shall be in writing and shall recite the Court's findings of fact, conclusions of law, and the statutory basis for the order.

2. Every order terminating parental rights shall also provide for the custody and placement of the child in one of the following ways:

a. If only the rights of one parent are terminated, leaving the child in the custody of the remaining parent;

b. Granting an adoption of the child in accordance with the laws of the Tribe;

c. Appointing a guardian of the child and, if appropriate, a conservator for the child in accordance with the laws of the Tribe; or

d. Awarding the Department custody and guardianship of the child for the purpose of placing the child for adoption or guardianship.

3. Upon entry of an order terminating parental rights, all rights, powers, privileges, immunities, duties and obligations, including to custody, to control visitation and to support, existing between the child and the parent subject of the order shall be severed, divested and terminated unless otherwise directed by the Court, except that:

a. Any support obligations existing prior to the effective date of the order terminating parental rights shall not be severed or terminated;

b. The order shall not prevent the child from inheriting property or interests from the parent in the same manner as any other biological child of the parent even though the parent may not inherit from the child after termination of parental rights;

c. The status of the child as a member of the Tribe or any other tribe, or his or her eligibility to be a member, and his or her right to benefits and privileges as a member of the Tribe or another tribe shall not be affected; and

d. The order shall not disentitle the child to any benefit due the child from any third person, agency, state or the United States.

4. Upon entry of an order terminating the parental rights of a parent, the parent shall have no standing to appear at any future legal proceeding concerning the child.

Section 3-8-14. Notice of Termination of Parental Rights. Upon entry of a final order terminating the parental rights of one or both parents, the Court shall give notice of such termination:

1. In the case of a child who is a member or eligible to be a member of the Tribe, to the Enrollment Department; and

2. In the case of a child who is not a member of the Tribe and is a member or eligible to be a member in another federally recognized Indian tribe, to the child's tribe.

Section 3-8-15. Restoration of Parental Rights.

1. A petition to restore parental rights that have been terminated may be filed and heard in accordance with this Section.

2. A petition to restore parental rights of a parent of a child who has not been adopted and whose parent has had his or her parental rights terminated may be filed by:

a. The child;

b. The guardian or custodian of the child;

c. A parent who voluntarily consented to termination of his or her parental rights to the child; or

d. The Tribal Attorney or the Department on behalf of the Tribe, if the Tribe obtained the original order terminating parental rights.

3. Upon the filing of a petition under this Section, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The parent for whom parental rights are sought to be restored;

b. The guardian or custodian of the child who is the subject of the petition; and

c. The person who obtained the original order terminating parental rights under this Chapter or, if termination was part of a proceeding under Chapter 6 of this Title, the Tribal Attorney and the Department.

4. The Court may restore parental rights, after a hearing on the petition, if it finds by clear and convincing evidence that:

a. The child is not currently subject of a pending adoption proceeding;

b. If the child who is subject of the petition is twelve (12) years of age or older, the child consents to the restoration of parental rights;

c. The parent whose rights are to be restored:

i. Has been informed of the legal obligations, rights and consequences of the restoration and the parent is willing and able to accept such obligations, rights and consequences;

ii. Consents in writing to the restoration of his or her parental rights; and

iii. Is a fit parent and has remedied any bases for the original order terminating parental rights;

d. The restoration of parental rights does not present a risk to the child's health, welfare, or safety; and

e. Restoration of parental rights of the parent is in the best interests of the child.

5. The Court may conditionally grant a petition filed under this Section, enter a temporary order restoring parental rights, and continue the case for up to six (6) months. During such continuance, the child shall be placed in the custody of the parent. At the end of the continuance, the Court shall hold a hearing and, if the Court finds that the placement with the parent

has been successful, the Court shall enter a final order restoring of parental rights.

6. Upon the entry of a final order restoring parental rights under this Section, any child who is the subject of the petition becomes the legal child of the parent whose rights have been restored and he or she shall become the child's legal parent on that date with all the rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child.

7. The granting of the petition under this Section does not vacate or otherwise affect the validity of the original order terminating parental rights.

CHAPTER 9
GUARDIANSHIP AND CONSERVATORSHIP

Section 3-9-1. Purpose. The purpose of this Chapter is to provide a process and procedure governing the appointment of guardians and conservators of children and incapacitated persons to promote the health, safety and general welfare of the Tribe.

Section 3-9-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Conservator" means a person appointed as caretaker and protector to look after the property of a child or an incapacitated person, with the duties and powers described in this Chapter.

2. "Developmental disability" means a disability attributable to intellectual development disorder, cerebral palsy, epilepsy, autism or another neurological condition closely related to intellectual development disorder or requiring treatment similar to that required for individuals with intellectual development disorder, which has continued indefinitely, substantially impairs the individual from adequately providing for his or her own care or custody and constitutes a substantial handicap to the afflicted individual. The term does not include a person affected by senility which is primarily caused by the process of aging or the infirmities of aging.

3. "Estate" means income, accounts, securities, assets, liabilities and personal and real property.

4. "Incapacitated person" means a person who is substantially incapable of managing his or her property or caring

for himself or herself by reason of infirmities of aging, mental illness, mental deficiency, physical illness or disability, developmental disabilities, chronic use of drugs, chronic intoxication, or other like incapacity which results in a lacking of sufficient understanding or capacity to communicate informed decisions. Physical disability without mental incapacity is not sufficient to establish incapacitation.

5. "Infirmities of aging" means organic brain damage caused by advanced age or other physical degeneration in connection therewith to the extent that the person so afflicted is substantially impaired in his or her ability to adequately provide for his or her own care or custody.

6. "Mental Illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

7. "Other like incapacities" means those conditions incurred at any age which are the result of accident, organic brain damage, mental or physical disability, or continued consumption or absorption of substances, producing a condition which substantially impairs an individual from providing for his or her own care or custody.

Section 3-9-3. When Guardianship Permitted. Subject to the provisions of this Chapter, the Court may appoint a guardian for a person where:

1. In the case of a child who is not an incapacitated person, when appointment of a guardian is in the best interest of the child and:

a. The parents of the child consent in writing to the guardianship;

b. The parental rights of both parents or the surviving parent to the child have been terminated or suspended by prior order of the Court or any other court of competent jurisdiction;

c. The parents of the child have been determined to be incapacitated persons by the Court or any other court of competent jurisdiction;

d. The parents of the child have disappeared;

e. The parents of the child are imprisoned;

f. The parents of the child are dead;

g. The child is a child in need of assistance under Chapter 6 of this Title; or

h. The appointment of a guardian is otherwise necessary for the immediate well-being of the child; or

2. The person is an incapacitated person and appointment of a guardian is necessary as a means of providing continuing care and supervision of the incapacitated person.

Section 3-9-4. When Conservatorship Permitted. Subject to the provisions of this Chapter, the Court may appoint a conservator in relation to the estate of a person where:

1. The person is unable to manage his or her estate effectively because the person is an incapacitated person or because of confinement, detention, or disappearance; and

a. The person's estate will be wasted or dissipated unless proper management is provided; or

b. Money is needed for the person's support, care and welfare, or for those entitled to the person's support and protection is necessary to obtain or provide money; or

2. The person is mentally competent, but due to age or physical infirmity is unable to manage his or her estate or affairs effectively.

Section 3-9-5. Requirements for Finding Incapacity.

1. In any proceeding under this Chapter where it is proposed to appoint a guardian or conservator on the ground that the proposed ward is an incapacitated person, the petitioner shall submit a written statement concerning the mental condition of the proposed ward, based upon examination, from a physician or qualified mental health professional, or both, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the proposed ward.

2. A copy of the statement required by this Section shall be provided to the proposed ward and his or her guardian ad litem and legal counsel, if any.

3. The proposed ward shall have the right to secure, at his or her own expense, an independent examination by a physician or mental health professional, or both, and may present a report of this independent examination or the evaluator's personal testimony to the Court at an appropriate hearing.

4. If necessary, the Court may issue an order for examination of the proposed ward in accordance with and subject to the provisions of Section 3-9-13 of this Chapter.

5. In the absence of a written statement as required by this Section and an affirmative finding by the Court that the proposed ward is an incapacitated person, the Court shall not appoint a guardian or conservator on the basis that the proposed ward is an incapacitated person.

Section 3-9-6. Eligibility for Appointment.

1. The Court may appoint the following to act as guardian or conservator:

a. Any competent, suitable and willing adult individual who is subject to the jurisdiction of the Court; or

b. Any suitable and willing entity which is authorized to exercise fiduciary powers, provided that the Court shall appoint an entity only if such appointment is in the proposed ward's best interests and there is no adult individual who is subject to the jurisdiction of the Court and competent, suitable and willing to serve as guardian or conservator.

2. The same person or entity may be appointed to serve as both guardian and conservator.

3. More than one person may be appointed to serve as conservator, but only one person may be appointed as guardian unless:

a. The guardians are spouses or domestic partners;

b. There is a compelling reason that multiple guardians would be in the ward's best interests; or

c. Separate guardians are appointed with one to have guardianship of the ward's person and another the ward's estate.

4. Subject to the provisions of this Chapter, the Court shall appoint a person as guardian or conservator in a proceeding brought under this Chapter based upon the following order of priority:

a. Subject to the rights of a surviving parent, a person nominated by the testamentary will of the parent to be guardian of his or her minor child unless such nominated person is unable or unwilling to serve as guardian;

b. A person or entity designated by a proposed ward twelve (12) years of age or older so long as the appointment is not contrary to the best interests of the proposed ward;

c. The proposed ward's spouse;

d. An adult child of the proposed ward;

e. A parent of the proposed ward;

f. A relative of the proposed ward, other than those listed above, with whom the proposed ward has resided for more than six (6) months before the filing of the petition;

g. A member of the proposed ward's extended family, other than those listed above; and

h. Any other competent, suitable and willing person.

Section 3-9-7. Continuing Jurisdiction.

1. Jurisdiction of the Court over a person subject of a proceeding under this Chapter is retained until terminated by any of the following situations:

a. Where the guardianship or conservatorship is terminated automatically or by order of the Court as provided in this Chapter;

b. The case is transferred by the Court to another court and the other court accepts the transfer; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over persons and their extended family members who leave the territory of the Tribe.

Section 3-9-8. Proceedings Involving Child of Another Tribe. In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe where guardianship of the child is requested without the consent of the parents:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it; and

2. The child's tribe shall have a right to intervene at any point in the proceedings.

Section 3-9-9. Initiation of Proceedings.

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court to appoint a guardian or conservator shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. For guardianship, any person interested in the welfare of the proposed ward;

b. For conservatorship:

i. Any adult on his or her own behalf;

ii. Any person interested in the estate, affairs or welfare of the proposed ward;

iii. A guardian or any person or entity who would be adversely affected by lack of effective management of a proposed ward's estate or business affairs;

iv. A guardian, if the Court orders the guardian to file upon a determination that financial protection of a ward's estate is required;

c. For guardianship or conservatorship, a proposed ward twelve (12) years of age or older;

d. For guardianship or conservatorship, the Tribal Attorney, or in the absence of the Tribal Attorney, the Department on behalf of the Tribe when there is no other available petitioner to file;

3. Petitions to appoint a guardian or conservator shall be captioned: "In Re the (Guardianship/Conservatorship) of (proposed ward(s) name(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address and tribal affiliation of the petitioner;

b. The name, sex, date and place of birth, current residence and tribal affiliation of the proposed ward or the reasons such information is unavailable;

c. Unless the petitioner is the Tribe, the relationship of the proposed guardian or conservator to the proposed ward, or the fact that no relationship exists;

d. The names, last known addresses and tribal affiliation of the proposed ward's parents or the reasons that such information is unavailable;

e. Where the proposed ward's parent is a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

f. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

g. The names, last know addresses and tribal membership of the proposed ward's extended family members, former care givers and others who have or may have a direct or substantial interest in the proposed ward, or the reasons such information is unavailable;

h. The basis for the Court's jurisdiction;

i. Whether guardianship or conservatorship is requested;

j. In detail, the grounds which justify the appointment of a guardian or conservator, including, in the case of a proposed ward who is alleged to be an incapacitated person, the grounds upon which the proposed ward is an incapacitated person under this Chapter;

k. A full description and statement of the value of the proposed ward's estate, including all property owned, possessed, or in which the proposed ward has an interest; and

l. A request that the Court appoint a guardian or conservator, as the case may be, for the proposed ward.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 3-9-10. Appointment in Other Proceedings.

1. The Court may appoint a guardian or conservator without a petition filed under this Chapter or a separate hearing in a child in need of assistance proceeding under Chapter 6 of this Title or a child offender proceeding under Chapter 7 of this Title.

2. When the Court is administering a deceased's estate, the Court may appoint a guardian of a minor child in that proceeding without a petition filed under this Chapter or a separate hearing if:

a. The decedent is the parent, guardian or custodian of a minor child;

b. Such minor child is orphaned by the deceased's death; and

c. There is a valid will containing a designation of a guardian for the minor child.

However, the Court shall hold a separate hearing in accordance with this Chapter if the person designated in the will is unable or unwilling to serve, a child over the age of twelve (12) years objects to such person's appointment, or the Court determines that a hearing is in the best interests of the minor child.

Section 3-9-11. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The proposed ward, if an adult;

b. The parents of the proposed ward, if known, except for parents whose parental rights to the child have been terminated;

c. The children, siblings and spouse of the proposed ward, if an adult;

d. All known interested persons listed in the petition; and

e. If the petition is for the appointment of a conservator, the known creditors of the proposed ward at the time the petition is filed.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 3-9-12. Responsive Pleading.

1. The proposed ward and any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-9-13. Orders for Examinations.

1. In any proceeding under this Chapter, on motion of any interested party or on the Court's own motion, the Court may order:

a. A proposed ward subject of the proceeding to be examined by a physician or qualified mental health professional, provided that such physician or mental health professional is able to make evaluations grounded in the cultural context of the proposed ward;

b. The proposed ward to submit to a substance abuse evaluation if the grounds for guardianship or conservatorship involve chronic use of drugs or intoxication; and

c. Homestudy investigations of the home of a proposed guardian.

2. An order issued under this Section shall provide that the results of any ordered evaluation, examination or investigation be submitted to the Court, legal counsel of record for the parties, and any representatives of the proposed ward.

3. The proposed ward shall have the right to secure, at his or her own expense, an independent examination by a physician or mental health professional or substance abuse evaluation which may be submitted to the Court and legal counsel of record for the parties.

4. The Court shall treat any written report resulting from an evaluation, examination or investigation ordered or secured under this Section as it would consider all other evidence regardless of whether the report, any matter therein or any exhibit attached thereto is formally introduced as evidence.

Section 3-9-14. Initial Hearing.

1. The Court may hold an initial hearing as soon as practicably possible following the filing of a petition under this Chapter.

2. The purpose of the initial hearing shall be to address procedural matters and enter any necessary orders appointing a guardian ad litem for the proposed ward, having conducted examinations and evaluations as permitted in this Chapter, and entering any temporary guardianship orders as permitted in this Chapter.

Section 3-9-15. Temporary Guardianship or Conservatorship.

1. The Court may appoint a temporary guardian or conservator for a period not to exceed sixty (60) days if:

a. During a hearing, the Court finds that the welfare of the proposed ward requires the immediate appointment of guardian or conservator, or of both; or

b. With or without a hearing, where a petition filed under this Chapter:

i. Alleges abuse or neglect as the grounds which justify the appointment of a guardian;

ii. Requests temporary guardianship or custody of the proposed ward;

iii. Is signed under oath or affirmation;

iv. Includes a separate affidavit which sets forth specific facts constituting abuse or neglect, provided that no guardianship, conservatorship or custody, temporary or otherwise, based on allegations of abuse or neglect shall be granted without a hearing unless such affidavit is filed with the petition and the facts thereof, if true, would constitute abuse or neglect; and

v. Has been served on all required parties as provided in this Chapter.

2. If the Court appoints a temporary guardian or conservator without a hearing, the Court shall conduct a hearing

to review the appointment within ten (10) business days of the order appointing the temporary guardian or conservator.

3. The authority of a temporary guardian or conservator shall be limited to the performance of duties respecting specific property, or to the performance of particular acts, as stated in the order of appointment.

4. All provisions of the laws of the Tribe concerning the powers and duties of guardians and conservators shall apply to temporary guardians and conservators except as limited by the order of appointment.

5. No temporary guardian or conservator shall sell, dispose of, convey or otherwise alienate title to or interest in the ward's property.

6. The temporary guardian or conservator shall make the reports the Court directs and shall account to the Court upon termination of authority.

7. Every temporary guardian or conservator appointed pursuant to this Section shall, before entering upon the duties of his or her appointment, give any security required by the Court as provided in this Chapter.

8. The Court may extend the period of a temporary guardianship or conservatorship only once for an additional sixty (60) days.

9. If the temporary guardianship or conservatorship is not sooner terminated, the duties and powers of the temporary guardian or conservator shall cease upon:

a. The issuing of letters of permanent guardianship or conservatorship to the guardian or conservator of the ward;

b. If the ward is a minor and not an incapacitated person, upon his or her reaching the age of majority; or

c. When the Court determines that the grounds which were the cause for the temporary guardianship or conservatorship have ceased or no longer exist.

10. Upon termination of a temporary guardianship or conservatorship, the temporary guardian or conservator shall:

a. File with the Court any report that the Court requires;

b. Account to the Court for any part of the ward's estate in the temporary guardian's or conservator's possession or control; and

c. Deliver the assets of the ward in the temporary guardian's or conservator's possession or control to the persons entitled thereto.

11. Any action which has been commenced by a temporary guardian or conservator prior to termination of the temporary guardianship or conservatorship may be prosecuted to final judgment by the ward or an appointed permanent guardian or conservator on behalf of the ward.

Section 3-9-16. Hearing on Petition.

1. Upon the filing of a petition under this Chapter or an initial hearing, if held, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether there are grounds for appointment of a guardian or conservator, as applicable, to make any such appointment, and to enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. Any person may request permission from the Court to participate in the hearing and the Court may grant the request, with or without a hearing, upon determining that the best interest of the proposed ward will be served by granting the request. The Court may attach appropriate conditions to any such grant of permission.

5. The Court may appoint a guardian and/or conservator, as requested, if the Court finds:

a. The proposed ward is a child or an incapacitated person;

b. The appointment is necessary or desirable as a means of providing continuing care and supervision of the proposed ward and/or the property of the proposed ward; and

c. The proposed guardian and/or conservator is eligible to serve as provided in this Chapter.

6. Based on the information provided to the Court, the Court's appointment, if any, must be no more restrictive upon the liberty of the ward than is reasonably necessary to protect the ward.

7. The Court may grant a guardian of a child guardianship over the estate of the child only if the Court specifically finds that guardianship over the estate is necessary and appropriate under the circumstances and is in the best interests of the child.

8. The burden of proof shall lie with the petitioner to demonstrate that grounds exist under this Chapter for the appointment of a guardian or conservator by clear and convincing evidence and that the best interests of the proposed ward will be served by appointment of a guardian or conservator.

9. The burden of proof shall lie with the proponent of the appointment of a proposed guardian or conservator to establish by a preponderance of the evidence that the proposed guardian or conservator is eligible, is granted any priority, and is most suitable for the appointment.

Section 3-9-17. Order of Appointment.

1. After hearing on the petition, the Court shall enter written findings of fact, conclusions of law and an order based on the results of said hearing. The order shall:

a. If the Court determines that a guardian or conservator shall be appointed:

i. Set forth the statutory basis for appointing the guardian or conservator, including the basis for finding that the proposed ward is an incapacitated person if that is the basis for appointment;

ii. Appoint a guardian or conservator, as applicable, and state the name and address of the appointed guardian or conservator;

iii. Set forth whether the guardian or conservator accepted appointment before the Court or in writing, or provide for the appointment to be contingent upon receipt of such written acceptance by the Court;

iv. Set forth the scope of the guardian's or conservator's authority, including, in the case of a guardian, whether the guardian will have guardianship of the ward's estate;

v. Design the guardianship or conservatorship to encourage the development of maximum self-reliance and independence;

vi. If appropriate, provide for visitation between a ward who is a child and his or her parents or any other person, in the best interest of the child and of the Tribe, including specifying that supervision is required or imposing other requirements to protect the child;

vii. Provide whether security for the guardian's or conservator's performance is required;

viii. Set forth the compensation of the guardian or conservator, if any;

ix. State the duration of the appointment;

x. State that the guardian or conservator shall be required to file periodic reports and/or accountings as provided in this Chapter; and

xi. State whether periodic review hearings shall be required and, if so, the frequency of such hearings;

b. If the Court determines that the allegations of the petition are not supported by the evidence or otherwise that a guardian or conservator shall not be appointed:

i. Release the proposed ward from any temporary guardianship, restrictions, or other orders previously entered; and

ii. Dismiss the action; and

c. Order any other matters the Court deems necessary or appropriate.

2. Upon entry of an order appointing a guardian or conservator for a minor child, the rights, powers, privileges, duties and obligations, including rights to custody and to control visitation, existing between the child subject of the order and his or her parents shall be temporarily suspended with respect to the rights, powers, privileges, duties and obligations granted the guardian or conservator until the guardianship or conservatorship is terminated, unless otherwise directed by the Court.

3. An order appointing or denying the appointment of a guardian or conservator is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-9-18. Acceptance of Appointment.

1. A proposed guardian or conservator shall affirmatively accept his or her appointment before such appointment becomes effective.

2. At a minimum, an acceptance of appointment shall state that the guardian or conservator:

a. Accepts the appointment;

b. Submits to and consents to the jurisdiction of the Court, which cannot be withdrawn without permission of the Court;

c. Will not delegate any authority of the guardian or conservator; and

d. Will perform all required duties and obligations.

3. The acceptance of appointment shall either be made orally before the Court during a hearing on the petition or by filing a written acceptance with the Court in a form prescribed by the Court.

Section 3-9-19. Oath. A guardian or conservator appointed by the Court shall certify under oath, the form of which to be prescribed by the Court, to the effect that he or she will faithfully perform his or her duties as guardian or conservator, as the case may be.

Section 3-9-20. Consent to Jurisdiction. Any person or entity who accepts appointment as a guardian or conservator submits to

the jurisdiction of the Court and shall be deemed to agree as follows:

1. Any portion of the ward's estate which is under the control or possession of the guardian or conservator in connection with the guardianship or conservatorship shall be subject to the jurisdiction of the Court; and

2. The guardian or conservator shall be subject to the jurisdiction of, and all orders entered by, the Court in connection with all actions or proceedings related in any way to service in such capacity.

Section 3-9-21. Security.

1. The Court may, in its discretion, require a guardian or conservator to provide security in the form of a bond or otherwise in such amount as the Court may deem necessary to protect the ward's estate and affairs.

2. Any surety or other company of any security provided under this Section shall be deemed to have consented to the jurisdiction of the Court for the purposes of actions against such security in connection with any such security.

Section 3-9-22. Letters. Upon a guardian or conservator taking the oath required in this Chapter and filing proof of any security required by the Court, the Tribal Court Administrator or his or her designee shall issue letters under seal of the Court granting the guardian or conservator the powers authorized by the Court's order of appointment and this Chapter, as applicable. Any restriction or limitation on the powers of a guardian or conservator must be set forth in the letters. A guardian or conservator duly appointed shall be entitled to receive, without charge, three (3) certified copies of letters from the Court.

Section 3-9-23. Review Hearings. The Court shall conduct a review hearing as it deems necessary and upon the filing of a report or accounting by a guardian or conservator.

Section 3-9-24. Powers and Duties of Guardians.

1. Except as limited or modified by order of the Court, a guardian shall be responsible for the care, custody and control of the ward and, without limiting such responsibilities, shall have all of the following powers and duties:

a. To the extent consistent with the terms of an order of the Court relating to detention or commitment of the ward, have custody of the person of the ward and establish the ward's place of residence, provided that the guardian shall give preference as follows:

i. To the least restrictive setting in which the ward's special needs, if any, will be met;

ii. To places within the territory of the Tribe, if residence within the territory of the Tribe and outside the territory of the Tribe would be substantially equivalent; and

iii. To places that are not treatment facilities, unless the only available and appropriate place of residence is a treatment facility, in which case the guardian shall give preference to any treatment facilities licensed or approved by the Tribe over other such facilities;

b. Provide for the care, comfort and maintenance of the ward and, whenever appropriate, arrange for training and education of the ward;

c. Take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and begin protective proceedings if other property of the ward is in need of protection;

d. If the ward is an incapacitated person, to the extent possible, secure services to restore the ward to the best possible state of mental and physical well-being in an effort to return the ward to self-management at the earliest possible time;

e. Consent to or approve any necessary medical or other professional care, counsel, treatment or service for the ward and any other matters that may be required or in the ward's best interest;

f. If no conservator has been appointed or the guardianship does not exclude guardianship of the ward's estate, to the extent consistent with the orders of the Court:

i. Institute a proceeding to compel a person under a duty to support the ward or to pay money for the ward's welfare to perform the duty;

ii. Receive money and tangible property deliverable to the ward and apply the same for the ward's care, comfort, maintenance and appropriate training and education while exercising care to conserve any excess for the ward's needs; provided, however, the guardian shall not use money from the ward's estate for room and board which is furnished by the guardian or his or her spouse, parent or child unless authorized by order of the Court;

g. If a conservator has been appointed, pay the conservator for management, pursuant to this Chapter, the amount of the ward's estate received by the guardian in excess of the amount the guardian expends for the ward's current care, comfort, maintenance and appropriate training and education, and account to the conservator for all amounts expended; and

h. Do all other things necessary for the protection of the ward.

2. Except as limited or modified by order of the Court, a guardian shall:

a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward;

b. Visit the ward within one (1) month of appointment and not less than once within one (1) month after each previous visit;

c. Immediately notify the Court, in writing, of any change of address;

d. Provide the Court with annual written reports on the guardianship as provided in this Chapter; and

e. At the termination of the guardianship, deliver the assets of the ward to the persons entitled thereto.

3. A guardian may petition the Court for authority to do any act about which the guardian is uncertain, and the Court may

grant such authority if such act appears to be in the best interests of the ward.

4. Except as provided by order of the Court, a guardian shall have no authority to relinquish a ward's membership in the Tribe without express permission of the Court.

5. The Court may impose restrictions and limitations on the duties and powers of a guardian and condition the appointment on the performance of specific duties.

Section 3-9-25. Powers and Duties of Conservators.

1. Except as limited or modified by order of the Court, a conservator shall be responsible for the collection, care, preservation, administration and protection of the ward's estate and, without limiting such responsibilities, shall have all of the following powers and duties without Court authorization or confirmation:

a. To expend or distribute the ward's estate income or principal for the support, education, care, or benefit of the ward or the ward's dependents and others who are members of the ward's household who are unable to support themselves;

b. To collect, hold, and retain assets of the ward's estate, in the ward's name, and receive any additions thereto, including real property wherever situated, until proper disposition in accordance with this Chapter;

c. To continue or participate in the operation of any business or other enterprise in which the ward is engaged;

d. To deposit estate funds in a federally insured financial institution;

e. To insure the assets of the estate against damage or loss, and the conservator against liability with respect to third persons;

f. To pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration and protection of the estate;

g. To pay any sum distributable to a ward or dependent of the ward by paying the sum to the proper party; and

h. To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

2. Upon authorization by the Court, a conservator may exercise the following powers:

a. To acquire an undivided interest in any asset of the ward's estate in which the conservator, in any fiduciary capacity, holds an undivided interest;

b. Sell, transfer, mortgage, encumber, lease, or otherwise dispose of the ward's real property or any interest therein;

c. To consent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise in which the ward is engaged;

d. To prudently invest and reinvest assets and funds of the ward's estate as would a trustee;

e. To acquire or dispose of an asset of the ward's estate, including non-trust land wherever located, for cash or on credit, at public or private sale;

f. To borrow money to be repaid from the ward's estate or otherwise for the purpose of paying debts, taxes, and other claims against the ward or the ward's estate;

g. To manage, develop, improve, exchange, partition, change the character of, or abandon an asset of the estate;

h. To make ordinary or extraordinary repairs or alterations to buildings or other structures, and demolish or construct new buildings or structures and any improvements;

i. To vote a security owned by the ward in person or by general or limited proxy;

j. To employ persons, including attorneys and lay counsel, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise and assist the conservator in the performance of administrative duties and to act upon their recommendation without independent investigation;

k. To prosecute or defend actions, claims or proceedings in any jurisdiction to obtain support to which the ward is legally entitled and for the protection of assets of the ward's estate or of the conservator in the performance of his or her duties;

l. To compromise, adjust, arbitrate, sue on, defend, abandon, or otherwise deal with and settle any claim in favor of or against the ward or the ward's estate; and

m. To prosecute claims of the ward, including those for personal injury.

3. Except as limited or modified by order of the Court, a conservator shall:

a. Whenever meaningful communication is possible, consult with the ward before making any major decision affecting the ward's affairs or estate;

b. Within forty-five (45) days of appointment, conduct a due diligence investigation of the ward's estate and prepare and submit to the Court an inventory and appraisement of the estate;

c. Mail notice of the conservator's appointment to all known creditors who were not originally notified of the conservatorship appointment;

d. Immediately notify the Court, in writing, of any change of address;

e. Provide the Court with annual written reports on the conservatorship as provided in this Chapter; and

f. At the termination of the conservatorship, deliver the assets of the ward to the persons entitled thereto.

4. A conservator may petition the Court for authority to do any act about which the conservator is uncertain, and the Court may grant such authority if such act appears to be in the best interests of the ward.

5. A conservator shall have no authority to relinquish a ward's membership in the Tribe.

6. The Court may impose restrictions and limitations on the duties and powers of a conservator and condition the appointment on the performance of specific duties.

Section 3-9-26. Limited Guardians and Conservators.

1. If the Court finds by clear and convincing evidence that grounds exist to appoint a guardian or conservator, but the proposed ward is only partially disabled in managing his or her estate and/or affairs, then a limited guardian or limited conservator may be appointed, as the case may be.

2. Any Court order appointing a limited guardian or limited conservator shall specify all duties and authority of the limited guardian or limited conservator and any time limits on the appointment.

3. A ward for whom a limited guardian or limited conservator has been appointed shall retain all rights except those which have been granted to the limited guardian or limited conservator by Court order or the exercise of which would be inconsistent with those granted by order of the Court.

Section 3-9-27. Fiduciary Duties of Guardians and Conservators. All guardians and conservators shall:

1. Be in a fiduciary relationship to the ward;

2. Exercise a high degree of care in managing the ward's estate; and

3. Derive no personal benefit of any kind from the management of the ward's estate, excluding reimbursement from the ward's estate in accordance with this Title.

Section 3-9-28. Liability to Ward.

1. A guardian or conservator shall be liable to the ward for any losses to the ward's estate attributable to a breach of the guardian's or conservator's duties.

2. An action to hold a guardian or conservator liable for breach of duty may be brought by:

a. The ward; or

b. A subsequently appointed guardian or conservator on behalf of the ward.

3. An action to hold a guardian or conservator liable for breach of duty may be brought anytime within two (2) years after either:

a. The appointment of a new guardian or conservator for the ward; or

b. The termination or expiration of the guardianship or conservatorship as provided in this Chapter.

Section 3-9-29. Liability to Third Persons.

1. A guardian is legally and morally responsible for acts of a ward who is a child pursuant to the laws of the Tribe. However, neither a guardian or conservator shall be liable to third persons for the acts of a ward solely by reason of the guardian and ward relationship or conservator and ward relationship, as the case may be.

2. Unless otherwise provided in a contract, a conservator shall not be personally liable to a third person on a contract properly entered into in a fiduciary capacity in the course of exercising any power or performing any duty unless the conservator failed to reveal the representative capacity and identify the ward's estate in connection with the contract.

3. A conservator shall not be personally liable to a third person for an obligation arising from ownership or control of the ward's estate or a tort committed in the course of exercising any power or performing any duty unless the conservator was personally at fault.

4. A claim based on a contract entered into by a conservator in a fiduciary capacity, an obligation arising from ownership or control of the ward's estate, or a tort committed in the course of administering the ward's estate may be asserted against the ward's estate by proceeding against the conservator in the conservator's fiduciary capacity, whether or not the conservator is personally liable for the claim.

5. Any question of liability between the estate of a ward and the guardian or conservator may be determined in a Court proceeding for accounting, surcharge, indemnification, or other appropriate proceeding or action.

Section 3-9-30. Transactions with Guardian or Conservator.

1. Any person who, in good faith, either assists or deals with a guardian in the conduct of a transaction may assume the existence and proper exercise of trust powers by the guardian. A third person is not bound to inquire whether a guardian may act or is properly exercising power. Unless the third person has actual knowledge that the guardian is exceeding or improperly exercising the guardian's powers, a third person shall be fully protected in dealing with the guardian as if the guardian properly exercised the power. This subsection does not apply to a limited guardian.

2. Any person who, in good faith, either assists or deals with a conservator for value in a transaction, excluding any transaction requiring a Court order under this Chapter, shall be protected as if the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise. This subsection does not apply to a limited conservator.

Section 3-9-31. Reimbursement.

1. A guardian or conservator shall be entitled to be reimbursed out of the ward's estate for necessary, reasonable, and proper expenditures incurred in the performance of his or her duties, subject to such limitations and requirements of this Section and as the Court may establish.

2. The Court may order reimbursement payments to be made on a regular schedule or on the request of the guardian or conservator, subject to the submission of adequate proof of the expenditure, the necessity of the expenditure, and the availability of funds.

Section 3-9-32. Compensation.

1. No guardian or conservator shall receive any compensation for acting as such without the prior approval of the Court.

2. A guardian or conservator may petition the Court to be compensated at a reasonable amount for services rendered.

3. The Court shall determine the amount of any such compensation, which if approved, shall be paid from the ward's

estate and shall not exceed ten percent (10%) of the gross income of the estate.

4. A guardian or conservator shall be deemed to have waived any right to compensation for all periods prior to approval thereof by the Court.

Section 3-9-33. Reports.

1. All guardians and conservators shall file reports with the Court annually within thirty (30) days after the anniversary of the appointment, and at such other times as ordered by the Court.

2. All reports filed pursuant to this Section shall be served on the ward and other persons as directed by the Court in the manner provided under the laws of the Tribe.

3. All reports filed by a guardian shall provide complete and accurate information regarding the condition of the ward, including, but not limited to:

a. The ward's mental, physical and social condition;

b. The ward's educational status, if the ward is in school;

c. The ward's present living arrangement and any changes to the same during the reporting period;

d. If the ward is not residing with the guardian, the dates and times of the guardian's visits with the ward during the reporting period;

e. A full accounting of the ward's estate, which is subject to the control or possession of the guardian, including but not limited to, all assets, liabilities, receipts, disbursements and other relevant financial information for the reporting period;

f. If the ward is not a minor, a recommendation as to the need for continued guardianship; and

g. Other information required by the Court or useful in the opinion of the guardian.

4. All reports filed by a conservator shall provide a full accounting of the ward's estate, verified under oath or affirmation of the conservator, which is subject to the control or possession of the conservator, including but not limited to:

a. All assets, liabilities, receipts, balances, investments, disbursements and other relevant financial information for the reporting period; and

b. All additions to and withdrawals from the estate, supported by cancelled checks, vouchers, receipts, statements, and the like.

5. The Court shall review and either approve or not approve any report filed by a guardian or conservator and, if not approved, the Court shall, by order, inform the guardian or conservator of the deficiencies in the report and set a deadline by which the report must be resubmitted. The Court shall reconcile or settle every account or balance in the report by allowing or disallowing it, either in whole or in part, and may charge or assess the guardian or conservator for any deficiencies.

6. The Court shall develop and provide forms to assist in completing reports required under this Section.

7. If a guardian or conservator fails to file a report or accounting as required by this Chapter or otherwise ordered by the Court, the Court shall take appropriate action. If the Court finds that the failure is willful or inexcusable, the guardian or conservator may be fined not to exceed $500.00 and such fine may be enforced and collected through a civil cause of action brought by the Tribal Attorney on behalf of the Tribe in a proceeding in the Court.

Section 3-9-34. Automatic Termination.

1. A guardianship shall terminate:

a. When a minor ward attains majority, unless the minor is an incapacitated person;

b. When a minor ward lawfully marries a person who is not subject to a guardianship or conservatorship;

c. When the Court adjudicates a former incapacitated person to no longer be incapacitated;

d. When a ward dies; or

e. By expiration of the term of the guardianship specified in the order appointing the guardian, unless prior to such expiration a motion has been filed and served seeking an extension of such term.

2. A conservatorship shall terminate:

a. When a minor ward attains majority, unless the minor is an incapacitated person;

b. When a minor ward lawfully marries a person who is not subject to a guardianship or conservatorship and the Court approves such termination;

c. When the Court adjudicates a former incapacitated person to be capable of handling his or her property;

d. When a ward dies; or

e. By expiration of the term of the conservatorship specified in the order appointing the conservator, unless prior to such expiration a motion has been filed and served seeking an extension of such term.

Section 3-9-35. Modification or Termination by Court.

1. On its own motion or on motion of the ward, a guardian ad litem of the ward, or a person interested in the welfare of the ward, the Court may modify or terminate a guardianship or conservatorship or remove or replace a guardian or conservator. Such motion shall state the specific reasons or grounds for modification, termination, or removal or replacement.

2. The Court may summarily deny a motion under this Section without scheduling a hearing if it appears, based on the contents of the motion or documents in the Court file, that the motion is frivolous. Any denial of a motion without a hearing shall be in writing with the reasons for the denial explained.

3. Upon a motion under this Section that is not summarily denied, the Court shall set a date for a hearing, provided that an order finding a ward to be an incapacitated person may specify a minimum period, not exceeding 180 days, during which a motion to terminate the guardianship or conservatorship shall not be filed without special leave of the Court.

4. At any hearing under this Section, the ward shall have all the rights afforded under an initial hearing to appoint the guardian or conservator.

5. The Court may terminate a guardianship or conservatorship if it is in the best interests of the ward and one of the following grounds exists:

a. The guardianship or conservatorship has automatically terminated as provided in this Chapter;

b. A ward who is an incapacitated person lawfully marries a person who is not subject to a guardianship or conservatorship;

c. The custody of a ward who is a minor child will be restored to the child's parents and parental rights have not been terminated; or

d. The grounds for guardianship or conservatorship set forth in this Chapter, as applicable, no longer permit the guardianship or conservatorship.

6. In all other proceedings under this Section, the Court may grant such relief as it deems just and in the best interest of the ward.

Section 3-9-36. Resignation of Guardian or Conservator. Any guardian or conservator who wishes to resign shall file a motion with the Court submitting their resignation. The motion may include a request to appoint a successor guardian or conservator. Subject to the filing of a final report as required in this Chapter, the Court may accept the resignation after a showing that no other actions in the interim are necessary to protect the ward or the ward's estate.

Section 3-9-37. Appointment of Successor. Upon the resignation, removal, or death of a guardian or conservator, the Court, if necessary, may appoint a successor and, prior to any such appointment, may enter an emergency or interim order which is in the best interests of the ward.

Section 3-9-38. Final Report. Upon termination of a guardianship or conservatorship or upon resignation, removal or death of a guardian or conservator, such guardian, conservator or his or her personal representative shall file a final report with the Court

in the form required for the annual report required in this Chapter. Upon approval of the report and filing any proper receipts, the guardian or conservator shall be discharged and his or her bond released.

Section 3-9-39. Civil Fines. In addition to any liability a guardian or conservator may have to his or her ward, any guardian or conservator who steals, diverts, or grossly abuses the funds or property of a ward or who knowingly or recklessly abuses a ward or neglects a ward's rights under this Chapter or any other law of the Tribe shall, in addition to any crime, be subject to a civil fine not to exceed $1000 per occurrence.

CHAPTER 10
ADOPTION OF CHILDREN

Section 3-10-1. Purpose. The purpose of this Chapter is to protect the rights and the welfare of children, biological parents, and adoptive parents. The purpose of adoptions is to give the adoptive child a permanent home. It is the policy of the Tribe to promote the adoption of children who are members or eligible to be members of the Tribe by other family members and other members of the Tribe.

Section 3-10-2. Who May Be Adopted. Any child who is located within the territory of the Tribe or who is a member or eligible to be a member of the Tribe, regardless of location, may be adopted.

Section 3-10-3. Who May Adopt.

1. Any adult is eligible to adopt a child, provided, that no non-member who is not a member of the child's extended family may adopt a child who is a member or eligible to be a member of the Tribe except in compelling circumstances as determined by the Court when the best interests of the Tribe or the child so require.

2. Spouses, not lawfully separated, may jointly adopt children but a person may not adopt a child without the consent and approval of the adopting person's spouse, provided the spouse is capable of giving such consent.

3. A person adopting a child must be at least ten (10) years older than the child adopted.

Section 3-10-4. Recognition of Customary Adoption.

1. A person may petition the Court under this Chapter to recognize an adoption under the customs and traditions of the Tribe. The Court shall issue a decree recognizing the adoption if:

a. The biological parents of the person adopted acknowledge the traditional or customary adoption; or

b. At least two (2) reliable witnesses attest to the traditional or customary adoption;

2. The Court shall issue a decree recognizing the adoption even if the parental rights of the biological parents of the person adopted have not been terminated.

3. Upon request of the customary adoptive parents and/or the biological parents of the person adopted, the Court shall resolve any questions that arise over the respective rights of the biological parents and the adoptive parents in a traditional or customary adoption based on the best interests of the person adopted and where the sense of family is for the person adopted.

Section 3-10-5. Consent to Adoption; Waiver.

1. Except as provided in this Section, no adoption shall be granted unless consent to adopt has been obtained and filed with the Court from the following:

a. Both parents;

b. The guardian of the child;

c. The custodian of the child, if empowered to consent;

d. Any official appointed by a court of competent jurisdiction and given authority by it to consent to the child's adoption;

e. An agency which has been given consent to place the child for adoption by a parent whose consent would be necessary under this subsection, or which has been given authority in other legal proceedings to place the child for adoption;

f. The Department or any other person or agency with legal custody of the child; and

g. The child, if twelve (12) years of age or older.

2. Consent is not necessary from the following:

a. A parent:

i. Who is not living;

ii. Whose parental rights have been lawfully relinquished or have been terminated by a court of competent jurisdiction if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired;

iii. Who has abandoned his or her child for a period of one (1) year;

iv. Who has been convicted of any crime punishable by imprisonment for a period that, in the opinion of the Court, will deprive the child of a parent's companionship for a critical period of time;

v. Who has been adjudged by a court of competent jurisdiction to be incompetent or an incapacitated person; or

vi. Who committed an act of rape or sexual assault against the other parent of the child and the child was conceived as a result of the act of rape or sexual assault, provided that the Court shall accept a guilty plea or conviction of rape, sexual assault or comparable offense under the laws of the Tribe or other jurisdiction where the offense occurred against the other parent as conclusive proof that the parent committed the act of rape or sexual assault;

b. The father of a child born out of wedlock where parentage has not been established by acknowledgment, subsequent marriage to the mother, or a court of competent jurisdiction;

c. The guardian of the child, if the guardian is adopting the child; and

d. The parents, guardian or custodian of the child in the case of recognition of a customary adoption.

3. The Court may waive any requirement for the consent of any person, except a parent and the child when, after a hearing, the Court determines that the best interests of the child will be promoted thereby. In such a case, the Court shall make written findings of all facts upon which its order is based.

4. The consent of a parent to the adoption of a child shall not constitute or be construed as constituting a relinquishment or termination of the parental rights of such parent.

Section 3-10-6. Form of Consent.

1. Except for the child to be adopted whose consent is required, all consents to an adoption shall be executed in writing, signed by the person giving the consent under oath or affirmation and filed with the Court prior to the hearing on a petition for adoption.

2. Consent by a child to be adopted whose consent is required shall be made:

a. Orally either in open court or in chambers with only the judge, any other persons the judge deems necessary, and the child present; and

b. After an explanation to the child of the legal consequences of the adoption and the rights of the child under this Chapter.

3. A consent given prior to, or within, ten (10) days after the birth of the child to be adopted shall not be valid.

4. A consent by a parent or guardian to an adoption shall designate one of the following:

a. An agency authorized to place the child for adoption; or

b. A particular person or persons authorized to adopt the child.

5. A consent which purports to permit a third person, other than an agency, to locate or nominate an adoptive parent shall be invalid.

6. A consent by a minor parent to an adoption shall not be valid unless prior written approval from the Court is obtained. Any consent given in accordance with this Section shall not be subject to revocation by reason of the parent's minority.

Section 3-10-7. Withdrawal of Consent.

1. Any consent given under the provisions of this Chapter may be withdrawn by the person or agency which gave the consent at any time prior to the entry of a decree of adoption.

2. No reason need to be stated and no hearing need be held on any withdrawal of consent under this Section.

3. All withdrawals shall be in writing and notarized or witnessed by the Tribal Court Administrator with the original being filed with the Court.

4. If a parent withdraws consent under this Section, the child shall be returned to the parent withdrawing consent if such parent would otherwise be entitled to the custody and control of the child.

Section 3-10-8. Proceedings Involving Child of Another Tribe. In any proceeding under this Chapter involving a child who is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe:

1. The Court shall provide notice of the proceedings to the child's tribe as soon as possible, and preferably prior to the next hearing, after the Court knows or has reason to know that the child is not a member of the Tribe and is a member or eligible to be a member of another federally recognized Indian tribe, which shall include:

a. The nature of the proceedings;

b. Notification of the tribe's right to intervene in the proceedings; and

c. Notification of the tribe's right to request transfer of the proceedings involving that child to it; and

2. The child's tribe shall have a right to intervene at any point in the proceedings.

Section 3-10-9. Nature of Adoption.

1. Except as expressly provided in this Section, adoptions under this Chapter shall be open adoptions. An open adoption is intended to not permanently deprive the child of connections to, or knowledge of, his or her biological family. The following shall apply to all orders and decrees of an open adoption:

a. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and tribal heritage;

b. Unless termination of parental rights is required under another provision of the laws of the Tribe, the termination or relinquishment of the parental rights of the child's biological parents shall not be required, provided that:

i. The Court may provide for the respective rights and duties of the biological parents and the adoptive parents based on the best interests of the child or, to the extent consistent with the best interests of the child, the agreement of the biological parents and the adoptive parents; and

ii. In the absence of the Court providing for the respective rights and duties of the biological parents and the adoptive parents, the rights, powers, privileges, duties and obligations of a parent, including to custody, to control visitation and to support, shall reside with the adoptive parents;

c. The adoptive child and members of the child's biological extended family, including parents, may have the right to reasonable visitation, subject to reasonable controls of the adoptive parents, unless otherwise restricted by the Court for a compelling reason; and

d. Adoption shall not serve to prevent an adoptive child from inheriting from a biological parent in the same manner as any other biological child.

2. At the request of the petitioner, the child's biological parents, or the Department and if deemed reasonable by the Court, adoption proceedings may be made closed adoptions. A closed adoption is intended to sever all ties between the child and his

or her biological family. The following shall apply to all orders and decrees of a closed adoption:

a. The adoptive child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and tribal heritage upon reaching the age of majority;

b. The termination or relinquishment of the parental rights of the child's biological parents shall be required;

c. The child's biological family shall not be entitled to or have access to any information regarding the child; and

d. The adoptive child shall not be entitled to inherit from his or her biological parents by intestate succession.

Section 3-10-10. Placement Preferences.

1. In any adoption proceeding except the recognition of a customary adoption, preference shall be given to placement in the following order:

a. A relative of the child who is a member of the tribe in which the child is a member or eligible to be a member;

b. A relative of the child who is not a member of the tribe in which the child is a member or eligible to be a member;

c. A non-relative member of the tribe in which the child is a member or eligible to be a member; or

d. A member of a federally recognized Indian tribe.

2. If a child who is a member or eligible to be a member of the Tribe is to be adopted by a non-Ponca family, the following placement conditions, when reasonable, should be imposed:

a. The child should have reasonable access to Ponca family members, including, but not limited to, visitation, phone calls, and correspondence;

b. If the child wishes to observe or participate in the Tribe's cultural and religious ceremonies and activities, appropriate arrangements should be made;

c. All correspondence from the Tribe (such as the Tribal Newsletter, special mailings, etc.) must be accepted; and

d. The Tribe must be kept informed of all address changes.

3. Notwithstanding anything in this Section, the Court, with good cause shown, may place the child in a placement that serves the best interests of the child.

Section 3-10-11. Initiation of Proceedings.

1. Proceedings in the Court to adopt a child or recognize a customary adoption shall be initiated by the filing of a petition.

2. Petitions may only be filed by the person desiring to adopt the child or who claim a customary adoption, provided that spouses desiring to adopt a child shall file a joint petition for adoption unless one of the spouses is the biological or adopted parent of the proposed adoptee.

3. Petitions for adoption shall be captioned: "In the Adoption of (child's or children's name(s))". Petitions for the recognition of customary adoptions shall be captioned: "In the Recognition of the Adoption of (child's or children's name(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The full names, ages, place of residence, marital status, and tribal membership of the petitioner;

b. The status of parental rights of the petitioner;

c. The child's full name, sex, date and place of birth, current residence and tribal membership or the reasons such information is unavailable;

d. The adoptive name of the child, if a change of name is desired;

e. The date, if applicable, when the child was first placed or lived with petitioner;

f. The relationship of the petitioner to the child, or the fact that no relationship exists;

g. The names, last known addresses and tribal membership of the child's parents or the reasons that such information is unavailable;

h. Where the child's parent is also a child, the names and addresses of the parent's parents or guardian or a statement that the parent has no parent or guardian, or the reasons that such information is unavailable;

i. The names, last known addresses and tribal membership of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

j. The names, last know addresses and tribal membership of the child's extended family members, former care givers and others who have or may have a direct or substantial interest in the child, or the reasons such information is unavailable;

k. A full description and statement of the value of all property owned or possessed by the child if known by petitioner;

l. The names and addresses of any person or agency whose consent to the adoption is necessary;

m. Information regarding any consents which have been given or the reason that consents need not be given;

n. Information regarding notifying the Department of the filing of the petition;

o. Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child;

p. If the petitioner desires a closed adoption, a statement to that effect;

q. The basis for the Court's jurisdiction;

r. That it is the desire of the petitioner to adopt the child, and approved by the spouse of the petitioner, if applicable;

s. A request that the Court grant the adoption or recognize the customary adoption, as the case may be.

5. All petitions under this Section shall be verified under oath or affirmation of the petitioner.

6. Any written consent required by this Chapter may be attached to the petition or may be filed separately with the Court.

7. The petitioner's written agreement required by this Chapter that the child adopted shall be treated in all respects as his or her own may also be attached to the petition or may be filed separately with the Court.

8. Where there is more than one child to be adopted by the petitioner, only one petition shall be required for the adoption of all or any combination of the children, provided that each child proposed to be adopted shall be named in the petition and a separate order of adoption shall be made and filed by the Court as to each child adopted.

9. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 3-10-12. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Any person whose consent is required by this Chapter;

b. The parents of the child whose parental rights have not been terminated;

c. The person having custody of or responsibility for the child, if any; and

d. If the child is a ward or dependent child of the Tribe, the Department.

2. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the hearing on the petition.

Section 3-10-13. Responsive Pleading.

1. Any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-10-14. Notice to Department.

1. Upon the filing of a petition for adoption, the petitioner shall notify the Department by mailing to the Department a copy of the petition. In the event the petitioner fails to notify the Department, the Tribal Court Administrator shall provide notice to the Department in the petitioner's stead.

2. The Department may appear in any proceeding under this Chapter the same as a party.

Section 3-10-15. Investigation and Recommendation.

1. Unless otherwise ordered by the Court pursuant to this Section, upon receipt of notification of the filing of a petition for adoption under this Chapter, the Department shall investigate the proposed adoption.

2. The investigation required by this Section shall consider all relevant and material facts concerning the petitioner's fitness to adopt the child and shall include, but not be limited to, the following factors concerning the petitioner and the members of his or her household:

a. Social history;

b. Financial condition;

c. A history of any previous child support obligations;

d. Moral and physical fitness;

e. Religious and community background;

f. Mental and physical conditions; and

g. All other facts bearing on the issue of the fitness of the petitioner and his or her household that may be deemed relevant.

3. If a petitioner is not a member of the Tribe and the child to be adopted is a member or eligible to be a member of the Tribe, the investigation shall also include the reasons the nonmember should be considered suitable to adopt a member.

4. As soon as identity of the child to be adopted is known, the investigation shall also include:

a. The background of the child and his or her mental and physical condition;

b. The existing arrangements for custody of the child;

c. The adoptability of the child and the suitability of the child's adoption by the petitioner; and

d. The desire of the child, to the extent it may be determined.

5. The Department may request a postponement of a hearing on the petition in the event it needs more time for its investigation.

6. Based on the Department's investigation, the Department or the Tribal Attorney shall submit a recommendation to the Court on behalf of the Tribe prior to the hearing on the petition. The recommendation shall include:

a. A full report of the facts disclosed by its investigation;

b. Information on whether the requirements of this Chapter have been met, including placement preferences; and

c. A recommendation whether the adoption should be allowed.

7. The Tribe may attach the Department's report to its recommendation as an exhibit or may include the necessary information from the Department's report directly in the Tribe's recommendation. The Tribe may also attach any homestudy investigations or other reports and documents as exhibits to its recommendation. Subject to objection from any party, the Court shall receive and accept the Tribe's recommendation and any exhibit attached thereto as it would any other evidence presented regardless of whether the recommendation, any matter therein or any exhibit attached thereto is formally introduced as evidence.

8. In the case of a step-parent adopting his or her stepchild, the Court, by order, may waive the requirement of the Department's investigation pursuant to this Section or limit the investigation to such matters as the Court deems appropriate.

Section 3-10-16. Requirements to Complete Adoption. No petition for adoption shall be granted unless and until:

1. A home study has been completed by the Department or another agency or individual qualified to perform a home study and filed with the Court in the proceedings, provided that the Court, by order, may excuse the requirement of a home study in the case of a step-parent adopting his or her stepchild;

2. The child to be adopted has lived with the petitioner in the petitioner's home for a period of at least six (6) months;

3. The petitioner executes an agreement under oath or affirmation to the effect that the child to be adopted shall be treated in all respects as his or her own;

4. An affidavit of non-identifying information as required under this Chapter is executed and filed with the Court; and

5. The child to be adopted, if eligible to be a member of the Tribe, is enrolled as a member of the Tribe, unless the Court finds compelling circumstances as determined by the Court that best interests of the Tribe or the child require otherwise.

Section 3-10-17. Affidavit of Non-Identifying Information.

1. Except in the case of a step-parent adopting his or her stepchild, in a petition for adoption, the petitioner or, if the

identity of the biological parents is unknown another appropriate person, shall execute and file with the Court an affidavit of non-identifying information, if known, which shall include the following:

a. The age of the biological parents at the time of the birth of the child to be adopted, but not the dates of birth of the biological parents;

b. The nationality, ethnic background and race of the biological parents;

c. The number of years of school completed by the biological parents at the time of the birth of the child to be adopted;

d. The height, weight, hair color, eye color, skin color and other information of a similar nature of the biological parents at the time of the birth of the child to be adopted;

e. The talents, hobbies, and special interests of the biological parents;

f. The existence of any other children born to either biological parent before the birth of the child to be adopted;

g. Whether the parental rights of the biological parents were terminated voluntarily or involuntarily;

h. The religion of the biological parents;

i. The occupation of the biological parents in general terms;

j. The health history of the biological parents and blood relatives; and

k. The relationship between the biological parents.

2. Notwithstanding anything to the contrary in this Title, upon written request and proper proof of identification, the non-identifying information listed in this Section shall be made available to the adopted child, except that in the case of a closed adoption such information shall not be made available until the child reaches the age of majority and part or all of such

information may be withheld if it would tend to identify a biological relative of the child.

Section 3-10-18. Hearing on Petition.

1. The petitioner and the child to be adopted shall appear in person at the hearing on the petition.

2. The Department shall appear at the hearing if it has custody of the child to be adopted. In all other cases, the Department and the Tribal Attorney may appear, but shall not be required to appear.

3. All other persons issued a summons, persons whose consent is necessary, and extended family members of the child and others who have a direct or substantial interest in the child may also appear at the hearing either in person or through legal counsel.

4. At the beginning of the hearing on the petition, the Court shall first:

a. Explain to the petitioner and to the child the effect of the granting of the petition; and

b. Advise the parties of their basic rights under Section 3-3-7 of this Title.

5. The Court shall examine all persons appearing before it. The examination of each person shall be conducted separately but within the physical presence of each such other persons unless the Court, in its discretion, shall order otherwise.

6. The Court shall consider any and all reports required by this Chapter or ordered by the Court and any additional relevant testimony or evidence presented at the hearing.

7. For a petition for adoption, the Court shall determine if adoption is in the best interests of the child to be adopted and the Tribe. In determining the best interests of the child and the Tribe, the Court shall examine:

a. The validity of any written consents;

b. Any termination of parental rights order;

c. The length of time of the child's wardship by the Court, if any;

d. Special conditions of the child;

e. Parent communications with the child;

f. Homestudies;

g. The recommendation of the Tribe and report of the Department; and

h. Order of preference of placement.

8. For a petition to recognize a customary adoption, the Court shall determine whether the customary adoption is recognizable as provided in this Chapter.

9. The burden of proof shall lie with the petitioner to prove that the allegations in the petition are supported by a preponderance of the evidence and that the best interests of the child and the Tribe will be served by the adoption.

10. Proceedings for termination of parental rights and proceedings for adoption may be consolidated and determined at one hearing provided that all the requirements of this Chapter as well as Chapter 8 of this Title governing termination of parental rights are complied with fully.

Section 3-10-19. Order After Hearing.

1. After a hearing on the petition, the Court shall enter a written order based on the results of said hearing. The order shall be in writing, and shall recite the findings of fact upon which the order is based. The order shall:

a. State the appearances of all parties and failures to appear;

b. Include findings pertaining to the Court's jurisdiction;

c. If the hearing is continued, set a new date for the advisory hearing;

d. If the Court is satisfied that the requirements of this Chapter have been met, the adoption or recognition of

the customary adoption is in the best interests of the child and the Tribe, and, in the case of a petition to recognize a customary adoption, a decree recognizing the adoption should be entered, or, in the case of a petition for adoption, the child is suitable for adoption, the petitioner is fit to adopt the child, and a decree of adoption should be entered:

i. State the full adoptive name, date of birth, sex, race or ethnicity, and place of birth of the adopted child;

ii. State the full name, date of birth, citizenship, residence, race or ethnicity, birthplace, and occupation of the petitioner;

iii. Order the termination of parental rights, if appropriate or necessary;

iv. Order that the name of the child is changed, if requested;

v. Order that the child shall be the adopted child of the petitioner and shall be regarded and treated in all respects as the child of the petitioner; and

vi. Order that the adoptive parents shall maintain cultural ties with the Tribe and take those steps necessary to inform and/or affirm the child's knowledge and understanding of Tribal culture and traditions;

e. If the Court finds that not all of the requirements of this Chapter have been met, that the adoption or recognition of the customary adoption will not be in the best interests of the child or the Tribe, or, in the case of petition for adoption, the child is not suitable for adoption or the petitioner is not fit to adopt the child:

i. Delay action on the petition and, if appropriate under this circumstances, place the child in the legal custody of the petitioner for a period of time not to exceed six (6) months; or

ii. Deny the petition, make any other order not inconsistent with this Title the Court deems necessary for the care and custody of the child, and dismiss the action; and

f. Order any other matters the Court deems necessary or appropriate.

2. A decree of adoption and decree recognizing a customary adoption shall be effective and binding on all persons from the date of entry.

3. A decree of adoption, a decree recognizing a customary adoption, and an order dismissing a petition under this Section are final orders and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-10-20. Notice of Adoption. The Tribal Court Administrator shall notify any agencies or departments of the Tribe or other governments who need the information of any decree of adoption entered under this Chapter, including for purposes of amending the birth certificate of an adopted child, updating or creating vital records impacted by the adoption, and protecting the inheritance rights or tribal membership status of the adopted child and his or her descendants.

Section 3-10-21. Effect of Decree.

1. Upon entry of a decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural and biological relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent the same as though the child were born biologically to the adoptive parent in lawful wedlock.

2. The entry of a decree recognizing a customary adoption acknowledges the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural and biological relationship of child and parent existing between the adopted person and the adoptive parent the same as though the person were born biologically to the adoptive parent in lawful wedlock from the date of the customary adoption.

3. An adopted child shall be entitled to inherit real and personal property from and through the adoptive parent and the adoptive parent shall be entitled to inherit real and personal property from and through the adopted child. However, if an inheriting adopted child or adoptive parent is not a member or eligible to be a member of the Tribe, then said child or parent shall not be eligible to inherit any interest which the deceased

member's estate may have to any Tribal privilege, right, land or property of any kind.

4. Subject to the Court resolving the respective rights of a child's biological parents and adoptive parents as provided in this Chapter and except where the parental rights of a biological parent have been terminated, the entry of a decree of adoption or a decree recognizing a customary adoption does not alter, effect or modify the relationship between the child and his or her biological parents.

5. Except in a closed adoption, an adopted child shall be entitled to the society and companionship of his or her biological siblings.

6. Upon entry of a decree of adoption, the adopted child shall assume the surname of the person by whom he or she was adopted, unless the Court orders otherwise.

7. Notwithstanding anything in this Section to the contrary, the status as a member of the Tribe shall not be effected by adoption or a decree of adoption or recognition of customary adoption and adoption and the decree of adoption or recognition of customary adoption shall not extinguish any status, rights or privileges due to the child's membership or eligibility for membership in the Tribe.

Section 3-10-22. Dismissal After Death; Exception. In the event of the death of the petitioner prior to adoption, the petition shall be dismissed, except that, if there are two petitioners, the proceeding shall continue as to the surviving petitioner, unless voluntarily dismissed or withdrawn by the survivor.

Section 3-10-23. Sealing of Records in Closed Adoption.

1. Notwithstanding any provision of this Title to the contrary, upon entry of a decree of adoption in a closed adoption, the Court shall order all Court records relating to such proceeding sealed and no person shall have access to such records except:

a. The adoptive parents and their legal counsel;

b. Representatives of the Department; and

c. The child when he or she reaches the age of majority.

2. A person may petition the Court for permission to inspect such records, but permission shall not be granted except in extraordinary circumstances and for compelling cause shown or with consent of the adopted child executed after the child attains the age of majority.

Section 3-10-24. Vacating Decree. Subject to the disposition of an appeal, within one (1) year after the entry of a decree of adoption or decree recognizing a customary adoption, said decree may be vacated upon the filing of a petition therefor and a showing that the consent which made the adoption possible was obtained through fraud or duress. Upon such a showing, the Court shall vacate the decree and return the adopted person to that status he or she had prior to the entry of the decree.

Section 3-10-25. Irregularities; Curative Period. Subject to the disposition of an appeal, after one (1) year from the date that a decree of adoption or decree recognizing a customary adoption is entered, any irregularity in the proceeding, including lack of jurisdiction, fraud, misrepresentation, and failure to give any required notice, shall be deemed cured and the validity of the decree shall not thereafter be subject to attack or question on any ground by any person, including the petitioner, in any collateral or direct proceeding or any other manner unless the petitioner has not taken custody of the child.

CHAPTER 11
EMANCIPATION

Section 3-11-1. Purpose. The purpose of this Chapter is to provide for a child who is at least sixteen (16) years of age and capable of self-support and managing his or her own affairs to obtain the status of an emancipated person for limited or general purposes.

Section 3-11-2. Emancipated Minor Defined. For purposes of this Chapter, an emancipated minor is an individual under the age of majority who:

1. Has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

2. Is on active duty with any of the armed forces of the United States of America; or

3. Has received a declaration of emancipation pursuant to this Chapter.

Section 3-11-3. Initiation of Proceedings.

1. Proceedings in the Court to emancipate a child shall be initiated by the filing of a petition.

2. Petitions may be filed by a child sixteen (16) years of age or older or a parent, guardian or custodian of such child.

3. Petitions for emancipation shall be captioned: "In the Emancipation of (child's name)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The child's full name, date and place of birth, current residence and length of time at that residence, and tribal membership;

b. Whether the child is at least sixteen (16) years of age;

c. Whether the child is married;

d. The names, last known addresses and tribal membership of the child's living parents or the reasons such information is unavailable;

e. The names, last known addresses and tribal membership of the child's guardian or custodian, if any, or the reasons such information is unavailable;

f. A written statement of the reason for requesting emancipation;

g. The purpose for which emancipation is sought;

h. The income and housing plan for the child, if emancipated;

i. How the child would pay for medicine and health care costs through insurance or other programs, if emancipated;

j. A declaration by the child indicating that he or she has demonstrated the ability to manage his or her financial affairs and any information he or she considers necessary to support the declaration;

k. A declaration by the child indicating that he or she has the ability to manage his or her personal and social affairs and any information he or she considers necessary to support the declaration;

l. The basis for the Court's jurisdiction;

m. A request that the Court grant the emancipation.

5. All petitions under this Section shall also include the following items attached to the petition:

a. A certified copy of the child's birth certificate;

b. Tribal identification verification, if applicable;

c. One of the following:

i. The written consent or agreement of each living parent, guardian or custodian having control of the person or property of the child; or

ii. At least one affidavit from the Department or other appropriate service provider declaring the individual has personal knowledge of the child's circumstances, recommending emancipation, and setting out the factual basis for the recommendation; and

d. Any other affidavits supporting the request.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 3-11-4. Summons and Service of Process.

1. Upon the filing of a petition, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. The child, if the child is not the petitioner;

b. The parents, guardian or custodian of the child, if the parents, guardian or custodian is not the petitioner;

c. The person having custody of or responsibility for the child, if such person is not the parents, guardian or custodian of the child; and

d. If the child is a ward or dependent child of the Tribe, the Department.

2. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the hearing on the petition.

Section 3-11-5. Responsive Pleading.

1. Any person issued a summons may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 3-11-6. Notice of Hearing; Waiver.

1. In addition to any other persons required to receive notice of the emancipation hearing pursuant to Section 3-3-11 of this Chapter, the Court shall ensure that any individuals who provided affidavits attached to the petition are notified of each hearing in a proceeding under this Chapter.

2. A parent, guardian or custodian of the child may waive appearance at hearings under this Chapter, except that a parent, guardian or custodian may not waive such appearance where he or she is the petitioner. To be effective, the waiver must be in writing, be attested to by a notary public and contain a statement that the parent, guardian or custodian understands the meaning and consequences of the waiver and the emancipation.

Section 3-11-7. Hearing on Petition.

1. The petitioner and, if the petitioner is not the child, the child to be emancipated shall appear in person at the hearing on the petition.

2. Any individuals who provided affidavits attached to the petition may also appear or the Court may require their attendance.

3. All other persons issued a summons or notice may also appear at the hearing either in person or through legal counsel.

4. The Court may require the presence of any other parties or witnesses deemed necessary for disposition of the petition.

5. At the beginning of the hearing on the petition, the Court shall first:

a. Explain to the petitioner and to the child the effect of the granting of the petition; and

b. Advise the parties of their basic rights under Section 3-3-7 of this Title.

6. The Court shall determine if emancipation is not contrary to the best interests of the child and whether all of the following is established:

a. That the child is at least sixteen (16) years of age;

b. That the child's parents, guardian or custodian does not object to the petition, or if a parent, guardian or custodian objects to the petition, that the objecting parent, guardian or custodian is not providing the child with support;

c. That the child has demonstrated the ability to manage his or her financial affairs, including proof of employment or other means of support, provided that general assistance or aid to families with dependent children received from a government shall not constitute other means of support;

d. That the child has the ability to manage his or her personal and social affairs, including, but not limited to, proof of housing; and

e. That the child understands his or her rights and responsibilities under this Chapter as an emancipated child.

7. In determining whether to order emancipation of the child, the Court shall consider at least the following factors as evidence of the child's ability to be emancipated:

a. Whether the minor is able to manage his or her affairs independently of his or her parents, guardian or custodian;

b. Whether the minor is living separately or paying room and board at home;

c. Whether the minor is employed and the history of the minor's employment;

d. Whether the minor is married;

e. Whether the minor is enlisted in the Armed Services;

f. Any other facts deemed relevant by the Court.

8. The burden of proof shall lie with the petitioner to prove that emancipation should be ordered by clear and convincing evidence and that the best interests of the child will be served by the emancipation.

Section 3-11-8. Order After Hearing.

1. After a hearing on the petition, the Court shall enter a written order based on the results of said hearing. Emancipation may be for general purposes or the limited purposes specified in the order. The order shall be in writing and shall recite the findings of fact upon which the order is based. The order shall:

a. State the appearances of all parties and failures to appear;

b. Include findings pertaining to the Court's jurisdiction;

c. If the hearing is continued, set a new date for the hearing;

d. If the Court is satisfied that the requirements of this Chapter have been met and the child shall be emancipated, order the emancipation of the child for general purposes or limited purposes specified;

e. If the Court finds that not all of the requirements of this Chapter have been met or that the child should not be emancipated, deny the emancipation and dismiss the action; and

f. Order any other matters the Court deems necessary or appropriate.

2. An emancipation order shall be conclusive and binding on all persons from the date of entry. The Court shall retain a copy of an emancipation order until the emancipated child reaches the age of majority.

3. An order issued under this Section shall not be confidential and shall be open to inspection as other records of the Court generally open to the public.

4. An emancipation order and an order dismissing a petition under this Section are final orders and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 3-11-9. Effect of Emancipation.

1. Notwithstanding any other provision of law, an emancipation order for limited purposes means that such child has the power and capacity of an adult for the limited purposes stated in the order.

2. Notwithstanding any other provision of law, an emancipation order for general purposes means that such child may, in the same manner as an adult:

a. Consent to or obtain medical, chiropractic, optometric, dental, psychiatric, legal and educational services;

b. Enter into a binding contract;

c. Sue and be sued in his or her own name;

d. Earn, keep and spend his or her own earnings;

e. Establish his or her own residence apart from such child's parents, guardian or custodian;

f. Buy, sell and dispose of real and personal property;

g. Not be the subject of a petition as a child in need of assistance or otherwise as an abused, dependent, neglected or uncared for child;

h. May enroll in any school or college;

i. Obtain an operator's license or marriage license; and

j. Enlist in the armed forces of the United States.

3. An emancipation order for general purposes releases the child's parents, guardian or custodians of the following during the period of emancipation:

a. Being the guardians of the minor;

b. Any obligations respecting the child's school attendance;

c. All obligations to support the child; and

d. All liability for agreements, contracts, obligations, torts and crimes of such minor.

4. Nothing in this Section shall be construed to relieve the child's parents, guardian or custodian from any liability for the emancipated child under a principle of law other than the parent-child relationship.

5. An emancipation order does not affect or alter any specific constitutional or statutory age requirements, including but not limited to, voting, holding public office, and use of alcoholic beverages or tobacco.

Section 3-11-10. Effect of Fraud.

1. An emancipation order obtained by fraud or by the withholding of material information shall be voidable.

2. A proceeding to void an emancipation order under this Section may be commenced by any person or by any public or private agency in accordance with the laws of the Tribe governing civil actions.

3. The voiding of any emancipation order pursuant to this Section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the order was in effect.

4. No liability may accrue as a result of the voiding of an emancipation order pursuant to this Section to any parent, guardian or custodian not given actual notice until such parent, guardian or custodian is given actual notice.

Section 3-11-11. Review and Revocation.

1. At any time before an emancipated minor reaches the age of majority, the child or his or her parents, guardian or custodian may file a petition with the Court for a review of the emancipation order in accordance with the laws of the Tribe governing civil actions.

2. The Court may revoke an emancipation order in a hearing to review the order if:

a. The child voluntarily consents to the revocation under oath during a hearing of the Court;

b. The petitioner proves by clear and convincing evidence that the child is indigent and has no means of support; or

c. The petitioner proves by clear and convincing evidence that the child otherwise no longer meets the requirements for emancipation under this Chapter.

3. Revocation of any emancipation order pursuant to this Section shall not alter any contractual obligations or rights or any property rights or interests which arose during the period that the order was in effect.

4. No liability may accrue as a result of the revocation of an emancipation order pursuant to this Section to any parent, guardian or custodian not given actual notice until such parent, guardian or custodian is given actual notice.

Approved 8/23/09 – Resolution 09-44
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Revised 10/22/24 – Resolution 24-71

TITLE IV
DOMESTIC RELATIONS

CHAPTER 1
GENERAL PROVISIONS

Section 4-1-1. Purpose and Policy. This Title shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Protect and govern the family relations of the members of the Tribe and other persons in the territory of the Tribe;

2. Ensure the safety and vitality of families which are essential to the Tribe and its sovereignty and self-determination; and

3. Promote the health, safety and general welfare of the Tribe by providing uniform, efficient and equitable processes and procedures governing marriage, dissolution, separation, child custody and child support.

Section 4-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court acting as the juvenile court of the Tribe.

2. "Custodian" means the person designated as such by agreement of the parties or in a custody decree or, in the absence thereof, the person granted sole physical custody of a child or with whom the child resides a majority of the time.

3. "Non-custodial parent" means a parent who is not a custodian of a child.

4. "Order for protection" means a temporary or permanent protective order, restraining order or injunction issued by a court on the grounds of domestic or family abuse pursuant to the laws of the jurisdiction where the order is issued and includes a court-approved consent agreement for an order for protection.

5. "Parent" means a person who has a legal parent-child relationship with a child which confers or imposes on the person legal rights, privileges, duties, and obligations and includes a biological parent of a person, a person for who parentage is

presumed or established pursuant to the laws of the Tribe, and a person who has lawfully adopted another person, including adoptions under the laws of the Tribe, but does not include unwed persons where parentage has not been acknowledged or established.

6. "Parent-child relationship" means the legal relationship between a child and a parent of the child incident to which the law confers or imposes rights, privileges, duties, and obligations and includes the mother-child relationship and the father-child relationship.

7. "Parenting time" means the time during which a parent is responsible for exercising caretaking functions with respect to a child.

Section 4-1-3. Subject Matter Jurisdiction.

1. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Title.

2. In any matter arising under this Title, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individuals, the Court shall decline to assert original subject matter jurisdiction unless and until the prior action is dismissed.

Section 4-1-4. Personal Jurisdiction. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or by express provision elsewhere in the laws of the Tribe and in addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over the following persons under this Title:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

3. Individuals who are the parent or alleged parent of a child who is a member or eligible to be a member of the Tribe regardless of residence or domicile;

4. Individuals who are alleged to be the parent of a child, including an unborn child, whose parenting partner is a member of or eligible for membership in the Tribe or another federally recognized Indian tribe;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe where another party to the action is a member of the Tribe or is a member of another federally recognized Indian tribe who is residing or domiciled within the territory of the Tribe;

6. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

7. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who does not reside and is not domiciled within the territory of the Tribe who:

a. Is personally served with a summons within the territory of the Tribe;

b. Consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

c. Resided in the past with the child subject of the action within the territory of the Tribe;

d. Resided in the past within the territory of the Tribe and provided prenatal or other expenses or support for the child subject of the action;

e. Is the parent of a child subject of the action and such child resides within the territory of the Tribe as a result of the acts or directives of the individual;

f. Engaged in sexual intercourse within the territory of the Tribe and the child subject of the action may have been conceived by that act of intercourse; or

g. Is otherwise subject to the personal jurisdiction of the Court consistent with the laws of the Tribe.

8. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings;

9. Where the Court asserts jurisdiction over an individual under this Section, the individual's extended family whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

Section 4-1-5. Procedure.

1. The procedures in the Court under this Title shall be governed by the rules of procedure for the Court which are not in conflict with this Title.

2. The Court may issue orders under this Title by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 4-1-6. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

Section 4-1-7. Summons and Service of Process.

1. Upon the filing of a petition in a proceeding under this Title, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Each respondent;

b. If the proceeding involves a child and his or her parent is not a petitioner or respondent, such child's parent, guardian, or custodian, except for parents whose parental rights to the child have been terminated; and

c. All known interested persons listed in the petition.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 4-1-8. Omission of Address from Pleadings.

1. Notwithstanding anything to the contrary in the laws of the Tribe, in any proceeding under this Title, if the petition states that disclosure of the petitioner's address could risk the safety of or result in physical or emotional harm to the petitioner, his or child, or any member of the petitioner's family or household, the petitioner may omit his or her address from all documents filed with the Court, provided that the petitioner must provide the Court a mailing address in a separate document.

2. If a petitioner has not disclosed an address pursuant to this Section and is not represented by legal counsel, the respondent shall serve all pleadings and other documents on the petitioner by delivering the same to the Court or at an alternative address designated by the petitioner. The Court shall forward all such served documents received from the respondent to the petitioner.

3. If disclosure of petitioner's address is necessary to determine jurisdiction in a proceeding under this Title, the Court may order the disclosure to be made:

a. After receiving the petitioner's consent;

b. Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or

c. After a hearing, if the Court takes into consideration the safety of petitioner, his or her child, and any member of the petitioner's family or household and finds such disclosure is in the interests of justice.

Section 4-1-9. Responsive Pleading.

1. The respondent and any person issued a summons may file a responsive pleading to any petition filed in a proceeding under this Title.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 4-1-10. Conduct of Hearings. All hearings involving proceedings under this Title shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. A verbatim record shall be taken of all hearings; and

6. A child may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child.

Section 4-1-11. Witness Lists and Subpoenas.

1. In a proceeding under this Title, each party shall provide to each other party in the proceeding or their respective legal counsel with a list of names of all witnesses that will be called at any hearing under this Title. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of a party or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Title.

Section 4-1-12. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Title:

a. Any party to the proceedings, including the petitioner, and their legal counsel;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian or custodian of any child subject of the proceedings and their legal counsel;

d. Legal counsel, guardian ad litem or advocate for a child subject of the proceedings, if any;

e. Individuals providing care for a child subject of the proceedings;

f. The Tribal Attorney, if the Tribe is a party to the proceedings; and

g. Any other person the Court may direct to be notified.

2. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Section 4-1-13. Appointment of Guardian Ad Litem.

1. At any stage of a proceeding conducted under this Title, the Court may appoint separate counsel or a spokesperson for a child subject of the proceeding to act as guardian ad litem representing the child's best interests.

2. A guardian ad litem shall be an officer of the Court for the purpose of representing the child's best interests and shall investigate the circumstances of each case where the guardian ad litem is appointed, including contacting family members, school officials, and other individuals having pertinent information regarding the child.

3. The Court may assess the cost of the guardian ad litem against the petitioner or any other party in the proceeding.

Section 4-1-14. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 4-1-15. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2
MARRIAGE

Section 4-2-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Recognize and acknowledge that marriage is a fundamental human right and an institution that strengthens family relationships and preserves the integrity, cohesiveness, and continuity of the Tribe;

2. Ensure that couples of the same sex and couples of opposite sex have equal access to marriage and to the protections, responsibilities, and benefits that result from marriage;

3. Provide adequate procedures for the solemnization and registration of marriage; and

4. Strengthen and preserve the integrity of marriage and safeguard family relationships.

Section 4-2-2. Jurisdiction. The Tribe shall have jurisdiction over all marriages licensed and performed within the territory of the Tribe and shall have the authority to issue marriage licenses to individuals who are residents within the territory of the Tribe.

Section 4-2-3. Nature of Marriage.

1. Marriage is a personal relationship between two persons arising out of a civil contract to which the consent of the parties is essential.

2. A marriage licensed, solemnized, and registered as provided in this Chapter is valid in the territory of the Tribe.

3. Nothing in this Chapter shall be deemed to repeal or render invalid any otherwise valid common law or traditional marriage that complies with Section 4-2-10 of this Chapter.

4. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by law.

Section 4-2-4. Who May Marry. The following persons may marry:

1. Every person, otherwise competent, who has attained the age of majority; and

2. A person of at least the age of seventeen (17) years, with the consent of the person's parents, guardian, custodian, or the Court, as provided in this Chapter.

Section 4-2-5. Prohibited Marriages.

1. The following marriages are prohibited:

a. A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

b. A marriage entered into where one or both parties are less than seventeen (17) years of age;

c. A marriage between lineal descendants or between siblings, whether the relationship is by the half or the whole blood or by adoption;

d. A marriage between an uncle or aunt and a niece or nephew, whether the relationship is by the half or the whole blood; and

e. A marriage between the children of two siblings or the children of two first cousins, whether the relationship is by the half or the whole blood.

2. Parties to a marriage prohibited under this Section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

3. Children born of a prohibited marriage are legitimate.

Section 4-2-6. Marriage License and Certificate.

1. The Court shall prescribe the form for an application for a marriage license, which shall include the following information:

a. Name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

b. If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

c. Name and address of the parents or guardian of each party;

d. Whether the parties are related to each other and, if so, their relationship; and

e. The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent-child relationship with respect to the child have been terminated.

2. The Court shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 4-2-7. License to Marry.

1. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the Tribal Court Administrator or his or her designee and paid the marriage license fee to be determined by the Court, the Tribal Court Administrator or his or her designee shall issue a license to marry and a marriage certificate form upon being furnished:

a. Satisfactory proof that each party to the marriage will have attained the age of majority at the time the marriage license is effective, or will have attained the age of seventeen (17) years and has either the consent to the marriage of his or her parents, guardian or custodian, or judicial approval; and

b. Satisfactory proof that the marriage is not prohibited.

2. A license to marry becomes effective when issued, unless the Court orders that the license is effective at a different time, and expires 180 days after it becomes effective.

Section 4-2-8. Judicial Approval.

1. The Court, after a reasonable effort has been made to notify the parents or guardian of each underage party, may order the Tribal Court Administrator to issue a marriage license and a marriage certificate form to a party aged at least seventeen (17), but not yet the age of majority, who has no parent capable of consenting to his or her marriage, or whose parent, guardian or custodian has not consented to his or her marriage.

2. A marriage license and a marriage certificate form may be issued under this Section only if the Court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interests. Pregnancy alone does not establish that the best interests of the party will be served.

3. The Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Section 4-2-9. Solemnization and Registration.

1. A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the Tribal Court Administrator.

2. If a party to a marriage is unable to be present at the solemnization, he or she may authorize in writing, notarized as an acknowledgment verifying the identity and confirmation of the signature of the party, a third person to act as his or her proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he or she may solemnize the marriage by proxy. If he or she is not satisfied, the parties may petition the Court for an order permitting the marriage to be solemnized by proxy.

3. Upon receipt of the marriage certificate, the Tribal Court Administrator or his or her designee shall register the marriage.

4. A marriage solemnized before a person professing to have authority to perform marriages is valid regardless of such lack of authority if the parties, or either of them, believe that they have been lawfully joined in marriage.

Section 4-2-10. Common Law and Traditional Marriage.

1. Even where there has been no solemnization or ceremony and no certificate of marriage issued, two persons shall be considered married in a common law marriage if:

a. Each party is at least the age of majority;

b. Each party consents to the marriage;

c. The parties cohabitate;

d. The parties declare or hold themselves out to the public as spouses; and

e. The marriage is not prohibited as provided in this Chapter.

2. Even where there has been no solemnization or ceremony and no certificate of marriage issued, two persons shall be considered married in a traditional marriage if:

a. Each party is at least the age of majority;

b. The parties are recognized as married under the customs and traditions of the Tribe; and

c. The marriage is not prohibited as provided in this Chapter.

3. Notwithstanding the provisions of Section 4-2-13, a common law marriage contracted within or outside the territory of the Tribe shall not be recognized as valid if:

a. One or more of the parties is not at least the age of majority; or

b. It is a prohibited marriage under this Chapter.

4. Persons involved in common law or traditional marriages may obtain a marriage certificate upon proof to the Tribal Court Administrator by affidavit or otherwise of the validity of their marriage under this Section and payment of the fee for a marriage license.

Section 4-2-11. Domestic Partnership.

1. Domestic partnership is a personal relationship between two persons arising out of a civil contract to which the consent of the parties is essential. For all purposes under the laws of the Tribe, domestic partners:

a. Shall be considered as and treated the same as married spouses; and

b. Any privilege, immunity, right, benefit, or responsibility granted or imposed by the laws of the Tribe to an individual because the individual is or was a spouse, or because the individual is or was an in-law to another individual, is granted on equal terms, substantive and procedural, to an individual because the individual is or was

in a domestic partnership or is or was, based on a domestic partnership, related to another individual.

2. Without the requirement of any solemnization or ceremony, two persons may enter into a domestic partnership if:

a. Each party is eligible to marry under this Chapter;

b. Each party consents to the domestic partnership;

c. The parties cohabitate;

d. The domestic partnership, if it were a formal marriage, would not be a prohibited marriage under this Chapter.

3. Notwithstanding the provisions of Section 4-2-13, a domestic partnership contracted within or outside the territory of the Tribe shall not be recognized as valid if:

a. One or more of the parties is not at least the age of majority; or

b. Were it a formal marriage, it would be a prohibited marriage under this Chapter.

4. Two individuals wishing to become partners in a domestic partnership may obtain a domestic partnership certificate upon completing and filing a registration of domestic partnership with the Tribal Court Administrator and payment of the fee for a marriage license. The Court shall prescribe the form for registration of a domestic partnership, which shall include any information required to obtain a marriage license under this Section along with a declaration that both persons:

a. Cohabitate with one another;

b. Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and

c. Desire of their own free will to enter into a domestic partnership.

5. The provisions governing judicial approval of marriage in this Chapter shall apply to individuals wishing to become domestic partners.

6. Nothing in this Section shall be deemed to repeal or render invalid any otherwise valid domestic partnership.

7. A domestic partnership may only be invalidated or dissolved as provided by law with respect to marriage, provided that a domestic partnership shall automatically terminate if the parties enter into a formal marriage to each other.

Section 4-2-12. Putative Spouse.

1. Any person who has cohabited with another to whom he or she is not legally married in the good faith belief that he or she was married to that person is a putative spouse until knowledge of the fact that he or she is not legally married terminates his or her status and prevents acquisition of further rights.

2. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his or her status, whether or not the marriage is prohibited or declared invalid.

3. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the Court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 4-2-13. Existing Marriages.

1. Except as expressly provided in this Chapter, all marriages which are valid under the laws of the jurisdiction where and when performed shall be recognized and valid within the territory and jurisdiction of the Tribe.

2. All marriages performed or entered into within the territory of the Tribe prior to the effective date of this Chapter, including common law marriages and those perfected according to Tribal custom and tradition, are declared valid for all purposes under this Code. Persons involved in such marriages may obtain a marriage certificate upon proof to the Tribal Court Administrator by affidavit or otherwise of the validity of their marriage, and payment of the fee for a marriage license.

CHAPTER 3
INVALIDITY OF MARRIAGE

Section 4-3-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Protect the political integrity of the Tribe by ensuring the ability of individuals to have a marriage declared invalid;

2. Define the grounds upon which a marriage may be declared invalid; and

3. Provide adequate procedures for declaring a marriage invalid.

Section 4-3-2. Authority of Court. The Court shall have the authority to declare a marriage invalid whether the marriage was solemnized or registered under marriage license issued by the Tribal Court Administrator or under any other proper authority.

Section 4-3-3. Grounds for Invalidity. The Court shall enter an order declaring the invalidity of a marriage under the following circumstances:

1. A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances;

2. A party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

3. A party was under the age of seventeen (17) years, or was aged seventeen (17) but under the age of majority and did not have the consent of his or her parents, guardian or custodian, or judicial approval; or

4. The marriage is prohibited as provided in this Chapter 2 of this Title.

Section 4-3-4. Initiation of Proceedings.

1. Proceedings in the Court to declare a marriage invalid shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. For a reason set forth in Section 4-3-3(1) or Section 4-3-3(2), by either party or by the legal representative of the party who lacked capacity to consent;

b. For the reason set forth in Section 4-3-3(3), by the underage party or his or her parent, guardian or custodian.

c. For the reason set forth in Section 4-3-3(4), by either party, the legal spouse in case of a bigamous, polygamous or incestuous marriage, the appropriate state official, or a child of either party.

3. Petitions to declare a marriage invalid shall be captioned: "In Re the Marriage of: (name of spouse) and (name of spouse)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of each spouse to the marriage, if different from the petitioner, or the reasons that such information is unavailable;

c. The name, last known address, and tribal affiliation of any other interested persons, such as other spouses, or the reasons that such information is unavailable;

d. The name, sex, date and place of birth, current residence and tribal affiliation of all living children of the marriage, and whether either of the parties is pregnant;

e. The basis for the Court's jurisdiction;

f. The basis for the petitioner claiming the marriage is invalid; and

g. A request that the Court enter an order declaring the marriage invalid.

5. Each spouse subject of the petition who is not a petitioner shall be considered a respondent.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-3-5. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the marriage between the individuals listed in the petition is invalid.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall enter a declaration of invalidity of the marriage if the Court finds that the marriage is invalid under the laws of the Tribe.

5. The burden of proof for establishing that a marriage is invalid shall lie with the petitioner to demonstrate that such marriage is invalid under the provisions of this Chapter by a preponderance of the evidence.

Section 4-3-6. Order on Invalidity.

1. In addition to any other matters necessary for an order of the Court, an order declaring the invalidity of a marriage shall include:

a. The name, date of birth, and last four digits of the social security number of each of the parties;

b. The basis for the Court's jurisdiction;

c. The grounds for declaring or not declaring the marriage invalid;

d. If the Court finds the marriage is not invalid, a declaration that the marriage is not invalid;

e. If the Court finds the marriage is invalid, a declaration that the marriage is invalid as of the date of the marriage, unless the Court finds, after a consideration of all relevant circumstances, including the effect of a

retroactive declaration on third parties, that the interests of justice would be served by making the declaration not retroactive; and

f. Any other findings or orders the Court deems necessary or desirable.

2. A final declaration of invalidity shall restore the parties to the status of unmarried persons.

3. An order declaring a marriage invalid or denying that a marriage is invalid is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-3-7. Time Limit for Action. A declaration of invalidity must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

1. For a reason set forth in Section 4-3-3(1) or Section 4-3-3(2), no later than six (6) months after the petitioner obtained knowledge of the described condition;

2. For the reason set forth in Section 4-3-3(3), prior to the time the underage party reaches the age of majority; and

3. For the reason set forth in Section 4-3-3(4), at any time prior to the death of either party to the marriage or prior to six months after the estate of either party to the marriage is closed.

Section 4-3-8. Legitimacy of Children. Children born of a marriage declared invalid are legitimate.

Section 4-3-9. Conclusiveness of Declaration. A declaration of invalidity of a marriage is conclusive only as against the parties to the action and those claiming under them.

Section 4-3-10. Other Provisions of Title. The provisions of this Title relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive declarations of invalidity.

CHAPTER 4
DISSOLUTION AND SEPARATION

Section 4-4-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Promote the amicable settlement of disputes that have arisen between parties to a marriage;

2. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

3. Make reasonable provision for spouse and minor children during and after litigation; and

4. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 4-4-2. Authority of Court.

1. The Court shall have the authority to grant dissolution and separation of marriage to individuals whether the marriage was solemnized or registered under marriage license issued by the Tribal Court Administrator or under any other proper authority.

2. The Court shall also have the authority to order the disposition of property within the jurisdiction of the Court, spousal maintenance, child support, and child custody following a decree of dissolution of marriage or legal separation issued by the court of another jurisdiction which lacked jurisdiction over one of the spouses, over a child of the parties, or to dispose of the property.

Section 4-4-3. Grounds for Dissolution.

1. A dissolution of marriage may be granted if the Court finds that there has been an irretrievable breakdown of the marriage relationship supported by evidence that:

   a. The parties have lived separate and apart for a period of more than one-hundred eighty (180) days next preceding the commencement of the proceeding; or

   b. There is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

2. Defenses to dissolution of marriage and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, shall not be recognized and, to the extent such defenses previously existed, are abolished.

Section 4-4-4. Initiation of Proceedings.

1. Proceedings in the Court for a decree of dissolution or legal separation or for disposition of property after dissolution or legal separation shall be initiated by the filing of a petition.

2. Petitions may be filed by either or both spouses.

3. Petitions for dissolution of marriage or legal separation shall be captioned: "In Re the Marriage of: (name of spouse) and (name of spouse)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, tribal affiliation, and employment of each party;

b. The length of residence of each party in the territory of the Tribe;

c. The date of the marriage and the place at which it was registered;

d. The name, sex, date and place of birth, current residence and tribal affiliation of all living children of the marriage, and whether either of the parties is pregnant;

e. The basis for the Court's jurisdiction;

f. An allegation that the marriage is irretrievably broken;

g. Any arrangements as to support, custody, visitation and parenting time of the children and maintenance of a spouse; and

h. The relief sought.

5. A party to the marriage who is not a petitioner shall be considered a respondent.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-4-5. Temporary Orders.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses, over a child of the parties, or to dispose of the property, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

2. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the Court to issue a temporary injunction for any of the following relief:

a. Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

b. Enjoining a party from harassing or disturbing the peace of the other party or of any child;

c. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

d. Enjoining a party from removing a child from the jurisdiction of the Court; and

e. Providing other injunctive relief proper in the circumstances.

3. The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on

the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

4. Unless another time is specified in the temporary restraining order, a response may be filed within the time period provided in the rules of procedure for the Court for answering or responding to a motion.

5. On the basis of the showing made and in conformity with the provisions of this Chapter governing maintenance and Chapter 6 of this Title governing child support, the Court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

6. A temporary order or temporary injunction:

a. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

b. May be revoked or modified before a final decree on a showing by affidavit of the facts necessary for revocation or modification of a final decree under this Chapter; and

c. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

Section 4-4-6. Separation Agreements.

1. To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and/or support, custody, and visitation of their children.

2. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, visitation and parenting time of children, are binding upon the Court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unconscionable.

3. If the Court finds the separation agreement is unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

4. The terms of the separation agreement providing for child custody, visitation and parenting time shall comply with and be subject to approval of the Court in accordance with Chapter 5 of this Title.

5. The terms of the separation agreement providing for child support shall comply with and be subject to approval of the Court in accordance with Chapter 6 of this Title.

6. If the Court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support and custody, visitation and parenting time:

a. Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

b. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the Court has found the terms not unconscionable.

7. Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

8. Except for terms concerning the support, custody, visitation and parenting time of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

9. On the written agreement of the parties or on the Court's own motion, the Court may order or refer parties to a proceeding under this Chapter to mediation or traditional dispute resolution regarding disposition of their property, maintenance, and/or support, custody, and visitation of their children to assist them

in entering into a separation agreement pursuant to this Section, with the costs allocated between the parties, provided that:

a. The Court shall not order or refer the parties to mediation or traditional dispute resolution if an order for protection is in effect involving the parties or a preponderance of the evidence demonstrates that domestic or family abuse has occurred between the parties; and

b. If a party alleges that domestic or family abuse has occurred between the parties, but the allegation is not supported by a preponderance of the evidence, the Court shall order appropriate measures be taken to ensure the physical and emotional safety of the alleged victim of domestic or family abuse, including ordering that the parties not be required to have face-to-face contact and be placed in separate rooms during the mediation or traditional dispute resolution.

Section 4-4-7. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the marriage is irretrievably broken and, if so, determine the disposition of any property owned by the parties, maintenance of either of the parties, and support, custody, visitation, and parenting time of the parties' children.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall make a finding of irretrievable breakdown in accordance with the following:

a. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court, shall find the marriage is irretrievably broken;

b. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

i. Make a finding whether the marriage is irretrievably broken; or

ii. Continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later and may suggest to the parties that they seek counseling. The Court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the next hearing the Court shall make a finding whether the marriage is irretrievably broken.

c. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

5. The Court shall make findings on the disposition of property and maintenance in accordance with the provisions of this Chapter.

6. The Court shall make findings on the custody and visitation of the parties' children, including the entry or approval of a parenting plan, in accordance with Chapter 5 of this Title.

7. The Court shall make findings on child support for the parties' children in accordance with Chapter 6 of this Title.

Section 4-4-8. Decree.

1. The Court shall enter a decree of dissolution or a decree of legal separation if:

a. The Court finds that one of the parties, at the time the action was commenced, was domiciled within the territory of the Tribe and that the domicile has been maintained for at least ninety (90) days prior to the Court entering the decree; and

b. The Court finds that the marriage is irretrievably broken.

2. In addition to any other matters necessary for an order of the Court, a decree of dissolution or legal separation shall include:

a. The basis for the Court's jurisdiction;

b. The disposition of property and debts between the parties, or provision for a separate, later hearing to complete such matters;

c. If there are children from the relationship, findings and determinations with respect to child custody, including the entry or approval of a parenting plan, and child support in accordance with the provisions of this Title, or provision for a separate, later hearing to complete such matters;

d. Determinations with respect to maintenance of either spouse in accordance with the provisions of this Chapter, or provision for a separate, later hearing to complete such matters;

e. If it is a decree of dissolution, an order returning the surname of either party to their surname before the marriage, if requested;

f. An order for either or both parties to sign or deliver all necessary legal documents to effect the provisions of the decree; and

g. Any other findings or orders the Court deems necessary or desirable.

3. If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court shall grant the decree in that form unless the other party objects.

4. A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

5. A decree of dissolution shall terminate the marriage of the parties. A decree of legal separation shall not terminate the marriage of the parties.

6. No earlier than six (6) months after entry of a decree of legal separation, the Court on motion of either party shall convert the decree to a decree of dissolution of marriage.

7. The Tribal Court Administrator shall give notice of the entry of a decree of dissolution or legal separation to the

appropriate official of the jurisdiction where the marriage is registered, with the request that such official enter the fact of dissolution in the appropriate record.

8. A decree of dissolution or legal separation is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-4-9. Disposition of Property.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or to dispose of the property, the Court shall set apart to each spouse his or her separate property and shall divide the marital property, without regard to marital misconduct, in such proportions as the Court deems just and equitable after considering all relevant factors including:

a. The duration of the marriage and any prior marriage of either party;

b. Any antenuptial agreement of the parties;

c. The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;

d. Custodial provisions;

e. The value of the property set apart to each spouse;

f. Whether the apportionment is in lieu of or in addition to maintenance;

g. The opportunity of each for future acquisition of capital assets and income;

h. The contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates; and

i. The contribution of a spouse as a homemaker or to the family unit.

2. For purposes of this Chapter, "marital property" means all property, including retirement benefits, acquired by either spouse subsequent to the marriage except for property that is:

a. Separate property as provided in this Section; and

b. Excluded by valid agreement of the parties.

3. For purposes of this Chapter, "separate property" means property of a spouse that is:

a. Owned by the spouse before marriage and the increase, rents, issues and profits of that property;

b. Acquired by the spouse before or during the marriage by gift, bequest, devise, or descent or in exchange for property acquired by gift, bequest, devise, or descent, and the increase, rents, issues and profits of that property;

c. Acquired by the spouse after service of a petition for dissolution of marriage, legal separation or declaration of invalidity of marriage if the petition results in a decree of dissolution of marriage, legal separation or invalidity of marriage; and

d. Held in trust by the United States for the benefit of the spouse, whether acquired before or during the marriage.

4. In a proceeding under this Chapter, the Court may protect and promote the best interests of the child of the parties by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent child of the parties.

Section 4-4-10. Maintenance.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for maintenance following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

a. Lacks sufficient property to provide for his or her reasonable needs; and

b. Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in amounts and for periods of time the Court deems just, without regard to marital misconduct, and after considering all relevant factors including:

a. The financial resources of the party seeking maintenance, including marital property apportioned to him or her, his or her ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

b. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

c. The standard of living established during the marriage;

d. The duration of the marriage;

e. The age and the physical and emotional condition of the spouse seeking maintenance; and

f. The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.

3. Upon its own motion or upon motion of either party, the Court may order at any time that maintenance payments be made to the Tribal Court Administrator as trustee for remittance to the person entitled to receive the payments in accordance with the following:

a. The Tribal Court Administrator shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order; and

b. The parties affected by the order shall inform the Tribal Court Administrator of any change of address or of other condition that may affect the administration of the order.

4. The Court may order the person obligated to pay maintenance to make an assignment of a part of his or her periodic earnings or other income to the person entitled to receive the payments. The assignment shall be binding on the employer or other payor of the funds two (2) weeks after service upon it of notice that the assignment has been made. The employer or other payor shall withhold from the earnings or other income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. An employer shall not discipline, discharge from employment or refuse to employ any person because his or her wages are subject to assignment under this subsection. An employer who disciplines, discharges from employment, or refuses to employ a person because of an assignment under this subsection shall be subject to a civil fine not to exceed eight hundred dollars ($800).

5. If a party fails to make a required maintenance payment, the obligee may file a motion in the original proceeding to enforce the payment against the obligor, including requesting contempt proceedings.

Section 4-4-11. Child Custody. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for child custody following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or the child of the parties, the Court shall order the custody, visitation and parenting time, including the entry or approval of a parenting plan, in accordance with the provisions of Chapter 5 of this Title.

Section 4-4-12. Child Support. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for child support following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or the child of the parties, the Court shall order either or both parents owing a duty of support to a child to pay child support in accordance with the provisions of Chapter 6 of this Title.

Section 4-4-13. Legal Counsel's Fees. The Court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Chapter and for legal counsel's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The Court may order that

the amount be paid directly to the legal counsel, who may enforce the order in his or her name.

Section 4-4-14. Independence of Provisions of Decree. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation or parenting time is not suspended, but he or she may move the Court to grant an appropriate order.

Section 4-4-15. Modification and Termination of Decree.

1. Except as otherwise provided in this Chapter, either party subject to a decree which includes provisions for maintenance may, by motion in the same action in which the decree was issued, request the Court to modify or vacate the provision respecting maintenance in accordance with the following:

a. The provisions respecting maintenance may only be modified or vacated on the grounds of:

i. Changed circumstances so substantial and continuing as to make the terms unconscionable; or

ii. Unless it is otherwise agreed in writing or expressly provided in the decree that maintenance would continue, either party has died or the party receiving maintenance has remarried; and

b. The provisions of any decree respecting maintenance may be modified or vacated only as to installments accruing subsequent to the motion.

2. The provisions of a decree as to property disposition may not be revoked or modified unless the Court finds the existence of conditions that otherwise justify the reopening of a judgment under the laws of the Tribe.

3. The provisions of any decree respecting child custody may be modified in accordance with the provisions of Chapter 5. Unless otherwise agreed in writing or expressly provided in the decree, provisions respecting child custody shall terminate in accordance with the provisions of Chapter 5.

4. The provisions of any decree respecting child support may be modified in accordance with the provisions of Chapter 6. Unless otherwise agreed in writing or expressly provided in the

decree, provisions respecting child support shall terminate in accordance with the provisions of Chapter 6.

CHAPTER 5
CHILD CUSTODY AND VISITATION

Section 4-5-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Ensure that the best interests of children are the primary concern when making any orders regarding the physical or legal custody or visitation of children;

2. To assure that children have frequent and continuing contact with both parents after the parents have ended their relationship;

3. To encourage parents to share the rights and responsibilities of child rearing after the parents have ended their relationship; and

4. To maintain children's connection to their family and the Tribe even when their custody is in dispute.

Section 4-5-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Custody decree" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, visitation, or parenting time with respect to a child and includes permanent and temporary orders, and initial orders and modifications.

2. "Joint custody" means joint physical custody and joint legal custody.

3. "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

4. "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

5. "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

6. "Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the Court to order visitation with the other parent.

Section 4-5-3. Jurisdiction.

1. The Court shall have jurisdiction to decide child custody matters by initial or modification decree if:

a. The child has resided in the territory of the Tribe for at least six (6) months before commencement of the proceedings;

b. The child had been residing in the territory of the Tribe within six (6) months before commencement of the proceedings and is absent from the territory of the Tribe because of his or her removal or retention by a person claiming his or her custody or for other reason, and a parent or person acting as parent continues to live in the territory of the Tribe;

c. It is in the best interests of the child that the Court assume jurisdiction because:

i. The child and his or her parents, or the child and at least one contestant, have a significant connection with the Tribe; and

ii. There is available in the territory of the Tribe substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

d. The child is physically present in the territory of the Tribe and:

i. Has been abandoned; or

ii. It is necessary in an emergency to protect him or her because he or she has been subjected to or threatened with mistreatment or abuse or is neglected or dependent;

e. No other Indian tribe or state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), (c), or (d) of this subsection, or another Indian tribe or state has declined to exercise jurisdiction on the ground that the Tribe is the more appropriate forum to determine custody of the child, and it is in the child's best interests that the Court assume jurisdiction.

2. Except under paragraphs (d) and (e) of subsection (1) of this Section, physical presence of the child or of the child and one of the contestants in the territory of the Tribe is not alone sufficient to confer jurisdiction on the Court to make a child custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody.

Section 4-5-4. Continuing Jurisdiction.

1. Jurisdiction of the Court over a proceeding under this Chapter is exclusively retained until terminated by any of the following situations:

a. The Court determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with the Tribe and that substantial evidence is no longer available in the territory of the Tribe concerning the child's care, protection, training, and personal relationships;

b. The Court or a court of another Indian tribe or state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the territory of the Tribe; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over persons who leave the territory of the Tribe.

Section 4-5-5. Custody of Child.

1. Except as otherwise provided in this Chapter, each parent of an unemancipated child, including a presumed parent, is

equally entitled to the child's custody, services, and earnings and neither can transfer such custody, services, and earnings to any other person without the written consent of the other parent except in case of death, desertion, or abandonment.

2. Except as otherwise provided in this Chapter, each parent of a child has the following rights and duties whether the parent is the custodian or non-custodial parent, provided that the Court may restrict or exclude any right or duty if the Court states the reason in support of the restriction or exclusion in its order:

a. The right to access and obtain copies of the child's educational, medical, dental, insurance, and other records or information;

b. The right of access to information regarding health or dental insurance available to the child;

c. The right to be informed by school officials about the child's welfare, educational progress and status, and attend educational conferences concerning the child, provided no school shall be required to hold a separate conference with each parent;

d. The right to reasonable access to the child by written, telephonic, and electronic means;

e. The duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment, including the name of the health care provider and the place of treatment;

f. The duty to inform the other parent if the child is the victim of an alleged crime, including the name of the investigating law enforcement officer or agency unless the other parent is the alleged perpetrator;

g. The duty to immediately inform the other parent of a change in residential telephone number and address, unless the Court finds such information should be withheld because of safety concerns; and

h. The duty to keep the other parent informed of the name and address of the school the child attends, unless the Court finds such information should be withheld because of safety concerns.

3. Except as otherwise provided in this Chapter, in any proceeding under this Chapter, the Court shall determine whether to grant joint or sole legal and physical custody to the parents or proposed custodian of the child subject of the proceedings, taking into account:

a. The ability of the parents and/or proposed custodian to cooperate effectively and consistently in matters that directly affect the joint parenting of the child, but not considering the inability of the parents and/or proposed custodian to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;

b. The residential circumstances of each parent and proposed custodian; and

c. The best interests of the child.

4. Joint physical custody does not require an absolutely equal division of time between the parents and any proposed custodian.

5. A parent shall have sole responsibility for making routine decisions with respect to the child and for emergency decisions affecting the child's health and safety during that parent's parenting time.

6. Except for agreements and parenting plans related to custody permitted in this Chapter, an agreement, including an antenuptial agreement, which defines the rights or duties of the parties regarding physical or legal custody, parenting time, access, visitation, or other custodial rights or duties with respect to a child is void and may not be enforced.

Section 4-5-6. Visitation.

1. Except as provided in this Chapter, a non-custodial parent of a child is entitled to reasonable visitation rights, including parenting time, unless the Court finds by clear and convincing evidence, after a hearing, that visitation and/or parenting time would endanger the child's physical, mental, or emotional health.

2. Except as otherwise provided in this Chapter, any immediate or extended family member or person with a significant

connection to the child who is not granted custody of the child may be granted reasonable visitation rights unless the Court finds by clear and convincing evidence, after a hearing, that visitation would endanger the child's physical, mental, or emotional health or such visitation would interfere with the parent-child relationship.

3. Except as otherwise provided in this Chapter, a parent or any other immediate or extended family member or person with a significant connection to the child may file a petition under this Chapter at any time requesting visitation rights.

4. In a proceeding under this Chapter, the Court shall determine visitation and allocate parenting time according to the child's best interests. Except as otherwise provided in this Chapter, visitation and parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent. An order of the Court governing visitation shall protect the non-custodial parent's visitation rights where the non-custodial parent participates in family functions.

5. The Court may reduce, restrict or limit the visitation rights and/or parenting time of any person or any provision of a parenting plan if it finds, after a hearing:

a. In the case of a parent or custodian, the parent or custodian has willfully abandoned the child for an extended period of time;

b. In the case of a parent or custodian, the parent or custodian substantially refuses to perform parenting functions;

c. The person has a long term emotional or physical impairment resulting from drug, alcohol or other substance abuse that interferes with the person's ability to care for the child, including, in the case of a parent or custodian, the performance of parenting functions;

d. The person or a person residing with the person has engaged in physical, sexual, or emotional abuse of the child;

e. The person engages in abusive use of conflict that creates the danger of serious damage to the child's psychological development;

f. In the case of a parent or custodian, the parent or custodian withholds access to the child from the other parent for a protracted period without good cause;

g. The person or a person residing with the person has engaged in acts of domestic or family abuse, assault, or sexual assault which have caused bodily harm or the fear of such harm;

h. Any other basis for limiting or restricting custody or visitation provided in this Chapter; or

i. Such other factors as the Court expressly finds adverse to the best interests of the child.

6. Notwithstanding anything to the contrary in the laws of the Tribe, the Court may award visitation by and/or parenting time to a person who committed domestic or family abuse only if the Court finds that adequate provision for the safety of the child and the person who is a victim of domestic or family abuse can be made.

Section 4-5-7. Custody and Visitation When Sexual Assault.

1. Notwithstanding anything to the contrary in the laws of the Tribe, a person who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall have no right to nor be granted custody of, visitation of, or parenting time with the child unless the victim of the rape, incest, or sexual assault expressly and voluntarily consents to such custody, visitation or parenting time.

2. Notwithstanding anything to the contrary in the laws of the Tribe, a persons who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall be prohibited from bringing an action for custody, visitation or parenting time relating to such child.

Section 4-5-8. Allocation of Parental Responsibilities.

1. Except as otherwise agreed by the parties in writing at the time of the custody decree or otherwise provided in the custody decree, the custodian may determine the child’s upbringing, including his or her:

a. Education, including the choice of schools and tutors;

b. Health, including all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs; and

c. Extracurricular activities.

2. The Court may limit a custodian's authority, after hearing and motion by the non-custodial parent, if the Court finds by clear and convincing evidence that, in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his or her emotional development significantly impaired.

3. The parties may agree or the Court may, according to the child's best interests, allocate decision-making responsibilities between the parties, including when the Court orders joint legal custody.

Section 4-5-9. Best Interests of Child.

1. The Court shall determine custody, visitation, and parenting time in accordance with the best interests of the child, which shall include the best means to secure the child's sense of belonging to family, community and the Tribe. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents, but, between parents there is no presumption as to who will better promote the best interests of the child.

2. In determining the best interests of the child under this Chapter, the Court shall consider:

a. The wishes of the child's parent or parents as to his or her custody;

b. The wishes of the child as to his or her custodian, if the child is twelve (12) years of age or older;

c. The recommendation of the child's primary caretaker;

d. The love, affection, and other emotional ties existing between the parents or proposed custodian and child;

e. The interaction and interrelationship of the child with his or her parent or parents, siblings, extended family, any person who resides in, is present, or frequents the household where the child resides, and any other person who may significantly affect the child's best interests;

f. The child's adjustment to his or her home, school, and community;

g. The person best suited to provide parental guidance to the child in accordance with the beliefs, customs and traditions of the Tribe or, in the case of a non-member child, other cultural context of the child;

h. Availability of extended family to assist in the care and custody of the child;

i. The mental and physical health of all individuals involved, provided that a disability of a proposed custodian or the child shall not be determinative of custody unless the proposed custodial arrangement does not serve to protect the child's needs and sense of belonging;

j. The capacity and disposition of the proposed custodian to give the child love, affection, and guidance, and to continue educating and raising the child in the child's Tribal ways or, in the case of a non-member child, other cultural context of the child in addition to the child's religion or creed, if any;

k. Tribal affiliation of the parents and the child;

l. The child's Tribal, community, family and cultural background;

m. The extent of the participation of the proposed custodian in Tribal cultural activities or, in the case of a non-member child, other cultural activities of the child;

n. The making of false allegations, not made in good faith, by one parent or proposed custodian against the other, of harm to a child;

o. The effect of domestic or family abuse on the child if such abuse has occurred within the household of the child;

p. Except in cases in which a finding of domestic or family abuse has been made, the disposition of each proposed custodian to encourage and permit frequent and continuing contact with the child by the parents and other family of the child; and

q. Any other factors considered by the Court to be relevant to a particular proceeding under this Chapter.

3. In determining the best interests of the child, the Court may not use one factor to the exclusion of all others and shall not consider conduct of a parent or proposed custodian that does not affect his or her relationship to the child.

4. In a proceeding under this Chapter where the Court determines that domestic or family abuse has occurred:

a. There shall be a rebuttable presumption that it is detrimental to and not in the best interests of the child to be placed in the sole legal or physical custody or joint legal or physical custody of the perpetrator of the domestic or family abuse;

b. There shall be a rebuttable presumption that it is in the best interest of the child to be placed in the sole custody of and reside with the parent or proposed custodian who is not a perpetrator of domestic or family abuse in the location of that parent's choice, within or outside the territory of the Tribe;

c. In addition to the other factors that the Court must consider, the Court shall also consider:

i. The safety and well-being of the child and of the person who is the victim of domestic or family abuse as primary; and

ii. The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and

d. If a parent or proposed custodian is absent or relocates because of domestic or family abuse by the another party, the absence or relocation shall not be a factor that weighs against the parent or proposed custodian in determining custody, visitation, or parenting time.

Section 4-5-10. Initiation of Proceedings.

1. Proceedings in the Court for custody and/or visitation of a child shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A parent of the child;

b. If the child is not in the physical custody of one of his or her parents, a guardian or custodian of the child or another person who has physical care or custody of the child; or

c. Requesting visitation only, any immediate or extended family member or person with a significant connection to the child.

3. Petitions for custody and/or visitation of a child shall be captioned: "In Re the Custody of: (name(s) of child(ren)), (name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for a child custody or visitation order may be combined with a proceeding for invalidity of a marriage, dissolution of marriage, legal separation, or child support under this Title, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom custody and/or visitation is sought;

d. The relationship of the respondent to the child for whom custody and/or visitation is sought;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom custody

and/or visitation is sought or the reasons such information is unavailable;

f. If different from the petitioner and respondent and parental rights to the child have not been terminated, the names, last known addresses and tribal affiliation of the child's parents or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis for the petitioner requesting custody and/or visitation of the child;

j. If an agreement for custody and/or visitation exists, the details of such agreement and whether the petitioner requests an order upon such agreement;

k. A request that the Court enter an order for custody and/or visitation of the child.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children for whom custody and/or visitation is sought by the petitioner may be included in the same petition.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-5-11. Child Custody in Other Proceedings. The Court may enter a custody decree without a petition filed under this Chapter or a separate hearing in:

1. An invalidity of marriage proceeding under Chapter 3 of this Title;

2. A dissolution of marriage or legal separation proceeding under Chapter 4 of this Title;

3. A parentage proceeding under Chapter 7 of this Title;

4. A child support proceeding under Chapter 6 of this Title;

5. A child in need of assistance proceeding under Title III of this Code;

6. A child offender proceeding under Title III of this Code; or

7. Any other proceeding which permits or requires the provision of child custody, visitation and/or parenting time under the laws of the Tribe.

Section 4-5-12. Temporary Orders.

1. A party to a proceeding under this Chapter may move for a temporary custody order. The motion must be supported by an affidavit setting forth facts supporting the requested order. The Court may award temporary custody under the standards of this Chapter after a hearing, or, if there is no objection, solely on the basis of the affidavits.

2. If a proceeding for invalidity of marriage, dissolution of marriage, legal separation, or child support is dismissed, any temporary custody order is vacated unless a parent or the child's guardian or custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parties and the best interests of the child require that a custody decree be issued.

3. If a proceeding commenced under this Chapter in the absence of a petition for invalidity of marriage, dissolution of marriage, legal separation, or child support is dismissed, any temporary custody order is vacated.

Section 4-5-13. Interviews.

1. The Court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation and parenting time, if the child is twelve (12) years of age or older. The Court may permit legal counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be part of the record in the case.

2. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis, provided

such personnel are knowledgeable in the welfare of Indian children. The advice given shall be in writing and made available by the Court to legal counsel upon request. Legal counsel may examine as a witness any professional personnel consulted by the Court.

Section 4-5-14. Investigations and Reports.

1. In contested proceedings under this Chapter, and in other proceedings under this Chapter if a parent or the child's guardian or custodian so requests, the Court may order an investigation and report concerning custodial arrangements for the child. Such investigation and report shall be grounded in the cultural context of the child. The investigation and report may be made by a guardian ad litem appointed by the Court on behalf of the child or the Department of Social Services, provided the Department of Social Services determines that it has the resources and authority to furnish such services to the parties in the matter.

2. In preparing a report concerning a child, the investigator may consult any person who may have information about the child and his or her potential custodial arrangements. Upon order of the Court, the investigator may refer the child to professional personnel for diagnosis, provided that such professional personnel are able to make diagnoses grounded in the cultural context of the child. Upon order of the Court, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's guardian or custodian, provided the child's consent must be obtained if he or she has reached the age of sixteen (16) years unless the Court finds that he or she lacks mental capacity to consent. Subject to objection from any party, the Court shall receive and accept the investigator's report and consider such report as it would any other evidence presented.

3. The investigator's report shall be served on the legal counsel for any party and on any party not represented by legal counsel at least ten (10) days prior to the hearing. The investigator shall make available to legal counsel for any party and to any party not represented by legal counsel the investigator's file of underlying data, reports, complete texts of diagnostic reports made to the investigator, and the names and addresses of all persons whom the investigator consulted. Any party to the proceeding may call the investigator and any person whom he or she has consulted for cross-examination. A party may

not waive his or her right of cross-examination prior to the hearing.

Section 4-5-15. Parenting Plan.

1. In any proceeding under this Chapter, except a proceeding solely for visitation by an immediate or extended family member or person with a significant connection to the child, a parenting plan shall be developed and approved by the Court in accordance with this Section.

2. Any party to a proceeding under this Chapter may submit a proposed parenting plan to the Court for approval. To promote amicable settlement of disputes between parties regarding child custody and visitation, the parties may and are encouraged to submit a joint parenting plan. When a parenting plan has not been developed and submitted to the Court, the Court shall create the parenting plan in accordance with this Section.

3. On the written agreement of the parties or on the Court's own motion, the Court may order or refer parties to a proceeding under this Chapter to mediation or traditional dispute resolution to assist them in entering into a joint parenting plan pursuant to this Section, with the costs allocated between the parties, provided that:

a. The Court shall not order or refer the parties to mediation or traditional dispute resolution if an order for protection is in effect involving the parties or a preponderance of the evidence demonstrates that domestic or family abuse has occurred between the parties; and

b. If a party alleges that domestic or family abuse has occurred between the parties, but the allegation is not supported by a preponderance of the evidence, the Court shall order appropriate measures be taken to ensure the physical and emotional safety of the alleged victim of domestic or family abuse, including ordering that the parties not be required to have face-to-face contact and be placed in separate rooms during the mediation or traditional dispute resolution.

4. The objective of any parenting plan shall be:

a. To provide for the child's care and maintain the child's emotional well-being;

b. To provide for the child's physical care and to maintain the child's emotional stability;

c. To provide for the child's changing needs as the child grows;

d. To promote and preserve the child's cultural heritage and tribal affiliation, if any;

e. To set forth the authority and responsibilities of each parent and any other individual seeking custody;

f. To minimize the child's exposure to harmful parental conflict;

g. To encourage parents and other parties seeking custody to meet their responsibilities through the parenting plan rather than by relying on court intervention; and

h. To otherwise protect the best interests of the child consistent with this Chapter.

5. A parenting plan shall include, but not be limited to:

a. Legal custody and physical custody of the child;

b. Provisions for the child's living arrangements and for the custodial responsibility of each parent and/or other individual seeking custody, which shall include either:

i. A custodial schedule that designates in which party's home the child will reside on given days of the year including birthdays, vacations, holidays, and weekends including weekends with holidays or school in-service days preceding or following weekends; or

ii. A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in a subsequent proceeding.

c. Apportionment of parenting time, visitation, or other access to the child to the extent not included in provisions for the child's living arrangements;

d. A designation of decision-making responsibilities regarding the child;

e. Telephone access and transportation needs;

f. Provisions to ensure regular and continuous school attendance and progress for a school-age child;

g. Provisions for the parties to notify each other of a change of address, unless the Court finds such information should be withheld because of safety concerns; and

h. Any other issues and matters the parties agree to or the Court finds appropriate regarding the child.

6. A parenting plan may include:

a. Visitation with immediate or extended family members or other persons with a significant connection to the child;

b. Methods for dispute resolution other than a proceeding in the Court, including counseling, mediation, arbitration or traditional dispute resolution processes;

c. Provisions for suspension of parenting time, visitation, and other access until a modified custody order and parenting plan is in place when new findings of child abuse or neglect, domestic or family abuse, criminal activity affecting the best interests of the child, or violation of an order for protection occur; and

d. Consequences for failure to follow the parenting plan's provisions.

7. Each parenting plan filed under this Section shall be supported by an affidavit containing, to the extent known:

a. The name, address, tribal affiliation, and length of co-residence of any individuals with whom the child has lived for one (1) year or more, or in the case of a child less than one (1) year old, any individuals with whom the child has lived for any significant period of time since birth;

b. A description of the past allocation of caretaking and other parenting functions performed by both parents and any individual seeking an allocation of custodial responsibility, including at a minimum during the twenty-four (24) months preceding the filing of the proceeding;

c. A description of the employment and child-care schedules of any individual seeking an allocation of custodial responsibility, and any expected changes to these schedules in the future;

d. A schedule of the child's school and extracurricular activities;

e. A description of any limiting factors specified in this Chapter that are present in the case, including any restraining orders to prevent child abuse or domestic or family abuse, with case number and issuing court; and

f. A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

8. If a party fails to comply with a provision of an approved parenting plan, the other parties' obligations under the parenting plan are not affected.

9. The Court shall approve a submitted parenting plan if the plan meets all of the requirements of this Chapter and is in the best interests of the child. If the parenting plan lacks any of the elements required by this Chapter or is not in the child's best interests, the Court shall either:

a. Modify the parenting plan and approve it plan as modified;

b. Reject the parenting plan and order the parties to develop a new parenting plan; or

c. Reject the parenting plan and create a parenting plan that meets the requirements of this Chapter and is in the best interests of the child.

Section 4-5-16. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine the custody, visitation and parenting time of the child subject of the petition.

3. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from the hearing, but shall admit any person who has a direct and legitimate interest in the particular case and may admit any person who has a legitimate educational or research interest in the work of the Court. If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a proceeding under this Chapter be kept secret, the Court may make an appropriate order sealing the record.

4. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

5. Any person may request permission from the Court to participate in the hearing and the Court may grant the request, with or without a hearing, upon determining that the best interests of the child will be served by granting the request. The Court may attach appropriate conditions to any such grant of permission.

6. The Court shall determine the custody, visitation, and parenting time of the child in accordance with the provisions of this Chapter.

7. The burden of proof for establishment of custody, visitation, parenting time or a parenting plan of a child shall lie with the proponent of such custody, visitation, parenting time or parenting plan to demonstrate that such custody, visitation, parenting time or parenting plan is appropriate under the provisions of this Chapter by a preponderance of the evidence.

Section 4-5-17. Custody Decree.

1. In addition to any other matters necessary for an order of the Court, a custody decree shall include:

a. The basis for the Court's jurisdiction;

b. The legal custody of the child, which shall be sole or joint;

c. The physical custody of the child, which shall be sole or joint, and residence of the child;

d. If neither parent is granted sole physical custody, a designation of the custodian;

e. A parenting plan approved or created by the Court in accordance with this Chapter; and

f. Any other findings or orders the Court deems necessary or desirable.

2. A custody decree is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-5-18. Supervision.

1. The Court may order supervision and other restrictions in a custody decree if:

a. All parties agree to the order;

b. The Court finds that, in the absence of the order, the child's physical health would be endangered or his or her emotional development significantly impaired; or

c. The Court finds that domestic or family abuse has occurred.

2. An order for supervision or other restrictions may include any provision necessary to assure that the custodial or visitation terms of the decree are carried out and, in the case of a finding of domestic or family abuse, may also include:

a. An order that any exchange of the child shall occur in a protected setting;

b. An order that visitation or parenting time will be supervised by another person or agency;

c. An order that the perpetrator of domestic or family abuse attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of domestic or family abuse or other designated counseling as a condition of visitation;

d. An order that the perpetrator of domestic or family abuse abstain from possession or consumption of alcohol or controlled substances during visitation or parenting time and for twenty-four (24) hours preceding visitation or parenting time;

e. An order that the perpetrator of domestic or family abuse pay a fee to defray the costs of supervised visitation;

f. A prohibition on overnight visitation or parenting time;

g. A requirement of a bond from the perpetrator of domestic or family abuse for the return and safety of the child;

h. Whether or not visitation or parenting time is allowed, an order that the address of the child and the victim be kept confidential;

i. A referral, but not order, of the victim of domestic or family abuse to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family abuse, as a condition of receiving custody of, visitation of, or parenting time with the child; and

j. Any other provision necessary to provide for the safety of the child, the victim of domestic or family abuse, or other family or household member.

3. Supervision ordered under this Section may be carried out by the Court itself, an individual designated by the Court, a private agency paid by the parties, or the Department of Social Services, provided that the Department of Social Services determines that it has the resources and authority to furnish such services to the parties. If the Court allows a family or household member to supervise visitation or parenting time, the Court shall establish conditions to be followed during visitation or parenting time.

Section 4-5-19. Modification of Custody Decree.

1. Any party subject to a custody decree or a party to the action in which the custody decree was issued may, by motion in the same action in which the custody decree was issued, request the Court to modify the custody decree in accordance with this Section.

2. The Court shall modify a prior custody decree only if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of entry of the prior decree, that:

a. A change has occurred in the circumstances of the custodian, a parent, or the child, provided that a finding that domestic or family abuse has occurred since the issuance of the last custody decree shall be deemed a change of circumstances; and

b. The modification is necessary to serve the best interests of the child.

3. In considering a motion to modify a custody decree, the Court shall retain the custodian appointed pursuant to the prior custody decree unless:

a. The custodian agrees to the modification;

b. The child has been integrated into the family of another person with consent of, or without objection from, the custodian;

c. The child's present environment endangers seriously his or her physical, mental, moral, or emotional health; or

d. The Court has found the custodian has willfully and persistently denied custody, visitation rights or parenting time with respect to a child to another at least twice within three (3) years because the custodian failed to comply with the custody decree.

4. If a custodian seeks to relocate with the child for more than thirty (30) days to a residence which is more than sixty (60) miles from the current residence or otherwise substantially changes the geographical ties between the child and any person entitled to visitation with the child under a custody decree, the custodian shall seek a modification of the custody decree pursuant to this Section unless there is prior written agreement for the relocation. A hearing on any modification due to an intent to relocate shall be given a priority on the Court's docket. In determining whether the modification is in the best interests of the child, the Court shall take into account all relevant factors and:

a. The reasons the custodian wishes to relocate with the child;

b. The reasons why any party objects to the proposed relocation;

c. The good faith of each of the parties in requesting or opposing the relocation;

d. The history, relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent or custodian, sibling, and other significant person in the child's life;

e. Prior agreements of the parties;

f. Whether either parent or a person entitled to visitation with the child is subject to restrictions under this Chapter;

g. The age, developmental stage, and needs of the child, and the anticipated impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

h. The quality of life, resources, and opportunities available to the child and to the custodian at the existing location and at the proposed new location;

i. The presence or absence of extended family at the existing location and at the proposed new location;

j. The continued cultural relationship between the child and the Tribe or, in the case of a non-member child, other cultural relationships of the child;

k. Any advantages of the child remaining with the custodian;

l. Any alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

m. The financial impact and logistics of the relocation or its prevention;

n. Whether the Court will be able to fashion reasonable visitation and/or parenting time if the relocation is permitted; and

o. Any other relevant factors bearing on the best interests of the child.

5. The Court may modify the visitation and parenting time provisions of a custody decree whenever modification would serve the best interests of the child, except the Court shall not expand the visitation or parenting time of a person whose visitation rights have been reduced or restricted pursuant to Section 4-5-6 of this Chapter unless the person demonstrates a substantial change in circumstances specifically related to the basis for the reduction or restriction.

6. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the grounds for modifying the custody decree.

7. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding and any other individual granted custodial responsibilities or visitation under the prior custody decree.

8. In addition to any other remedies or sanctions provided for under the laws of the Tribe, legal counsel fees and costs shall be assessed against a party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

Section 4-5-20. Enforcement of Custody Decree.

1. Any party subject to a custody decree or a party to the action in which the custody decree was issued may, by motion in the same action in which the custody decree was issued, request the Court to enforce the custody decree if another party fails to comply with the decree.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the failure to comply with the custody decree and the remedy requested.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may enforce a custody decree pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that another party has failed to comply with the custody decree.

5. The following remedies shall be available for enforcement of a custody decree and may be applied cumulatively:

a. If a substantial amount of parenting time has been made unavailable to the movant, compensatory parenting time, unless providing such compensatory parenting time is not consistent with the child's best interests;

b. Impose a civil fine of up to five hundred dollars ($500) on the party;

c. Require the party to post a bond with the Court for a specified period of time to secure the party's compliance;

d. Award reasonable attorney's fees and costs;

e. Require the party who violated the custody decree to reimburse the other party for costs incurred as a result of the violation of the decree;

f. Injunction;

g. Contempt proceedings in accordance with the laws of the Tribe; and

h. Any and all other enforcement remedies available to enforce an order of the Court if the Court finds such remedies to be in the best interests of the child involved.

Section 4-5-21. Interference with Custody.

1. In addition to any other remedy available under the laws of the Tribe, if the Court finds that a person has willfully and persistently denied custody, visitation rights or parenting time with respect to a child to another in violation of a custody decree, the Court may:

a. Find the person in contempt of court in accordance with the laws of the Tribe;

b. Award the other person reasonable legal counsel's fees and costs; or

c. Impose a civil fine on the person in an amount not to exceed one thousand dollars ($1,0000) for each occurrence of denial of custody, visitation rights or parenting time.

2. It shall be a defense to an allegation of denial of custody, visitation rights or parenting time that the other party voluntarily relinquished the actual care, control, and possession of the child for the time involved in the allegation.

Section 4-5-22. Foreign Custody Decrees.

1. Any party subject to a custody decree made by the court of another federally recognized Indian tribe or state may, by petition, request the Court to recognize and enforce such custody decree in accordance with this Section.

2. A petition filed under this Section shall include:

a. Two copies, including one certified copy, of all custody decrees to be recognized and enforced, including any modification of a decree; and

b. Any specific remedies or enforcement allowed under the laws of the Tribe sought and the grounds for such remedies or enforcement.

3. Upon the filing of a petition under this Section, a summons shall be issued and served in accordance with the Tribal Rules of Civil Procedure. In addition to all other requirements of a summons issued by the Court, the summons shall also state that any person claimed to be bound by the order shall have the right to object to the recognition and enforcement of the custody decree within the time permitted as provided in this Section and that if no such objection is filed, the custody decree will be recognized and enforced without a hearing.

4. A party served with a summons pursuant to this Section shall have fourteen (14) days from the date of service of such summons to file an objection to recognition and enforcement of the custody decree.

5. If an objection is filed within the time period allowed, the Court shall set the matter for hearing. If no objections are timely filed, the Tribal Court Administrator or his or her designee shall issue a certification that no objections were timely filed and the Court shall enter an order that the custody decree is recognized and enforced pursuant to this Section.

6. Notwithstanding any objections filed and except as provided in this Section, the Court shall recognize and enforce a custody decree made by a court of another federally recognized

Indian tribe or state unless the objecting party demonstrates to the Court at least one of the following:

a. The court did not have subject matter jurisdiction to hear the matter and enter an order;

b. The court did not have personal jurisdiction over the parties claimed to be bound by the order; or

c. The parties claimed to be bound by the order were not given reasonable notice and opportunity to be heard.

7. The Court may, in its discretion, decline to recognize and enforce a custody decree made by a court of another federally recognized Indian tribe or state pursuant to this Section if it finds that such federally recognized Indian tribe or state does not or would not recognize or enforce a custody decree issued by the Court under a standard substantially similar to the standard under this Section. In such cases, the Court may:

a. Apply the standard of this Section;

b. Apply the standard that would be applied by such federally recognized Indian tribe or state to a custody decree of the Court; or

c. Determine whether to recognize and enforce the custody decree in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

8. If the objecting party demonstrates to the Court that an appeal from the custody decree is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the custody decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

9. The Court shall not seek or make a modification of any custody decree subject to recognition and enforcement under this Section unless:

a. The Court has jurisdiction to enter such a custody decree itself, notwithstanding the existence of the prior action in the court or administrative agency of the other federally recognized Indian tribe or state; and

b. Either:

i. The court of the other federally recognized Indian tribe or state no longer has exclusive, continuing jurisdiction to modify the decree, has declined to exercise such jurisdiction, or has determined that the Court would be a more convenient forum; or

ii. The child, the child's parents, and any person acting as a parent do not presently reside in the jurisdiction which issued the child support order.

10. Any custody decree issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

11. No custody decree issued by a foreign court shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

12. Except for any limitations under this Section, a custody decree recognized pursuant to this Section shall be treated in all respects as a custody decree of the Court and may be enforced in the same manner as though it was originally issued by the Court.

13. This Section shall apply to a custody decree issued by the Court that has been lawfully modified by the court of another jurisdiction.

CHAPTER 6
CHILD SUPPORT

Section 4-6-1. Purpose. Children of the Tribe are one of its most important resources and the support of children is of paramount importance to the Tribe. The primary purposes and objectives of this Chapter are:

1. To establish the legal responsibility of parents to provide financially for their children's food, clothing, shelter, medical care, education and general well being;

2. To provide and ensure that all children within the jurisdiction of the Tribe receive adequate support to prepare such

children to take their places as responsible adult members of the Tribe and community;

3. To establish a fair and equitable process for establishing, modifying and enforcing child support orders in a manner which provides for consistent treatment of all persons in similar circumstances;

4. To determine child support amounts and payments based on the real earning capability of parents demonstrated in current and prior work history;

5. To improve the efficiency of establishing child support obligations and amounts and enforcement of child support;

6. To preserve and strengthen family ties whenever possible; and

7. To preserve and strengthen a child's cultural and Tribal identity wherever possible.

Section 4-6-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Arrearage" means unpaid amounts of child support, medical support, child care, or unreimbursed medical expenses that accrue pursuant to an obligor's failure to pay child support pursuant to, or other failure to comply with, a child support order and includes any past child support included in a child support order which does not contain terms for repayment of such past child support.

2. "Child care support" means a portion of child support allocated for child care expenses of a child.

3. "Child support guidelines" means the child support guidelines promulgated by the Law and Justice Committee which establish the amount of child support for a child.

4. "Child support obligation" means the financial obligation a parent has towards his or her child, including for health insurance coverage or other medical support and child care support, whether such obligation is established through judicial or administrative process, by stipulation, by parentage of the child, by the laws of the Tribe, or otherwise.

5. "Child support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court, tribunal or administrative agency of a competent jurisdiction requiring the payment of child support in periodic amounts or in a lump sum, including for a child who has attained the age of majority under the law of the issuing jurisdiction.

6. "Disposable income" means the income of an individual remaining after deduction of any amounts required by law to be withheld, excluding deductions for child support, spousal support, garnishment and anything voluntary.

7. "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the Tribe, including, but not limited to salaries, wages, commissions, self-employment income, worker's compensation, unemployment benefits, annuity payments, retirement and pension payments, disability payments, spousal maintenance, gaming winnings, and any form of benefits derived from an individual's status as an enrolled member of a federally recognized Indian tribe.

8. "Medical support" means providing health care coverage for a child by carrying health insurance for the child or by contributing to the cost of health insurance, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the child.

9. "Non-cash child support" means child support provided to a family in the nature of goods and/or services rather than in cash which directly contributes to the needs of a child, such as making repairs to automobiles or a home, clearing or upkeep of property, providing a means for travel, providing needed resources for a child's participation in Tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.

10. "Obligee" means a person or government agency to which child support payments are owed.

11. "Obligor" means a person who is required to pay child support.

12. "Public assistance" means temporary financial assistance provided to eligible persons by a government agency based on need.

Section 4-6-3. Continuing Jurisdiction.

1. Jurisdiction of the Court over a proceeding under this Chapter is retained until terminated by any of the following situations:

a. The child subject of the action becomes an adult;

b. All of the parties to the proceeding have filed written consents with the Court to allow the court of another jurisdiction to modify the child support order issued in the proceeding or assume continuing, exclusive jurisdiction over the order; or

c. The Court dismisses the proceeding or enters an order closing the matter and removing it from its continuing jurisdiction.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over individuals who leave the territory of the Tribe.

Section 4-6-4. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

b. The child subject of the proceedings and his or her legal counsel or guardian ad litem;

c. The child's parent, guardian or custodian and his or her legal counsel;

d. Legal counsel requesting discovery as permissible under the laws of the Tribe;

e. The Department of Social Services;

f. The Domestic Violence Department;

g. The Tribal Attorney;

h. Another court having jurisdiction over an action involving the parties or the child subject of the action;

i. An agency of another government engaged in the establishment of parentage, child support, or the enforcement of child support for the child subject of the proceedings; or

j. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a child to another person:

a. Against whom an order for protection is in effect with respect to the party or the child; or

b. If the Court has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child.

4. When providing service by publication in a proceeding under this Chapter, the name of the child in the matter shall not be disclosed, provided that the child's initials may be published.

5. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 4-6-5. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

1. The parties and their legal counsel;

2. Witnesses; and

3. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-6-6. Child Support Guidelines.

1. Subject to the approval of the Tribal Council, the Law and Justice Committee shall establish by rule of the Court child support guidelines which shall apply to all child support cases that come before the Court. Subject to the approval of the Tribal Council, the Law and Justice Committee may, in lieu of developing child support guidelines, designate the child support guidelines of a state as the child support guidelines of the Tribe.

2. The guidelines shall establish the scale of minimum child support contributions and shall be used to determine the amount an obligor must pay for support of a child.

3. The guidelines shall, at a minimum:

a. Take into account:

i. All earnings, income and resources of both parents, including real and personal property;

ii. Non-cash contributions of both parents, including fuel, clothing and child care, provided that the guidelines identify the types of non-cash resources which are permitted and the specific dollar amount of the support obligation which the non-cash resources satisfy;

iii. The earnings history and potential of each parent;

iv. The reasonable necessities of the child and each parent;

v. The number of children to be supported;

vi. The educational, physical and emotional needs of the child for whom child support is sought;

vii. Any preexisting child support orders the parents are subject to;

viii. Any other current dependents of both parents other than the child for whom child support is sought;

ix. The percentage of parenting time of each parent, whether designated as visitation, physical custody, or parenting time, provided that the parenting time of less than ten percent (10%) shall not be taken into account; and

x. Any other criteria the Law and Justice Committee determines to be appropriate;

b. Set forth standards for determining and applying imputed income for a parent who is voluntarily unemployed or voluntarily and unreasonably underemployed;

c. Reflect the best interests of the child;

d. Be based on specific descriptive and numeric criteria;

e. Result in a computation of an amount of child support which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care, recreation and goods and services required by physical and/or mental disability;

f. Provide for the actual child care expenses reasonably necessary to enable both parents to maintain employment or education, or to conduct an active search for employment;

g. Provide for the child's health care needs, through health insurance coverage or otherwise, which supplements any health care provided by the Tribe or another government, where appropriate;

h. Provide for a minimum child support amount per child;

i. Provide for circumstances, which may support written findings on the record of a Court proceeding for the award of child support, in reducing support contributions on the basis of hardship to parent paying child support or other children while considering the best interests of the child who is subject of the Court proceeding; and

j. Provide for an imputed income to be applied when the Court has no reliable evidence upon which to base a child support award.

4. The guidelines may provide for certain circumstances which will permit deviation from the standard formula of the guidelines, including, but not limited to:

a. Costs of a health plan or insurance incurred by the parents; and

b. Social security, veteran's benefits or other government benefits paid to the child, or another administering the funds for the use and benefit of the child, as a result of a parent's disability or retirement.

5. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award that results from the application of the guidelines established pursuant to this Section is the correct amount of child support to be awarded.

6. The guidelines shall be reviewed and updated at least every four (4) years to ensure that their application results in the determination of appropriate child support amounts, including accounting for increases or decreases in the costs associated with the care and support of children.

Section 4-6-7. Duty to Support Child.

1. The parents of a child are jointly and severally obligated for the necessary maintenance, education and support of the child suitable to the child's circumstances and in accordance with their respective means.

2. If the parent of a child is a minor, the parents of the minor parent shall bear the responsibility for support of the child until the minor parent reaches the age of majority or is emancipated.

3. The termination of parental rights to a child terminates the parent's child support obligation from the date of such termination of parental rights, but not before.

4. Subject to the circumstances of each case, any other person, agency, organization or institution may be secondarily liable for the support of a child, provided the Court finds that such person, agency, organization or institution has assumed the obligation of support.

5. The Court may compel either or both parents to provide for the support of their child in accordance with this Chapter.

6. An agreement purporting to relieve a person with a duty to support a child of any current or future duty of child support is void and may not be enforced.

Section 4-6-8. Duration of Support Obligation.

1. Unless dates for the commencement or termination of a child support obligation are specified by an order of child support, an order of child support is effective in the month in which the order is entered and continues until the end of the month in which the child support obligation terminates as provided in this Section.

2. Except as otherwise provided in this Section, a parent's child support obligation terminates upon the earliest of:

a. The date of entry of an order terminating the parent's parental rights to the child or the effective date of such termination, whichever is later, but not prior to such date;

b. The date of entry of an adoption decree for the child or the effective date of such adoption, whichever is later, but not prior to such date, provided the parent's parental rights to the child are not retained;

c. The date of entry of an order of emancipation of the child or the effective date of such emancipation, whichever is later, but not prior to such date, provided that the obligation of support shall resume upon the revocation of such emancipation;

d. The date entered on a marriage certificate if the child lawfully marries, but not prior to such date;

e. The death of the child or the parent; or

f. When the child reaches the age of majority.

3. The Court, in its discretion, may order the payment of child support to continue after the age of majority if:

a. The child continues to reside with the person to whom child support is paid and requires substantial care

because of a mental or physical disability and will not be capable of self-support and the disability exists or the cause of the disability is known to exist on or before the date the child reaches the age of majority, provided that payment of child support shall terminate at the end of the month in which the child obtains the age of twenty-one (21);

b. The child is still in primary or secondary school when he or she reaches the age of majority and continues to reside with the person to whom child support is paid, provided that payment of child support shall terminate at the end of the first month in which the child:

i. Graduates; or

ii. Otherwise ceases to attend school on a regular basis; or

c. It is appropriate to provide for the medical support of a child who attends post-secondary school, including college or university, provided that payment of medical support shall terminate at the end of the month in which the child:

i. Graduates;

ii. Otherwise ceases to attend school on a regular basis; or

iii. Reaches the age of twenty-four (24) years.

4. If an arrearage for child support or fees or costs exists at the time a child support obligation terminates, payments shall continue in the same amount and be applied to the arrearage until all arrearages and fees or costs are satisfied or until further order of the Court.

Section 4-6-9. Amount of Support Obligation.

1. Payments ordered for the support of a minor child shall be in such amounts as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

2. Unless the Court finds that the best interests of the child require a lump sum child support payment, child support shall be on a monthly basis, due and payable on the first day of each month, provided that the monthly basis of child support payments shall not affect the availability of wage withholding or garnishment based on an obligor's pay period.

3. The Court shall first determine the amount of child support payments by applying the child support guidelines established by the Law and Justice Committee pursuant to this Title.

4. Upon request of a party, the Court may deviate from the amount of child support payments which would be required under the child support guidelines if, after considering all of the circumstances of the case, the Court:

a. Finds that use of the child support guidelines is unjust to or inappropriate for the child or any of the parties;

b. Identifies the amount of child support that would be required under the child support guidelines; and

c. Makes findings of fact as to the criteria that justify varying from the child support guidelines and the basis for the amount ordered.

5. This Section shall not prohibit or limit the Court from entering a child support order that is agreed to by the parties that deviates from the child support guidelines, provided such agreement is in the best interests of the child.

6. Until a child support order is entered, the amount of a parent's child support obligation shall be the amount determined in accordance with the child support guidelines commencing on the first day of a parent's physical absence from the home for a period of at least thirty (30) consecutive days where the nature of such absence is the result of substantial severance of marital and/or family ties and responsibilities resulting in the child losing or having a substantial reduction of physical care, communication, guidance and support from the parent.

Section 4-6-10. Child Care Expenses.

1. The Court may order the payment of child care expenses of a child where such expenses are necessary for any of the parties

to be employed, seek employment, or attend school or training to enhance employment income. Such child care expenses shall be divided between the parties based on their proportionate share of income determined pursuant to the child support guidelines, provided that any child care support ordered must be based on the actual child care expenses incurred and shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the child.

2. The Court shall determine child care expenses in accordance with the following:

a. The Court shall require verification of employment or school attendance and documentation of child care expenses from the parties;

b. If child care expenses fluctuate during the year because of a party's seasonal employment or school attendance or extended periods of parenting time with the other party, the Court shall determine child care expenses based on an average monthly cost; and

c. The Court may allow the party with whom the child does not reside to care for the child while the party with whom the child resides is working or attending school, provided that allowing the party with whom the child does not reside to care for the child shall not be a reason to deviate from the guidelines.

3. If there is a substantial increase or decrease in child care expenses, the parties may request that the Court modify the order in accordance with the provisions of this Chapter and the Court may provide that a change in the amount of the child care support which is based on a substantial increase or decrease in the actual child care expenses is effective as of the date the expense is increased or decreased.

4. An order to pay child care support under this Section shall separately state the amount allocated for child care support. Such amount shall be considered child support but shall not be subject to a cost-of-living adjustment.

Section 4-6-11. Medical Support.

1. The Court may order a party to provide medical support for the child. An order to provide medical support may require one or both parties to:

a. Provide medical, hospital, dental and other health insurance for the child; and

b. Pay the medical, hospital, dental or other health care related expenses of the child not covered by insurance.

2. If a party has appropriate health insurance, the Court shall order the party to carry health insurance for the child. Health insurance shall be considered appropriate if it is accessible by the child, provides comprehensive coverage, and is reasonable in cost. If more than one party has appropriate health insurance, the Court shall order the party with the most appropriate health insurance to carry health insurance for the child, provided that if all available health insurance is comparable with regard to accessibility and comprehensiveness for the child, the Court shall presume that the least costly health insurance is the most appropriate.

3. The Court shall order the actual health care of the child not covered by appropriate health insurance, including if no party has appropriate health insurance available and all unreimbursed and uninsured health expenses, to be paid by the parties based on their proportionate share of income determined pursuant to the child support guidelines.

4. When the Court orders a party to carry health insurance for a child that is provided by an employer or other third party, notice of such order shall be served on such employer or other third party in accordance with the Tribal Rules of Civil Procedure within ten (10) business days of entry of the order. Such notice shall include:

a. A copy of the order to provide medical support;

b. Information regarding the employer's or other third party's rights and responsibilities under this Section; and

c. The civil fines and other remedies under this Section.

5. An employer or other third party who has been properly served with a notice regarding medical support is required to:

a. If applicable or necessary, forward the medical support order to its health plan administrator within ten

(10) business days after the notice was served on the employer or other third party;

b. If enrollment of the party ordered to carry health insurance for the child is necessary to obtain dependent health care coverage under the plan and the party is not enrolled in the health plan, enroll the party in the plan;

c. Enroll the child as a beneficiary in the health plan and withhold any required premiums from the income or wages of the party ordered to carry health insurance for the child;

d. Enroll the party, if necessary, and the child immediately and without regard to any open enrollment periods;

e. Within thirty (30) calendar days after the notice was served on the employer or other third party, provide written proof to the other parties to the order and the Court that the child has been enrolled or that application for enrollment has been made; and

f. Promptly notify the other parties to the order and the Court in writing:

i. When there is any change in the applicable insurance coverage;

ii. When the party ordered to carry health insurance for the child terminates employment or otherwise ceases to be entitled to health insurance from the employer or other third party, and provide the party's last known address and the name and address of his or her new employer, if known;

iii. Of the employer's or third party's inability to comply with the order for any reason.

6. A requirement that a child be covered by health insurance shall promptly terminate as to future coverage when the employer or other third party receives notice from the Court that the coverage is no longer required.

7. If an employer or other third party knowingly fails to comply with an order under this Section after being served with a notice of the order, the Court may:

a. Find the employer or other third party in contempt in accordance with the laws of the Tribe;

b. Hold the employer or other third party liable for one hundred percent (100%) of any uninsured medical expenses incurred by the child while the child was eligible to be enrolled in the health plan and for any other premium costs incurred as a result of the employer's or other third party's failure; and

c. Impose a civil fine on the employer or third party in an amount not to exceed eight hundred dollars ($800).

8. An employer shall not discipline, discharge from employment or refuse to employ any person because he or she is ordered to provide health insurance for the person's child. An employer who disciplines, discharges from employment, or refuses to employ a person because of an order to provide health insurance for the person's child shall be subject to a civil fine not to exceed eight hundred dollars ($800).

9. A party ordered to provide health insurance for a child may challenge such order at any time by motion. Such a motion shall set forth in clear and concise terms the basis for challenging the order. The Court shall hold a hearing on a motion filed under this subsection upon notice given to the parties to the child support proceeding and may withdraw or modify the order to provide health insurance, as appropriate, if the movant proves one or more of the following by a preponderance of the evidence:

a. The enrollment of the child in the health insurance plan is improper due to a mistake of fact; or

b. There is an agreement between the parties for an alternative method of providing health insurance for the child approved by the Court.

10. If a party is ordered to provide health insurance for a child, such party shall:

a. Provide written notice to the other party of any change in the applicable insurance coverage; and

b. Be liable for any medical, hospital, dental or other health expenses incurred from the date of the order that would have been covered by insurance had it been in

force, if such fails to maintain the insurance coverage for the child.

11. The Tribe shall comply with an order issued by the Court in accordance with this Section for any person employed by the Tribe, provided that the Tribe shall not be subject to any fines, penalties or other enforcement provisions in this Section, except that the Court may find an officer or employee of the Tribe responsible for enrolling the child in the health plan in contempt in accordance with the laws of the Tribe for refusal to comply with an order issued by the Court in accordance with this Section without regard to any immunity of such officer or employee.

Section 4-6-12. Payment to Court.

1. Unless the Court finds that child support payments must be made to another person or agency, including an agency to whom child support payments have been assigned, or there is good cause that payment should be made directly to the obligee, any child support payments ordered by the Court, including past due support, arrearages and reimbursement of public assistance, shall be paid to the Tribal Court Administrator or his or her designee, on behalf of the Court, for remittance to the obligee or other person entitled to receipt of such payments.

2. Unless provided otherwise by a child support order or applicable law, with each child support payment received, the Tribal Court Administrator shall:

a. First apply the payment to satisfy current child support and, second, to satisfy any arrearages; and

b. Remit any portion of the payment due a government agency for the provision of public assistance and any remaining amount not remitted to such government agency to the obligee.

3. If the Tribal Court Administrator receives a child support payment pursuant to a request for assistance in collecting support from another child support enforcement agency, the Tribal Court Administrator shall apply and remit the payment in accordance with its arrangement with the child support enforcement agency.

Section 4-6-13. Exemption from Attachment. Except as expressly provided in this Chapter, child support shall not be subject to execution, garnishment, attachment, or other process except to satisfy that child support.

Section 4-6-14. Voluntary Agreement. In lieu of or in settlement of a proceeding under this Chapter, the parents may enter into a voluntary child support agreement which may include provisions for medical support and child care expenses in accordance with this Chapter. The agreement shall be submitted to the Court for approval, subject to any conditions and limitations the Court may impose. Once the agreement is filed with the Court and approved by the Court, such agreement shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as a child support order entered by the Court and shall be enforceable and subject to modification in the same manner.

Section 4-6-15. Initiation of Proceedings.

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court for a child support order shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A parent, guardian, or custodian of the child for whom support is sought;

b. A parent, guardian or other legal representative of a minor parent on behalf of or for the benefit of the minor parent's child; or

c. The Department of Social Services, on behalf of the Tribe, for a child in its custody for whom support is sought.

3. Petitions for a child support order shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for a child support order may be combined with a proceeding for invalidity of a marriage, dissolution of marriage, legal separation, or child custody under this Title, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address, and tribal affiliation of the petitioner;

b. The name, last known address, tribal affiliation, and employment of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom support is sought;

d. The relationship of the respondent to the child for whom support is sought;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom support is sought or the reasons such information is unavailable;

f. If different from the petitioner and respondent and parental rights to the child have not been terminated, the names, last known addresses and tribal affiliation of the child's parents or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis for the respondent's obligation to provide support for the child;

j. If an agreement for support exists, the details of such agreement and whether the petitioner requests an order upon such agreement;

k. A request that the Court enter a child support order.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children for whom child support is sought by the petitioner may be included in the same petition.

7. A petition may be filed under this Chapter and a child support order entered any time prior to the child reaching the age of majority and for an additional three (3) year period following the child reaching the age of majority, and it may include

retroactive relief to the date of the child's birth or two (2) years prior to the date of the filing of the petition, whichever is less.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-6-16. Child Support in Other Proceedings. The Court may enter a child support order without a petition filed under this Chapter or a separate hearing in:

1. An invalidity of marriage proceeding under Chapter 3 of this Title;

2. A dissolution of marriage or legal separation proceeding under Chapter 4 of this Title;

3. A parentage proceeding under Chapter 7 of this Title;

4. A child custody proceeding under Chapter 5 of this Title;

5. A child in need of assistance proceeding under Title III of this Code;

6. A child offender proceeding under Title III of this Code; or

7. Any other proceeding which permits or requires the provision of child support under the laws of the Tribe.

Section 4-6-17. Orders to Facilitate Proceedings. In any proceeding under this Chapter, on motion of any party or on the Court's own motion, the Court may issue orders, including subpoenas, necessary to facilitate the proceeding and the establishment and collection of child support, including orders to assist in locating a parent or other party responsible for the support of a child and determining the employment and income of a party.

Section 4-6-18. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the respondent has a child support obligation

for the child named in the petition and, if so, the amount of the obligation, and to enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. The Court shall enter a child support order if the Court finds that any party has an obligation to support the child and pay child support to another under the laws of the Tribe.

5. The burden of proof for establishment of an obligation to support and the amount of child support shall lie with the proponent of such obligation and amount to demonstrate that such obligation and amount are appropriate under the provisions of this Chapter by a preponderance of the evidence.

Section 4-6-19. Child Support Order.

1. In addition to any other matters necessary for an order of the Court, a child support order shall include:

a. The name, date of birth, and last four digits of the social security number of each of the parties, including the child for whom support is sought;

b. The basis for the Court's jurisdiction;

c. Findings that state each parent's gross income, income subject to child support, and any other significant evidentiary factors affecting the child support determination;

d. If the Court deviates from the child support guidelines, findings that state the amount of child support computed under the child support guidelines, the reasons for the deviation, and how the deviation serves the best interests of the child;

e. The specific amount of child support to be paid and by whom;

f. The frequency with which child support payments will be made or, if in the best interests of the child, that the child support will be paid as a lump sum;

g. That child support payments are to be made to the Tribal Court Administrator in accordance with this Chapter, unless the Court finds that payments must be made to another person or agency receiving payments for the child or directly to the obligee;

h. That child support payments shall be distributed to the custodial parent, guardian or custodian of the child, or, if there is a showing the payments to the custodial parent, guardian or custodian are not in the best interest of the child, a trustee or conservator of the child;

i. If child care support is included, the amount of child support allocated for child care expenses;

j. If appropriate health insurance for the child is available:

i. Which parent must carry health insurance for the child;

ii. The cost of premiums and how the cost is allocated between the parents;

iii. How unreimbursed expenses will be allocated and collected by the parents; and

iv. The circumstances, if any, under which the obligation to provide health insurance for the child will shift from one parent to the other;

k. If appropriate health insurance for the child is not available, whether a contribution for medical support is required;

l. A decision as to who may claim the child as a dependent for purposes of income taxes;

m. That the parties shall cooperate with the Tribal Court Administrator and provide the Tribal Court Administrator with their social security number, date of birth, residential and mailing addresses, telephone number, motor vehicle operator's license number, employer's name, address, and telephone number, and any other information required by the Tribal Court Administrator within ten (10) days of entry of the order;

n. That the parties shall inform the Tribal Court Administrator of any change in address, employment or other condition that may affect administration of the order within ten (10) days of such change;

o. That child support payments shall be paid by income withholding as provided in this Chapter or, if the Court determines income withholding is not required under the provisions of this Chapter, the manner of making child support payments, findings supporting the exemption from income withholding, and a statement that a delinquency in payment will result in an income withholding order being issued; and

p. Any other findings or orders the Court deems necessary or desirable.

2. The amount of child support in a child support order shall not be construed to be an amount per child unless specified by the Court in the child support order.

3. A child support order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-6-20. Modification of Support.

1. Any party subject to a child support order, a party to the action in which a child support order was issued, or, in the case public assistance is being paid to or for the benefit of the child subject of the child support order, the Tribe may, by motion in the same action in which the child support order was issued, request the Court to modify or vacate the child support order in accordance with this Section.

2. A child support order may be modified on the grounds of:

a. A substantial change in circumstances, provided that at least six (6) months have passed since the entry of the current child support order;

b. Incarceration or involuntarily institutionalization of one of the parties for longer than sixty (60) consecutive days, unless the obligor has the means to pay support while incarcerated or involuntarily institutionalized;

c. If the child support amount in the existing child support order is based on the incarceration or involuntarily institutionalization of one of the parties, release of the party from incarceration or institutionalization, provided at least sixty (60) days have passed since such release and the party remains released;

d. Public assistance is being paid to or for the benefit of the child subject of the current child support order, provided that the motion is filed by the Tribe;

e. Updated child support guidelines that modify the child support amount, provided that at least one (1) year has passed since the entry of the current child support order; or

f. The modification is for a technical or corrective matter that does not alter the child support amount, such as changing to whom child support payments are distributed.

3. A child support order may be vacated on the grounds that the child support obligation has terminated in accordance with the provisions of this Chapter.

4. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the grounds for modifying or vacating the child support order.

5. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

6. The Court may modify or vacate a child support order pursuant to a motion made under this Section only if the movant proves by a preponderance of the evidence that there are grounds for such modification or vacating as provided in this Section.

7. For purposes of this Section, a substantial change of circumstances shall be limited to:

a. Substantially increased or decreased gross income of the parties, provided that a decrease by at least twenty percent (20%) through no fault or choice of the party shall be presumed to be a substantial change in circumstances;

b. Substantially increased or decreased need of a parent or the child that are the subject of the order;

c. Receipt of public assistance;

d. A change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;

e. Extraordinary medical expenses of the child not provided for in the existing child support order;

f. The addition or substantial increase or decrease of work-related or education-related child care expenses; or

g. The application of the child support guidelines to the current circumstances of the parties results in a calculated child support payment that is at least twenty percent (20%) higher or lower than the amount in the current child support order.

8. The following, by themselves, shall not be considered a substantial change in circumstances:

a. Voluntary unemployment or voluntary underemployment; and

b. Responsibility for the support of an additional child born after entry of the current child support order.

9. An order granting a motion to modify a child support order shall become effective from the date the motion was filed. An order granting a motion to vacate a child support order shall become effective on the date provided in the order or, if no such date is provided, on the date of entry.

10. An order vacating a child support order shall not vacate any other provisions of the child support order, including provisions establishing parentage, unless otherwise expressly provided in the order vacating the child support order.

Section 4-6-21. Enforcement of Child Support Order.

1. Any obligee or other person receiving payments under a child support order may, by motion in the same action in which the child support order was issued, request the Court to enforce the child support order if the obligor fails to comply with the order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise

terms the failure to comply with the child support order and the remedy requested.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may enforce a child support order pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that the obligor has failed to comply with the child support order.

5. The following remedies shall be available for enforcement of a child support order and may be applied cumulatively:

a. Requiring the execution of an assignment of wages, salary or other income due or to become due;

b. Income withholding in accordance with the provisions of this Chapter;

c. Attachment and garnishment in accordance with the laws of the Tribe;

d. Interception of federal and/or state tax refunds;

e. Interception of any worker's compensation or unemployment insurance benefits;

f. Submission to credit bureaus;

g. Any other collection methods available and appropriate including, but not limited to, seizure of bank accounts and suspension of hunting, fishing, professional and driver's licenses;

h. Interest, not to exceed the United States prime rate, assessed and applied to any accrued arrearages;

i. Writ of execution against non-exempt property;

j. Providing security for child support payments by means of a bond, mortgage, deed of trust, or any other means ordinarily used to secure an obligation to pay money;

k. Injunction;

l. The appointment of receivers;

m. Lien against real property, provided the order sets out the amount of the lien in a sum certain and adequately describes the real property affected;

n. Contempt proceedings in accordance with the laws of the Tribe; and

o. Any and all other enforcement remedies available to enforce an order of the Court.

Section 4-6-22. Income Withholding.

1. Except as provided in this Section, all child support orders issued by the Court shall include a provision requiring the obligor to pay support by income withholding.

2. The Court may grant an exception to the mandatory income withholding required in this Section if:

a. A party demonstrates there is good cause not to require immediate withholding and, at a minimum:

i. Implementing immediate income withholding would not be in the best interests of the child;

ii. There is proof of timely payment of previously ordered support, if any; and

iii. The obligor is required to keep the Court informed of any employment-related health insurance to which the obligor has access; or

b. The parties, including any assignee of child support payments, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, provided that any failure to comply with the agreement shall subject the obligor to income withholding under this Section and the agreement, at a minimum:

i. Describes the manner in which regular child support payments are assured;

ii. Is reviewed and approved by the Court and entered into the Court's records; and

iii. The obligor is required to keep the Court informed of any employment-related health insurance to which the obligor has access.

3. An income withholding order shall direct that the obligor's wages, income and other benefits be withheld in an amount equal to the monthly child support payment divided proportionally over the number of payments due the obligor during the month.

4. If there are any arrearages in child support payments, an income withholding order may also direct that an additional twenty percent (20%) of the child support payment or such amount as the Court may order after notice and hearing shall be withheld each month until the delinquency is satisfied.

5. Notwithstanding anything else to the contrary in this Section, the total amount withheld from an obligor's wages, income or other benefits shall not exceed fifty (50%) of the obligor's disposable income for a week.

6. An obligor may execute a voluntary income assignment voluntarily authorizing income withholding from current or future income due the obligor from an employer or payer in an amount sufficient to meet any child support obligation.

7. When an obligor is subject to more than one withholding for child support, whether pursuant to an income withholding order or voluntary income assignment, withholding for current child support shall have priority over past-due support. Where two or more child support orders for current child support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. The Tribal Court Administrator shall allocate withheld amounts across multiple child support orders to ensure that allocation shall not result in withholding for one of the child support obligations not being implemented.

8. The Tribal Court Administrator shall serve notice to withhold pursuant to an income withholding order or voluntary income assignment on the employer or other payer of the obligor in accordance with the Tribal Rules of Civil Procedure within ten (10) business days of entry of the order, provided that notice of a voluntary income assignment may be provided to the employer or payer in any manner agreed to by the employer or payer. Such notice shall be on the form required by applicable law and include:

a. A copy of the income withholding order or voluntary income assignment, as the case may be;

b. Information regarding the employer's or payer's rights and responsibilities under this Section;

c. The amount of disposable income attributable to the employer or payer on which the withholding is based;

d. The civil fines and other remedies under this Section; and

e. The maximum amount of disposable income that may be withheld as provided in this Section.

9. An employer or payer who has been properly served with a notice to withhold is required to:

a. Begin withholding from the first payment due the obligor that occurs fourteen (14) calendar days following the date the notice to withhold was served on the employer or payer;

b. Within seven (7) business days of the date the obligor is paid, send the amount withheld and the date the amount was withheld to the Tribal Court Administrator or as otherwise directed in the income withholding order or voluntary income assignment;

c. Continue withholding until further notice from the Court;

d. Withhold for child support before withholding pursuant to any other legal process against the same disposable income;

e. Promptly notify the obligee and the Court in writing:

i. If there are one or more orders of child support withholding for the obligor;

ii. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payer, and provide the obligor's last known address and the name and address of his or her new employer, if known;

iii. Of the employer's or payer's inability to comply with the withholding for any reason; and

f. Cooperate fully with the verification of the amount of the obligor's disposable income.

10. A requirement that income be withheld for child support shall promptly terminate as to future payments when the employer or payer receives notice from the Court that the withholding is no longer required, provided that withholding shall not be terminated for any valid arrearages until such arrearages are paid in full.

11. If an employer or payer knowingly fails to withhold and/or remit child support as required by this Section after being served with a notice to withhold, the Court may:

a. Find the employer or payer in contempt in accordance with the laws of the Tribe;

b. Hold the employer or payer liable for one hundred percent (100%) of the amount of child support ordered or the amount of monies that should have been withheld, whichever is less; and

c. Impose a civil fine on the employer or payer in an amount not to exceed eight hundred dollars ($800).

12. An employer shall not discipline, discharge from employment or refuse to employ any person because his or her wages are subject to an income withholding order or voluntary income assignment. An employer who disciplines, discharges from employment, or refuses to employ a person because of an income withholding order or voluntary income assignment shall be subject to a civil fine not to exceed eight hundred dollars ($800).

13. An employer or other payer may deduct a fee of up to three dollars ($3.00) per month for administrative costs incurred by the employer for withholding amounts pursuant to an income withholding order under this Section.

14. An obligor may challenge an income withholding order at any time by motion. Such a motion shall set forth in clear and concise terms the basis for challenging the income withholding order. The Court shall hold a hearing on a motion filed under this subsection upon notice given to the parties to the child support proceeding and may withdraw or modify the income

withholding order, as appropriate, only if the movant proves a mistake of fact by a preponderance of the evidence. Demonstration of a mistake of fact shall require a showing of one or more of the following:

a. In a case where withholding is based on arrearages:

i. That there has been a mistake in the identity of the obligor; or

ii. That the delinquency has been cured;

b. There is an error in the amount of support or arrearages;

c. There is a mistake in the identity of the obligor; or

d. There is an agreement between the obligor and the obligee for an alternative method of payment approved by the Court.

15. The Tribal Court Administrator shall promptly refund any monies improperly withheld from an obligor's income and shall ensure that income withholding is promptly terminated where there is no longer a current child support order and any arrearages have been satisfied.

16. The Tribe shall withhold and remit child support in accordance with an income withholding order issued by the Court in accordance with this Section or a voluntary income assignment executed under this Section for any obligor employed by the Tribe, provided that the Tribe shall not be subject to any fines, penalties or other enforcement provisions in this Section, except that the Court may find an officer or employee of the Tribe responsible for withholding support in contempt in accordance with the laws of the Tribe for refusal to comply with an income withholding order issued by the Court in accordance with this Section without regard to any immunity of such officer or employee.

Section 4-6-23. Seek Employment Order.

1. Any obligee or other person receiving payments under a child support order may, by motion in the same action in which the child support order was issued or by separate petition, request the Court to enter an order requiring the obligor subject to a child support order to seek employment if:

a. Employment of the obligor cannot be verified;

b. The obligor has arrearages in an amount equal to or greater than three times the obligor's monthly child support payment; and

c. The obligor is not in compliance with a written payment plan.

2. The Court shall hold a hearing on all motions or petitions filed under this Section upon notice given to the parties subject of the child support order.

3. The Court may enter an order to seek employment if it finds that the obligor:

a. Has not provided proof of gainful employment; and

b. Has not consented to income withholding in accordance with this Chapter or entered into a written payment plan approved by the Court.

4. In addition to any other matters necessary for an order of the Court, an order to seek employment shall:

a. Order that the obligor seek employment within a specified amount of time;

b. Order that the obligor file a written report with the Court on a weekly basis which contains:

i. At least five (5) new attempts to find employment or a report of having found employment;

ii. The names, addresses, and telephone numbers of any employers with whom the obligor attempted to seek employment; and

iii. The name of the individual contact with whom the obligor made application or inquiry for employment;

c. Notify the obligor that failure to comply with the order may subject the obligor to other enforcement actions under this Chapter, including contempt;

d. Order that the obligor provide the Court with verification of any reason for noncompliance with the order; and

e. Specify the duration of the order, not to exceed three (3) months.

Section 4-6-24. Receipt of Public Assistance.

1. Acceptance of public assistance by or on behalf of a child creates a debt, in the amount of public assistance paid, due and owing to the Tribe by the responsible parent, guardian or custodian of the child, provided that:

a. If child support was required to be paid pursuant to a child support order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such order; and

b. The debt shall only attach with respect to the period of time during which public assistance is granted and only if the responsible parent, guardian or custodian was financially able to furnish support during this period.

2. A party who receives public assistance may be required to assign accrued child support rights and payments for the public assistance to the government agency which provided the public assistance. The assignment of rights shall authorize the Tribe or government agency providing the public assistance to bring an action in the Court to establish a child support order and to collect on that order on behalf of the government expending the public assistance and to distribute monies collected to such government.

3. No action to collect a debt or assignment under this Section shall be commenced after the expiration of five (5) years subsequent to the receipt of the last grant of public assistance.

Section 4-6-25. Non-Cash Child Support. A non-cash child support payment may satisfy a child support obligation, including arrearages, only where:

1. The parties agree to the non-cash child support as a form of payment for child support;

2. The Court approves of the non-cash child support in a written order;

3. The order states the specific dollar amount of the child support obligation;

4. The order describes the type of non-cash child support that will be permitted to satisfy the child support obligation;

5. The order states the value of the permitted non-cash child support in a specific dollar amount based on the fair market value of the non-cash child support;

6. No more than fifty percent (50%) of any child support obligation is met by the non-cash child support; and

7. The non-cash child support is not used to satisfy child support that has been assigned to a public agency.

Section 4-6-26. Overpayments. If an obligor has overpaid child support because of a modification or error in the amount owed or collected, other than the result of an improper income withholding, the Tribal Court Administrator shall:

1. Apply the amount of the overpayment to reduce the amount of any child support arrearages or other debts owed to the obligee; and

2. If an overpayment exists after the reduction of any arrearage or other debt, reduce the amount of the child support remitted to the obligee by an amount no greater than twenty percent (20%) of the current monthly child support amount and remit this amount to the obligor until the overpayment is reduced to zero.

Section 4-6-27. Arrearages.

1. The remedies available for the collection and enforcement of child support in this Chapter apply to arrearages, including those in which the child for whom support is owed is emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the child's emancipation.

2. Parties may compromise any arrearages owed by one party to another, whether or not such arrearages have been entered in a court order or judgment.

3. An obligee or other person receiving payments under a child support order, may enter into agreements with obligors to

reduce and otherwise manage arrearages, including, but not limited to:

a. In the case of the Tribe or another jurisdiction receiving payments by assignment or reimbursement for public assistance, agreements to compromise or charge-off arrearages owed to the Tribe or such other jurisdiction;

b. Graduated payment plans tailored to the individual financial circumstances of the obligor; and

c. Agreements suspending or waiving interest on arrearages as an incentive for satisfying a child support obligation or complying with a payment plan, provided that any interest that is suspended or waived may be reinstated if the obligor fails to comply with the payment plan.

4. Any agreement to compromise or charge off any arrearages shall be submitted to the Court for approval. In approving any such proposed agreement, the Court shall take into consideration:

a. The best interests of the child for whom the arrearages are intended;

b. The amount of the arrearages;

c. The amount of the current support order;

d. Any pending request for modification;

e. The earnings and individual financial circumstances of the obligor; and

f. The obligor's ability to make any proposed payment in the agreement.

5. An agreement purporting to waive past-due child support or arrearages is void and may not be enforced unless the obligee and any assignee of the child support payments have consented to the agreement in writing and the agreement has been approved by the Court in accordance with this Section.

Section 4-6-28. Foreign Child Support Orders.

1. Any party subject to a child support order or an income withholding order made by the court or administrative agency of another federally recognized Indian tribe or state may, by

petition, request the Court to recognize and enforce such child support order or income withholding order in accordance with this Section.

2. A petition filed under this Section shall include:

a. Two copies, including one certified copy, of all child support orders or income withholding orders to be recognized and enforced, including any modification of an order;

b. A sworn statement by the party seeking recognition and enforcement or a certified statement by the custodian of the records showing the amount of any arrearages;

c. The name of the obligor and, if known, the obligor's address, social security number, date of birth, employer name and address, and any other source of income;

d. A description and location of any property of the obligor within the territory of the Tribe not exempt from execution;

e. The name and address of the obligee and, if applicable, the agency or person to whom child support payments are to be remitted; and

f. Any specific remedies or enforcement allowed under the laws of the Tribe sought and the grounds for such remedies or enforcement.

3. Upon the filing of a petition under this Section, a summons shall be issued and served in accordance with the Tribal Rules of Civil Procedure. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the obligor or any other person claimed to be bound by the order shall have the right to object to the recognition and enforcement of the order within the time permitted as provided in this Section and that if no such objection is filed, the order will be recognized and enforced without a hearing.

4. A party served with a summons pursuant to this Section shall have fourteen (14) days from the date of service of such summons to file an objection to recognition and enforcement of the order.

5. If an objection is filed within the time period allowed, the Court shall set the matter for hearing. If no objections are timely filed, the Tribal Court Administrator or his or her designee shall issue a certification that no objections were timely filed and the Court shall enter an order that the order is recognized and enforced pursuant to this Section.

6. Notwithstanding any objections filed, the Court shall recognize and enforce a child support order or income withholding order made by a court or administrative agency of another federally recognized Indian tribe or state unless the objecting party demonstrates to the Court at least one of the following:

a. The court or administrative agency did not have subject matter jurisdiction to hear the matter and enter an order;

b. The court or administrative agency did not have personal jurisdiction over the parties claimed to be bound by the order; or

c. The parties claimed to be bound by the order were not given reasonable notice and opportunity to be heard.

7. If the objecting party demonstrates to the Court that an appeal from the child support order or income withholding order is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the child support order or income withholding order until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

8. Notwithstanding anything to the contrary in this Section, the Tribe may enforce a child support order or income withholding order made by the court or administrative agency of another federally recognized Indian tribe or state involving an employee or officer of the Tribe regardless of whether such child support order or income withholding order has been recognized by the Court, provided that such child support order or income withholding order appears valid on its face. Any employee or officer of the Tribe subject to such a child support order or income withholding order which has not been recognized by the Court may challenge the enforcement of such order by filing a petition with the Court which includes the grounds for objecting to enforcement of the order and the Court shall determine whether such order may be enforced in accordance with the provisions of this Section.

9. The Court shall not seek or make a modification of any child support order subject to recognition and enforcement under this Section unless:

a. The Court has jurisdiction to enter such a child support order itself, notwithstanding the existence of the prior action in the court or administrative agency of the other federally recognized Indian tribe or state; and

b. Either:

i. The child and each party subject of the child support order no longer resides in the jurisdiction which issued the child support order; or

ii. Each party subject of the child support order has filed written consent with the court or administrative agency that issued the child support order for a court of another jurisdiction to modify the child support order and assume continuing, exclusive jurisdiction over the child support order.

10. Any child support order or income withholding order issued be a court or administrative agency of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

11. Except as otherwise provided in this Section, no child support order or income withholding order issued by a foreign court or administrative agency shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

12. Except for any limitations under this Section, a child support order or income withholding order recognized pursuant to this Section shall be treated in all respects as an order of the Court and may be enforced in the same manner as though it was originally issued by the Court, except that, unless otherwise ordered by the Court, the law of the jurisdiction which issued the order shall apply to the nature, extent, amount and duration of payments and other obligations under the order.

13. This Section shall apply to a child support order issued by the Court that has been lawfully modified by the court or administrative agency of another jurisdiction.

Section 4-6-29. No Limitation of Actions. Notwithstanding any other law of the Tribe, there shall be no time limitation in which to commence a cause of action to enforce a child support order or collect arrearages.

CHAPTER 7
PARENTAGE

Section 4-7-1. Purpose. The Tribe recognizes that parentage is a multi-faceted relationship that is often more than just a biological relationship. Parentage also involves social and economic parenthood which may or may not accompany a biological relationship and which may result in a child having more than two parents in some cases. The primary purposes and objectives of this Chapter are:

1. To establish a process by which the parental heritage of the children of the Tribe may be identified;

2. To determine parentage in accordance with the realities of a particular family and the intentions of the family; and

3. To ensure that the interests of children are protected to the fullest extent possible.

Section 4-7-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Acknowledged parent" means a person who has established a parent-child relationship by executing a recognition of parentage in accordance with this Chapter.

2. "Adjudged parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

3. "Alleged parent" means a person who alleges himself or herself to be, or is alleged to be, the parent or a possible parent of a child, but whose parentage has not been determined. The term does not include:

a. A presumed parent;

b. A person whose parental rights have been terminated or declared not to exist; or

c. A donor.

4. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse, including, but not limited to:

a. Intrauterine insemination;

b. Donation of eggs;

c. Donation of embryos;

d. In-vitro fertilization and transfer of embryos; and

e. Intracytoplasmic sperm injection.

5. "Donor" means a person who produces or provides his or her own human reproductive material from which a child is conceived or an embryo created through the use of his or her own human reproductive material for assisted reproduction, but does not include:

a. A husband who provides sperm or a wife who provides eggs to be used for assisted reproduction by the wife;

b. A woman who gives birth to a child by means of assisted reproduction, except for gestational mothers; or

c. A person who is a parent or intended parent as a result of assisted reproduction or pursuant to a gestational agreement.

6. "Genetic testing" means an analysis of genetic markers to exclude or identify a person as the parent of a child. The term includes an analysis of one or a combination of the following:

a. Deoxyribonucleic acid; and

b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

7. "Gestational mother" means an adult woman who gives birth to a child under a gestational agreement.

8. "Human reproductive material" means a sperm, an ovum or another human cell or human gene, and includes a part of any of them.

9. "Intended parent" means a person who intends, or two persons who are married or in a marriage-like relationship who intend, to be a parent of a child and, for that purpose, the person or two persons make an agreement with another person before the child is conceived that:

a. The other person will be a donor or the birth mother of a child conceived through assisted reproduction; and

b. The person, or the two persons, will be the child's parent or parents on the child's birth, regardless of whether that person's or those persons' human reproductive material was used in the child's conception.

10. "Parentage index" means the likelihood of genetic parentage calculated by computing the ratio between:

a. The likelihood that the tested person is the parent, based on the genetic markers of the tested person, the other parent, and child, conditioned on the hypothesis that the tested person is the parent of the child; and

b. The likelihood that the tested person is not the parent, based on the genetic markers of the tested person, the other parent, and child, conditioned on the hypothesis that the tested person is not the parent of the child and that the parent is of the same ethnic or racial group as the tested person.

11. "Presumed parent" means a person who, pursuant to this Chapter, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

12. "Surrogacy" means an arrangement where a woman agrees to be the birth mother of a child and will surrender the child to the intended parents of the child who will be the child's parents, regardless of whether the child is conceived using her own human reproductive material.

Section 4-7-3. No Discrimination Based on Marital Status. A child born to parents who are not married to each other has the same

rights under the law as a child born to parents who are married to each other.

Section 4-7-4. Parental Liability for Child.

1. Except as provided in this Section or expressly elsewhere in the laws of the Tribe, neither parent nor child is answerable, as such, for the acts of the other.

2. The parent of an unemancipated child residing with such parent, or placed by such parent under the care of other persons, may be held liable for damages to property or for personal injury attributable to an intentional, willful, malicious or wanton act of the child, but not to exceed one thousand five hundred dollars ($1,500.00).

3. Maximum recovery from any parent or parents of a child shall not exceed the amount provided in this Section for any one act of such child or children, if two or more children of the same parent or parents commit the same act.

4. Damages allowed under this Section may be assessed by the Court in any dispositional order in any case brought against the child or parent by the Tribe pursuant to Title III of this Code.

5. Nothing in this Section shall limit the amount of damages recoverable by an action against the child, except that any amount so recovered shall be reduced and apportioned by any amount received from the parent or parents.

Section 4-7-5. Establishment of Parent-Child Relationship.

1. Unless the person cannot be considered a parent of a child under another provision of this Chapter, a person is considered the parent of a child where:

a. There is a presumption of parentage that has not been rebutted;

b. The person is the birth mother or biological father of the child and the child is not born as a result of assisted reproduction or surrogacy;

c. If the child was born as a result of assisted reproduction and not surrogacy:

i. The person is the birth mother of the child;

ii. The person was married to or in a marriage-like relationship with the birth mother of the child when the child was conceived, unless the person did not consent to be the child's parent or withdrew consent to be the child's parent before the child was conceived;

iii. The person is an intended parent, unless the person withdrew from the agreement providing for him or her to be an intended parent before the child was conceived; or

iv. If the person became deceased prior to the child being conceived, the person consented to assisted reproduction and being the child's parent even after the person's death;

d. If the child was born as a result of surrogacy pursuant to a gestational agreement, the person is an intended parent under the gestational agreement and the person did not withdraw from the agreement before the child was conceived;

e. The person is a gestational mother or donor and there is an agreement with the parents or intended parents that the person will be a parent of the child;

f. The person has executed a recognition of parentage consistent with this Chapter, unless the recognition has been timely rescinded or successfully challenged;

g. The person adopted the child; or

h. The person has been adjudicated to be the parent of the child by a court of competent jurisdiction.

2. Except as otherwise specifically provided by the laws of the Tribe, unless and until parental rights are terminated, a parent-child relationship established under this Chapter applies for all purposes.

3. Nothing in this Chapter shall be construed as limiting the number of individuals that can be considered a parent of a child.

Section 4-7-6. Presumption of Parentage.

1. A person is presumed to be the parent of a child if:

a. Unless the person has joined in a recognition of parentage recognizing another person as the parent, he or she was married to or in a marriage-like relationship with the child's other parent:

i. On the day of the child's birth; or

ii. Within three hundred (300) days before the child's birth, if the marriage was terminated by death, declaration of invalidity, decree of separation, or decree of dissolution;

b. After the birth of the child, the person and the child's other parent married each other or entered into a marriage-like relationship, the person voluntarily asserted his or her parentage of the child, and:

i. The assertion is made in writing and filed with the Court, the Enrollment Department, or a government agency maintaining birth records;

ii. He or she agreed to be and is named as the child's parent on the child's birth certificate; or

iii. He or she is obligated to support the child as his or her own in a written document or pursuant to a child support order;

c. Scientifically reliable genetic testing reveals a statistical probability of parentage at ninety-two percent (92%) or more;

d. A birth certificate of the child is signed by the person; or

e. While the child is under the age of majority, he or she has resided in the same household with the child and openly holds out the child as his or her own.

2. There shall be no presumption of parentage under this Section if:

a. The person is excluded from being considered a parent under the provisions of this Chapter; or

b. The parentage of the person would conflict with the parentage of another person under Section 4-7-5 of this Chapter.

3. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic shall control.

4. For purposes of this Section, marriage includes a marriage in apparent compliance with the law, even if the marriage is or could be declared invalid.

5. A presumption of parentage under this Section may be rebutted only by an adjudication under the provisions of this Chapter.

Section 4-7-7. Persons Not Considered Parents.

1. A donor shall not be a parent of a child conceived by means of assisted reproduction, unless there is a written agreement with the parents or intended parents expressly providing that the donor will be a parent of the child.

2. A gestational mother shall not be a parent of a child conceived in accordance with a gestational agreement, unless the gestational agreement expressly provides that the gestational mother will be a parent of the child.

3. An individual who withdraws consent to assisted reproduction before the placement of human reproductive material shall not be a parent of the resulting child.

4. A person who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall not be a parent of the child, provided that the victim of the rape, incest, or sexual assault or the child, once an adult, may bring an action to establish the parentage of such person. Notwithstanding anything to the contrary in this Chapter, a persons who commits an act of rape, incest, or sexual assault against another person which result in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall be prohibited from bringing a parentage action under this Chapter relating to such child.

Section 4-7-8. Recognition and Denial of Parentage.

1. At any time, including during a parentage proceeding under this Chapter, a parent of a child and a person claiming to be the genetic parent of a child may acknowledge parentage for the child in a written recognition of parentage. A recognition of parentage shall:

a. Be in writing;

b. Be signed and notarized under penalty of perjury by the parent of the child and the parent seeking to establish his or her parentage;

c. Other than the parent of the child party to the recognition, state that the child whose parentage is being acknowledged:

i. Does not have a presumed parent or has a presumed parent whose full name is stated; and

ii. Does not have another acknowledged or adjudged parent which conflicts with the parentage of the person acknowledging parentage;

d. State that the parent seeking to establish his or her parentage is not a gestational mother or donor of the child;

e. State whether there has been genetic testing and, if so, that the acknowledging parent's claim of parentage is consistent with the results of the testing, if applicable to the basis for establishing parentage; and

f. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of parentage of the child and that after the rescission period has ended a challenge to the acknowledgment is permitted only on the basis of fraud, duress, or material mistake of fact.

2. A recognition of parentage is void if:

a. It states that another person is a presumed parent, unless a denial of parentage is signed or otherwise authenticated by the presumed parent, or the other presumed parentage does not conflict with the acknowledged parentage;

b. Another person other than the parent of the child signing the recognition has acknowledged parentage in a

previous valid recognition of parentage, unless the previous recognition has been timely rescinded or successfully challenged, or the previously acknowledged parentage does not conflict with the current acknowledged parentage;

c. Another person other than the parent of the child has been adjudicated to be a parent, unless the adjudicated parentage does not conflict with the acknowledged parentage;

d. The person seeking to establish his or her parentage is a gestational mother or donor of the child, unless there is a written agreement with the parents or intended parents expressly providing that the gestational mother or donor will be a parent of the child;

e. It falsely denies the existence of a presumed, acknowledged, or adjudged parent of the child; or

f. It falsely states that the person seeking to establish his or her parentage is not a gestational mother or donor of the child.

3. A presumed parent may sign a denial of his or her parentage. The denial is valid only if:

a. A recognition of parentage signed, or otherwise authenticated, by another parent is filed with the Court, the Enrollment Department, or a government agency maintaining birth records;

b. The denial is in writing, and is signed, or otherwise authenticated, under penalty of perjury; and

c. The presumed parent has not previously:

i. Recognized his or her parentage, unless the previous recognition has been timely rescinded or successfully challenged; or

ii. Been adjudicated to be the parent of the child.

4. A recognition of parentage and a denial of parentage:

a. May be contained in a single document or may be signed in counterparts;

b. May be executed separately or simultaneously, provided that if the recognition and denial are both necessary, neither is valid until both are executed;

c. May be signed before the birth of the child;

d. Take effect on the birth of the child or the execution of the document, whichever occurs later; and

e. May be signed by a minor if the document is otherwise in compliance with this Chapter.

5. Parties shall send a recognition of parentage and denial of parentage to the appropriate agency maintaining birth records to request the amendment of the birth record of the child, if appropriate.

6. Except as otherwise provided in Section 4-7-9 of this Chapter:

a. A valid recognition of parentage filed with the Court, the Enrollment Department, or a government agency maintaining birth records is equivalent to an adjudication of parentage of a child and confers upon the acknowledged parent all of the rights and duties of a parent; and

b. A valid denial of parentage by a presumed parent filed with the Court, the Enrollment Department, or a government agency maintaining birth records in conjunction with a valid recognition of parentage is equivalent to an adjudication of the nonparentage of the presumed parent and discharges the presumed parent from all rights and duties of a parent.

7. The Court shall give full faith and credit to a recognition of parentage or denial of parentage effective in another federally recognized Indian tribe or state if the recognition or denial has been signed and is otherwise in compliance with the law of the other jurisdiction.

8. The Court shall prescribe standard forms that parents may sign to recognize and deny parentage under this Section and shall not charge for filing a recognition of parentage, denial of parentage, or rescission of either. A valid recognition of parentage or denial of parentage is not affected by a later modification of the prescribed form.

Section 4-7-9. Rescinding and Challenging Recognition or Denial of Parentage.

1. A signatory may rescind a recognition of parentage or denial of parentage by commencing a proceeding to rescind before the earlier of:

a. Sixty (60) days after the effective date of the recognition or denial; or

b. The date of the first hearing, in a proceeding to which the signatory is a party, before the Court to adjudicate an issue relating to the child, including a proceeding that establishes child support or child custody.

2. After the period for rescission under this Section has expired, a signatory of a recognition of parentage or denial of parentage may commence a proceeding to challenge the recognition or denial only on the basis of fraud, duress, or material mistake of fact. There is no time limitation on when a party may commence a proceeding to challenge the recognition or denial of parentage under this subsection.

3. Every signatory to a recognition of parentage and any related denial of parentage shall be made a party to a proceeding to challenge the recognition or denial.

4. For the purpose of challenging a recognition of parentage or a denial of parentage, a signatory submits to the personal jurisdiction of the Court by signing the recognition or denial.

5. Except for good cause shown, during the pendency of a proceeding to challenge a recognition of parentage or a denial of parentage, the Court shall not suspend the legal responsibilities of a signatory arising from the recognition, including the duty to pay child support.

6. A proceeding to challenge a recognition of parentage or a denial of parentage shall be conducted in the same manner as a proceeding to adjudicate parentage under this Chapter.

7. At the conclusion of a proceeding to rescind a recognition of parentage or a denial of parentage, the Court shall send its order, or instruct the parties to do so, to the appropriate state agency to request the amendment of the birth record of the child, if appropriate.

Section 4-7-10. Gestational Agreements.

1. A prospective gestational mother, her spouse if married, a donor or the donors, and the intended parents may enter into a written agreement which provides that:

a. The prospective gestational mother agrees to pregnancy by means of assisted reproduction;

b. The prospective gestational mother, her spouse if married, and the donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction, unless the parties agree otherwise; and

c. The intended parents will be the parents of the child.

2. A gestational agreement may provide for payment of consideration.

3. To be valid, a gestational agreement must be approved by the Court under this Section. The intended parents and the prospective gestational mother and her spouse, if married, may, by petition, request the Court to approve the gestational agreement in accordance with this Section. The Court shall enter an order approving the gestational agreement if:

a. Each intended parent, the gestational mother and her spouse, if any, are each party to the agreement;

b. Each party has voluntarily entered into the agreement and understands its terms;

c. Adequate provision has been made for all reasonable health-care expense associated with the agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated;

d. The agreement does not limit the right of the prospective gestational mother to make decisions to safeguard her health or that of the embryos or fetus;

e. The consideration, if any, paid to the prospective gestational mother is reasonable;

f. Unless waived by the Court, a home study has been completed by the Department of Social Services or another agency or individual qualified to perform a home study; and

g. The Court finds that the intended parents are fit to be the parents of the child.

4. A gestational agreement may be terminated:

a. By the prospective gestational mother, her spouse if married, or any of the intended parents before the prospective gestational mother becomes pregnant by means of assisted reproduction, by giving written notice of termination to all other parties; or

b. By the Court for good cause shown.

5. A party who terminates a gestational agreement shall file a notice of the termination with the Court in the same action in which the agreement was approved. On receipt of the notice, the Court shall vacate the order approving the gestational agreement and the agreement shall be unenforceable unless the terminating party is an intended parent and there is still at least one more intended parent, the other parties to the agreement do not wish to terminate the agreement, and the agreement is otherwise still subject to Court approval under this Section. Neither a prospective gestational mother nor her spouse, if any, shall be liable to the intended parents for terminating a gestational agreement pursuant to this Section.

6. Upon birth of a child to a gestational mother, the intended parents shall file notice with the Court that the child has been born to the gestational mother within three hundred (300) days after assisted reproduction. Upon the filing of such notice, the Court shall issue an order:

a. Confirming that the intended parents are the parents of the child;

b. If necessary, ordering that the child be surrendered to the intended parents; and

c. Directing the government agency maintaining birth records to issue a birth certificate naming the intended parents as parents of the child.

7. A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

8. If a birth results under a gestational agreement that is not approved by the Court in accordance with this Section, the parent-child relationship shall be determined in accordance with this Chapter, provided that the Court shall have the authority to retroactively approve a gestational agreement that otherwise substantially complies with this Section.

9. Nothing in this Section shall prevent the Court from recognizing a gestational agreement entered into in another jurisdiction and valid under the laws of that jurisdiction.

Section 4-7-11. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

b. The child subject of the proceedings and his or her legal counsel or guardian ad litem;

c. The child's parent, guardian or custodian and his or her legal counsel;

d. Legal counsel requesting discovery as permissible under the laws of the Tribe;

e. The Department of Social Services;

f. The Domestic Violence Department;

g. The Tribal Attorney;

h. Another court having jurisdiction over an action involving the parties or the child subject of the action;

i. An agency of another government engaged in the establishment of parentage, child support, or the enforcement of child support for the child subject of the proceedings; or

j. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a child to another person:

a. Against whom an order for protection is in effect with respect to the party or the child; or

b. If the Court has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child.

4. Notwithstanding anything to the contrary in this Chapter, a final order issued in a proceeding under this Chapter shall be available for public inspection.

5. When providing service by publication, the name of the child in the matter shall not be disclosed, provided that the child's initials may be published.

6. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 4-7-12. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

1. The parties and their legal counsel;

2. Witnesses; and

3. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-7-13. Initiation of Proceedings.

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court to establish parentage shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. The child for whom parentage is sought to be established;

b. A parent, guardian, or custodian of the child for whom parentage is sought to be established;

c. A parent, guardian or other legal representative of a minor parent on behalf of or for the benefit of the minor parent's child;

d. An intended parent;

e. A person whose parentage of the child is to be adjudicated;

f. An authorized adoption agency or licensed child placement agency; or

g. The Department of Social Services, on behalf of the Tribe, for a child in its custody for whom parentage is sought to be established.

3. Petitions to establish parentage of a child shall be captioned: "In Re the Parentage of (child's or children's name(s)): (name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for establishment of parentage may be combined with a proceeding for invalidity of marriage, dissolution of marriage, legal separation, child support, or child custody under this Title, a proceeding for adoption or termination of parental rights under Title 3 of this Code, a probate proceeding, or any other appropriate proceeding, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom parentage is sought to be established;

d. The relationship of the respondent to the child for whom parentage is sought to be established;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom parentage is sought to be established or the reasons such information is unavailable;

f. If different from the petitioner, the names, last known addresses and tribal affiliation of the child's parents for whom parentage is established or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis alleged for the respondent being a parent of the child;

j. If an agreement or acknowledgment of parentage exists, the details of such agreement;

k. A request that the Court enter an order establishing the respondent as a parent of the child or such other relief requested.

5. The child's parent, except a parent who is a petitioner, and any person whose parentage of the child is to be adjudicated shall be included as named respondents. If not the petitioner, the child shall also be made a party to the action.

6. Two (2) or more children for whom parentage is sought to be established in a common parent may be included in the same petition.

7. A petition to establish parentage of a child who has become an adult may only be brought by the child.

8. If a petition to establish parentage of a child is filed before the birth of the child, the proceeding shall be stayed until after the birth of the child, except for service of process, discovery, and, except as prohibited by this Chapter, collection of specimens for genetic testing.

9. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-7-14. Admission of Parentage. A party in a proceeding under this Chapter may admit to the parentage of a child by filing a pleading to that effect or by admitting parentage under penalty of perjury when making an appearance or during a hearing. If the Court finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the person admitting parentage.

Section 4-7-15. Temporary Orders for Support.

1. In a proceeding under this Chapter, the Court may issue a temporary child support order if such child support order is appropriate and the individual ordered to pay support is:

a. A presumed parent of the child;

b. Petitioning to have his or her parentage adjudicated;

c. Identified as the parent through genetic testing conducted in accordance with this Chapter;

d. An alleged parent who has declined to submit to genetic testing;

e. Shown by clear and convincing evidence to be the parent of the child; or

f. The parent of the child.

2. A temporary child support order issued under this Section may also include provisions for custody and visitation in accordance with the provisions of this Title.

Section 4-7-16. Orders to Facilitate Proceedings. In any proceeding under this Chapter, on motion of any party or on the Court's own motion, the Court may issue orders, including subpoenas, necessary to facilitate the proceeding and the establishment of parentage of the child, including orders for genetic testing and to assist in locating a parent or other party required to adjudicate the parentage of the child.

Section 4-7-17. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the respondent is the parent of the child named in the petition and, if so, enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. The Court shall enter a parentage order if the Court finds the respondent is a parent of the child under the laws of the Tribe.

5. The burden of proof for establishment of parentage shall lie with the proponent of such parentage to demonstrate that the person is a parent by clear and convincing evidence.

Section 4-7-18. Order of Parentage.

1. In addition to any other matters necessary for an order of the Court, a parentage order shall include:

    a. The name, date of birth, and last four digits of the social security number of each of the parties, including the child for whom parentage is sought to be established;

    b. The basis for the Court's jurisdiction;

    c. Findings regarding the basis for the Court's determination of parentage;

    d. A decision as to whether the respondent or other party to the proceeding is a parent of the child;

e. If requested by a party for good cause shown, an order that the name of the child is changed;

f. If the determination of parentage differs from the child's birth certificate, an order to have the birth certificate appropriately amended;

g. Any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy, custody of the child, and visitation with the child; and

h. Any other findings or orders the Court deems necessary or desirable.

2. An order issued under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-7-19. Binding Effect of Parentage Determination.

1. Except as otherwise provided in this Section, a determination of parentage is binding on:

a. All signatories to a recognition or denial of parentage; and

b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of this Title.

2. A child is not bound by a determination of parentage under this Chapter unless:

a. The determination was based on an unrescinded recognition of parentage and the recognition is consistent with the results of genetic testing;

b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

c. The child was a party or was represented in the proceeding determining parentage by legal counsel or a guardian ad litem.

3. In a proceeding to dissolve a marriage, the Court is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of this Title and the final order:

a. Expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the spouse is the parent of the child; or

b. Provides for support of the child by the spouse unless parentage is specifically disclaimed in the order.

4. Except as otherwise provided in this Section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

5. A party to an adjudication of parentage may challenge the adjudication only under the laws of the Tribe relating to appeal, vacating judgments, or other judicial review.

Section 4-7-20. Order for Genetic Testing.

1. Except as otherwise provided in this Chapter, the Court shall order the child and other designated individuals to submit to genetic testing in accordance with this Chapter if:

a. The order for testing is supported by the sworn statement of a party to the proceeding alleging parentage and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals;

b. The order for testing is supported by the sworn statement of a party to the proceeding denying parentage and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child; or

c. The Court otherwise finds that there is good cause to believe the individuals are the genetic parents of the child and are not otherwise excluded from being the parents of the child.

2. The Court may deny issuing an order for genetic testing if the Court determines that:

a. The conduct of the parent or the alleged parent bars that party from denying parentage and it would be inequitable to disprove the parent-child relationship between the child and the alleged parent;

b. The parentage of the child is based on another provision of this Chapter other than genetic parentage and the results of genetic testing would not alter or modify that parentage determination;

c. A legal proceeding for adoption of the child whose parentage is sought to be established is pending in a court of competent jurisdiction, unless establishment of parentage is required for the purposes of the adoption proceeding; or

d. The genetic testing or establishment of parentage is reasonably likely to result in physical or emotional harm to the child or to the child's parent, guardian or custodian or otherwise would not be in the best interests of the child.

3. Notwithstanding anything to the contrary in this Chapter, the Court shall not order genetic testing if the alleged parent is otherwise excluded from being considered a parent of the child under the provisions of this Chapter, provided that if the alleged parent committed an act of rape, incest, or sexual assault which resulted in the birth of the child conceived as a result of the act of rape, incest, or sexual assault, the Court may order the genetic testing if the victim of the rape, incest, or sexual assault or the child, once an adult, expressly and voluntarily consents to such genetic testing.

4. If a request for genetic testing of a child is made before birth, the Court may not order in-utero testing.

5. If two or more individuals are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

6. Upon the request of a party who contests the result of genetic testing, the Court shall order additional genetic testing, provided that, if the previous genetic testing identified a person as the parent of the child under this Chapter, the Court may not order additional testing unless the party provides advance payment for the testing.

Section 4-7-21. Standards for Genetic Testing.

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

a. The American Association of Blood Banks, or a successor to its functions;

b. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

c. An accrediting body designated by the federal Secretary of Health and Human Services.

2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

3. If a genetic-testing specimen is not available from a person who may be the parent of a child and the Court finds that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested, the Court may order the following individuals to submit specimens for genetic testing:

a. The parents of the person;

b. Brothers and sisters of the person;

c. Other children of the person and their parents; and

d. Other immediate or extended family members of the person necessary to complete genetic testing.

4. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of parentage. If there is disagreement as to the testing laboratory's choice, the following rules shall apply:

a. The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of parentage using an ethnic or racial group different from that used by the laboratory;

b. The individual objecting to the testing laboratory's initial choice shall:

i. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

ii. Engage another testing laboratory to perform the calculations; and

c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate and, if available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

5. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a person as the parent of a child under this Chapter, an individual who has been tested may be required to submit to additional genetic testing.

6. Any person gathering a specimen for genetic testing pursuant to an order of the Court, at the request of the parent and alleged parent, or as otherwise authorized under the laws of the Tribe and any hospital, laboratory or other entity employing such person, may not be held liable for damages to the party from whom the specimen is gathered if the specimen is gathered with usual and ordinary care.

Section 4-7-22. Report of Genetic Testing Results.

1. The results of genetic testing shall be set forth in a report and, if ordered as part of a proceeding under this Chapter, filed with the Court.

2. A report of genetic testing must be in writing and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this Chapter is self-authenticating.

3. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

a. The names and photographs of the individuals whose specimens have been taken;

b. The names of the individuals who collected the specimens;

c. The places and dates the specimens were collected;

d. The names of the individuals who received the specimens in the testing laboratory; and

e. The dates the specimens were received.

Section 4-7-23. Results of Genetic Testing.

1. Under this Chapter, a person is rebuttably identified as the parent of a child if the genetic testing complies with this Chapter and the results disclose that:

a. The person has at least a ninety-two percent (92%) probability of parentage, using a prior probability of 0.50, as calculated by using the combined parentage index obtained in the testing; and

b. A combined parentage index of at least 100 to 1.

2. A person identified under this Section as the parent of the child may rebut the genetic testing results only:

a. By other genetic testing satisfying the requirements of this Chapter which:

i. Excludes the person as a genetic parent of the child; or

ii. Identifies another person as the possible parent of the child; or

b. By demonstrating by clear and convincing evidence that the person is excluded from being considered a parent of the child under the provisions of this Chapter.

3. If a child has a presumed, acknowledged, or adjudged parent in addition to the child's other parent, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

a. With the consent of both the parent and the presumed, acknowledged, or adjudged parent; or

b. Pursuant to an order of the Court issued under this Chapter.

Section 4-7-24. Payment of Costs of Genetic Testing. Subject to the assessment of costs in accordance with the Tribal Rules of Civil Procedure, the cost of initial genetic testing shall be paid:

1. By the individual who made the request;

2. As agreed by the parties; or

3. As otherwise ordered by the Court.

Section 4-7-25. Limitations of Actions.

1. An action to establish parentage of a child may be commenced by the child at any time, even after the child becomes an adult or an earlier proceeding to adjudicate parentage has been dismissed based on the application of a statute of limitations then in effect.

2. An action to establish parentage of a child may be commenced by a person other than the child at any time until the child reaches the age of majority, but not thereafter.

CHAPTER 8
DOMESTIC AND ELDER ABUSE

Section 4-8-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Provide for the protection of persons within the territory of the Tribe;

2. Secure the safety of persons within the territory of the Tribe, which will serve the spiritual, emotional, mental, physical, and financial welfare of such persons, and the best interests of the Tribe;

3. Improve any conditions or home environment which may be jeopardizing the safety of persons within the territory of the Tribe;

4. Preserve a person's freedom to work, live, and worship without threat of harm by another individual;

5. Protect the peace and security of the Tribe and its individual residents from abuse;

6. Provide mechanisms for providing protective services and placements for elders and vulnerable adults who are victims of abuse and neglect; and

7. Provide procedures for securing an order for protection from the Court.

Section 4-8-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Advocate" means an employee of or, after receiving training in the area, volunteer for a program for victims of domestic or family abuse and/or sexual assault, including the Department, who has a primary function of:

a. Rendering advice, counseling, or assistance to victims of domestic or family abuse;

b. Supervising the employees or volunteers of the program; or

c. Administering the program.

2. "Assault" means:

a. An attempt to cause or purposely, knowingly or recklessly causing physical harm to another;

b. Negligently, purposely or knowingly causing physical harm to another with a deadly weapon; or

c. Attempting by physical menace to put another in fear of imminent physical harm.

3. "Caretaker" means:

a. A person who is required by the laws of the Tribe or other applicable law to provide services or resources to an elder or vulnerable adult, including a guardian, conservator, guardian ad litem, court appointed special advocate, and juvenile court advocate;

b. A person who has voluntarily undertaken to provide care or resources to an elder or vulnerable adult, including a family or household member;

c. A person who takes possession of the home, funds, assets, or property or estate of another person, whether with or without right or lawful authority; or

d. An institution or agency which voluntarily provides or is required by the laws of the Tribe or other applicable law to provide services or resources to an elder or vulnerable adult and any such institution or agency which receives anything of value in return for providing services or resources to an elder or vulnerable adult, or an employee of such institution or agency.

4. "Dating" and "dating relationship" means a social relationship of a romantic or intimate nature between two or more persons, but does not include a casual acquaintance or ordinary fraternization between persons in a business or social context.

5. "Department" means the Ponca Tribe of Nebraska Domestic Violence Department.

6. "Domestic or family abuse" means the occurrence of one or more of the following acts by a family or household member or caretaker, but does not include acts of self-defense:

a. Assault, harassment, intimidation, or stalking against another family or household member or elder or vulnerable adult;

b. Placing a family or household member or elder or vulnerable adult in fear of physical harm;

c. Causing a family or household member or elder or vulnerable adult to engage in sexual activity:

i. Involuntarily;

ii. Without consent;

iii. When the family or household member or elder or vulnerable adult is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity; or

iv. With consent obtained by force, threat of force, intimidation, fraud, or duress;

d. Attempting to cause or purposefully, knowingly, or recklessly causing emotional abuse to a family or household member or elder or vulnerable adult;

e. Exploitation or attempted exploitation of an elder or vulnerable adult;

f. Attempting neglect or purposeful, knowing, or reckless neglect of a family or household member or elder or vulnerable adult; or

g. Attempting to cause isolation or causing isolation to a family or household member or elder or vulnerable adult.

7. "Elder" means a person who is fifty-five (55) years or more of age.

8. "Emotional abuse" means a pattern of ridiculing or demeaning, making derogatory remarks, verbally harassing, or threatening to inflict physical or emotional harm on another person.

9. "Exploitation" means knowingly or purposely, by deception or intimidation, obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use a person's funds, assets, or property with the intent to temporarily or permanently deprive the person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the person by another person who stands in a position of trust and confidence with the person, has a business relationship with the person, or, regardless of whether by deception or intimidation, knows or reasonably should know that the person lacks the capacity to consent and includes:

a. Breaches of fiduciary relationships, such as the misuse of power of attorney or the abuse of guardianship or conservatorship duties, resulting in the unauthorized appropriation, sale or transfer of funds, assets, or property;

b. Unauthorized taking of personal funds, assets, or property;

c. Misappropriation, misuse, or transfer of funds belonging to a person from a personal or joint account; or

d. Failure to effectively use a person's income, funds, and assets for the necessities required for that person's support and maintenance.

10. "Family or household member" means a member of a person's immediate or extended family and:

a. Persons who are current or former spouses or domestic partners;

b. Persons who are or were in a marriage-like relationship;

c. Persons who live together or who have lived together;

d. Persons who are dating or who have dated;

e. Persons who are engaged in or who have engaged in a sexual relationship;

f. Persons who are related or formerly related by marriage or a marriage-like relationship;

g. Persons who have a child in common; and

h. Minor children of a person in a relationship that is described in this subsection.

11. "Harassment" means willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person that would cause a reasonable person to be seriously alarmed, annoyed, or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. A person's acts constitute harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

a. Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses;

b. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist;

c. Repeatedly commits an act or acts that harass another person;

d. Surveils or causes another person to surveil a person for no legitimate purpose; or

e. On more than one occasion makes a false report to a law enforcement, credit, or social service agency about the person.

12. "Intimidation" means communicating a threat to another person, with the intent:

a. That the other person engage in conduct against the other person's will;

b. That the other person be placed in fear of retaliation for a prior lawful act; or

c. Of causing the other person to evacuate or abandon a dwelling, building, or other structure.

13. "Isolation" means any knowing or purposeful act intended to prevent or to actually prevent a person from receiving his or her mail, telephone calls, or visitors or preventing the person from having contact with immediate or extended family, friends, or concerned persons, provided that an act shall not constitute isolation if it is performed:

a. Pursuant to the instruction of a licensed physician or nurse who is caring for the person at the time the instruction is given and the instruction is given as part of the persons' medical care; or

b. In response to a reasonably perceived threat of danger to the person or his or her property.

14. "Neglect" means a caretaker's failure or omission to provide a person with the care, supervision, and services necessary to maintain the person's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services, that a prudent person would consider essential for the well-being of the person or

failure or omission to make reasonable effort to protect a person from abuse, neglect, or exploitation by another person and includes:

a. Failure to assist in personal hygiene, or in the provision of food, clothing or shelter;

b. Failure to provide medical care for physical and mental health needs, provided that no person shall be deemed neglected for the sole reason that he or she voluntarily relies on treatment by spiritual or religious means in lieu of medical treatment;

c. Failure to prevent malnutrition; and

d. Abandoning an elder or dependent adult for indefinite periods of time.

15. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ, or any physical condition that imperils health or welfare.

16. "Protective placement" means the placement of an elder or vulnerable adult in the care of another person, in a hospital, nursing home, residential care facility, or similar institution, or transfer of the elder or vulnerable adult from one such person or institution to another.

17. "Protective services" means services provided to a person appropriate to prevent and/or resolve domestic or family abuse, including social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other such services.

18. "Stalking" means purposefully engaging in a course of conduct where a person maintains visual or physical proximity to a specific person or directs verbal, written or other threats whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity. A person engages in stalking if the person purposely or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:

a. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate or extended member and that person in fact fears for their safety or the safety of that person's immediate or extended family member; or

b. Would cause a reasonable person to fear death of that person or that person's immediate or extended family member and that person in fact fears death of that person or that person's immediate or extended family member.

19. "Vulnerable adult" means an adult who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself by reason of infirmities of aging, mental illness, mental deficiency, physical illness or disability, developmental disabilities, chronic use of drugs, chronic intoxication, or other like incapacity, or otherwise is unable to protect himself or herself against significant harm or exploitation, regardless of whether the person has been declared incapacitated by a court.

Section 4-8-3. Domestic Violence Department.

1. There is hereby established a Domestic Violence Department as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Chapter and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of a Director and such other personnel and employees as may be required.

Section 4-8-4. General Authority of Department. The Department shall have the following powers, duties and responsibilities:

1. To assist in the enforcement of this Chapter and all laws of the Tribe relating to domestic or family abuse and take the initiative in securing enforcement of laws for the protection of persons from domestic or family abuse where no adequate provision is made for such enforcement;

2. To work with victims of domestic or family abuse in a way that is characteristic of the Tribe's cultural traditions, customs, and values and address the well-being and protection of persons, families, and communities of the Tribe and the Tribe

itself as well as others within the territory of the Tribe from domestic or family abuse;

3. To make resources available for victims of domestic or family abuse to make decisions and choices affecting their present and future protection and stability;

4. To promote the protection of children, families, other persons, communities, and the Tribe from domestic or family abuse;

5. To refer cases involving victims of domestic or family abuse to the Department of Social Services for appropriate services from the Department of Social Services, including protective placement and protective services for elders and vulnerable adults;

6. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states as are necessary to achieve the purposes of this Chapter and other laws of the Tribe administered by the Department; and

7. To promulgate rules and regulations, not inconsistent with this Chapter and subject to the approval of Tribal Council, as it deems necessary or desirable in carrying out its duties.

Section 4-8-5. Domestic Violence Workers. The Department may employ domestic and family abuse advocates and other domestic and family abuse workers who shall have the authority, within and subject to the resources of the Department, to:

1. Respond to law enforcement requests or victim requests to assist victims of domestic or family abuse;

2. Receive reports of domestic or family abuse and investigate such reports;

3. Immediately conduct or have conducted an investigation in accordance with the provisions of this Chapter upon receipt of any report or information that a person is a victim of domestic or family abuse;

4. Assess victim needs and act as a resource for community service referrals;

5. Provide necessary and emergency intervention services or arrange for the provision of services by other agencies for victims of domestic or family abuse;

6. Assist victims of domestic or family abuse in contacting the victim's family or friends and arrange for emergency shelter as needed;

7. Assist elders and vulnerable adults in being placed in the care of appropriate persons, agencies, and institutions and, when they are wards of the Court, make such placements;

8. Supervise placements of elders and vulnerable adults;

9. Offer short-term crisis counseling and intervention to victims of domestic or family abuse;

10. Assist victims of domestic or family abuse in the identification of witnesses;

11. Assist victims of domestic or family abuse in securing an order for protection in accordance with this Chapter, including presenting to the Court on behalf of such victims in order to secure such orders;

12. File petitions in the name of the Tribe for the appointment of guardians or conservators for elders and vulnerable adults who are victims of domestic or family abuse;

13. Assist victims of domestic or family abuse in determining losses suffered by the victim and assist the victim in his or her request for restitution, as appropriate;

14. Accompany victims of domestic or family abuse to court proceedings;

15. Inform victims of domestic or family abuse in writing about his or her rights;

16. Engage in follow-up contact with victims of domestic or family abuse after case disposition;

17. Document contact information and resources provided;

18. Report data to the agencies of other jurisdiction as required; and

19. Perform such other duties and responsibilities designated by the Director of the Department or his or her designee.

Section 4-8-6. Confidentiality of Department Records.

1. Except where expressly provided otherwise in the laws of the Tribe, names, records, and other information concerning persons applying for or receiving services from the Department shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person applying for or receiving services and their legal counsel or the person's guardian or conservator;

b. Persons directly connected with the administration of the Department or the services applied for or provided to the person;

c. Other Tribal departments and agencies, the Tribal Attorney, agencies of other governments, and private agencies directly involved in the services applied for or provided to the person;

d. Institutions and agencies that have legal responsibility or authorization to care for, treat or supervise the person applying for or receiving services and have a need for the information; and

e. To others when the person applying for or receiving services has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department;

b. In a proceeding in a court to which the Department is a party, participating, or representing the Tribe;

c. To the Tribal Attorney, law enforcement agencies, domestic and family abuse advocates, other Tribal departments and agencies, agencies of other governments, and others as necessary in order to protect a person from domestic or family abuse or self-harm;

d. For the purpose of assisting in finding a placement or home for an elder or vulnerable adult, provided that such

release of information is limited to the minimal information necessary to find such placement or home; or

e. When a person applying for or receiving services authorizes the release of information or otherwise waives confidentiality expressly in writing.

Section 4-8-7. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department shall use psychiatric, psychological, and therapeutic counseling and other services available to the Tribe, both from internal and external sources;

2. The Department may refer matters, including reports of domestic or family, for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation, including any determinations therein, as its own, which the Court shall then treat as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation, including any determinations therein, made by another investigating agency or authority, including investigations of domestic or family abuse, as its own and the Court shall treat such investigation as though conducted directly by the Department.

Section 4-8-8. Domestic Violence Advisory Teams.

1. The Department may establish a domestic violence advisory team. The domestic violence advisory team may include licensed or certified medical and health professionals, representatives of the Department, representatives of the Department of Social Services, representatives of the Health Services Department, representatives of the Culture Department, mental health professionals, attorneys and lay counsel, and representatives of the Tribal community.

2. The domestic violence advisory team shall be technical and advisory in nature. It shall in no manner undermine the authorities and responsibilities of individual agencies.

3. The domestic violence advisory team shall conduct its activities in accordance with the policies and rules and regulations of the Department.

4. The Department may promulgate rules and regulations for the development and operation of the domestic violence advisory team.

Section 4-8-9. Reporting Domestic Violence.

1. The following persons are mandated to report suspected domestic or family abuse under the circumstances set forth in this Section:

a. Physicians, hospital interns or residents, surgeons, physician's assistants, religious practitioners, osteopaths, chiropractors, and podiatrists;

b. Registered nurses, licensed practical nurses, nurse practitioners, nurse's aides, and midwives;

c. Dentists, dental assistants, and hygienists;

d. Coroners;

e. Psychiatrists and other mental health professionals or counselors;

f. Social workers and substance abuse counselors;

g. Teachers, school counselors or other school personnel;

h. Law enforcement officers;

i. Licensed or registered child care providers and residential care, nursing home, and institutional personnel; and

j. In the case of exploitation, banks, depository institutions, and credit unions.

2. Any person who is mandated to report under this Section whose observation or examination of any person discloses evidence that domestic or family abuse is occurring, or is about to occur and he or she believes the victim is in imminent risk of harm shall immediately report or cause reports to be made of such information to the Tribal Attorney, the Department, law enforcement officials, or such other agency of the Tribe with jurisdiction over domestic and family abuse.

3. Any other person who has knowledge of or observes a person whom he or she reasonably suspects has been a victim of domestic or family abuse may report such suspected instances of domestic or family abuse in the manner provided in this Section. Persons reporting under this subsection, except those mandated to report under subsection 1 of this Section, may remain anonymous.

4. A report under this Section shall be made by telephone or in person, and may be followed by a written report. The report shall include:

a. The name, address and tribal affiliation, if any, of the victim;

b. The nature and extent of the domestic or family abuse;

c. Previous domestic or family abuse involving the individuals, if known;

d. The name, address and tribal affiliation, if any, of the person alleged to be responsible for the domestic or family abuse, if known;

e. The name and address of the person or agency making the report, unless anonymous as permitted in this Section; and

f. Any other information that such person believes might be helpful.

5. Any person making a report pursuant to this Section may take or cause to be taken photographs or x-rays of the victim and the vicinity involved and such photographs or x-rays may be introduced into evidence at a hearing.

6. The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Section.

7. Any person making a report or providing information pursuant to this Section or an investigation conducted by the Department, other law enforcement officials, or an agency of the

Tribe with jurisdiction over domestic and family abuse, including the submission of copies of medical examination, treatment, or hospitalization records, pursuant to this Section shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice and without reasonable cause. The provisions of this subsection shall not extend to any person alleged to have committed an act or acts of domestic or family abuse or child abuse or neglect which is the subject of the report or investigation.

8. Any person mandated to report a case of known or suspected domestic or family abuse under this Section who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil fine not to exceed five hundred dollars ($500).

9. Any person who refuses to provide any information which is required to be furnished under this Section shall be subject to civil fines not to exceed five hundred dollars ($500) per day for each day that such information is not furnished after it is first requested.

10. Any person who makes a report of suspected domestic or family abuse with malice or knowing it to be false shall be subject to a civil fine not to exceed five hundred dollars ($500).

11. The Department of Social Services and the Health Services Department may refer any case involving domestic or family abuse to the Department without making a report under this Section and such referral shall be deemed compliance with this Section.

Section 4-8-10. Central Registry.

1. The Department shall maintain a central registry of reports, investigations, and evaluations made under this Chapter.

2. The registry shall contain the information furnished by all persons. Data shall be kept in the central registry until the family or household member or caretaker who committed the alleged act of domestic or family abuse has passed away or, in the case of an institution or agency, ceases services as a caretaker.

3. Except as otherwise provided in this Chapter, data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Court, other social service agencies, public health and law enforcement agencies, licensed health

practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

4. Notwithstanding anything to the contrary in this Chapter and excepting social security numbers or other data or information the Department deems necessary to keep confidential to protect victims of domestic or family abuse, data and information in the central registry involving a civil or criminal complaint that was filed with a court in any jurisdiction shall be available to the public on written request to the Department, including:

a. The names of persons and entities against whom the civil or criminal complaint was filed;

b. The dates of the conduct set forth in the complaint;

c. The general nature of the complaint;

d. The disposition of the complaint; and

e. Any orders issued in the civil or criminal proceeding.

5. Orders contained in the registry which are in effect and have not expired or been vacated, superseded, or otherwise made ineffective shall be made available at all times during regular office hours of the Tribe to a court, law enforcement agency, or other governmental agency upon request.

6. The Department and its staff and any other person that distributes information in the registry in good faith that is not confidential under this Section is immune from civil liability or criminal penalty based on the release of such information.

7. The Department may enter into agreements with other jurisdictions to share and aggregate data and information in the central registry.

Section 4-8-11. Investigation of Reports.

1. Within thirty (30) days of receiving a report under this Chapter or any other referral, notice, or report of domestic or family abuse, the Department and law enforcement officers shall complete an investigation of the report or refer the report to other appropriate authorities for investigation.

2. Investigating personnel shall have the authority, without the consent of or advanced notice to and out of the presence of any family or household member or caretaker to:

a. Interview an alleged victim of domestic or family abuse;

b. Take photographs of the areas of trauma visible on the victim; and

c. Conduct or have conducted medical and psychological examinations or testing of the victim.

3. Upon completion of an investigation, including a referred investigation, the Department shall make a determination as to whether evidence exists to substantiate the allegation of domestic or family abuse. If the report is substantiated, the information shall be added to the central registry for domestic or family abuse and the Department shall take appropriate action, including pursuing an action under this Chapter and referring the matter to the Department of Social Services, other social services, or law enforcement agencies. If the allegations are not substantiated by the evidence, the Department shall close the case and it will not be recorded into any domestic or family abuse registry. If the Department is unsure whether the allegations are substantiated, it may request the input of the Tribal Attorney or other appropriate professionals or authorities to attempt to make a determination.

4. The fact that the Department conducts an investigation of alleged domestic or family abuse shall not preclude the Department or any domestic and family abuse advocates or other domestic and family abuse workers employed by the Department from assisting and representing the victim of domestic or family abuse subject of such investigation in accordance with this Chapter and the rules, regulations, and policies of the Department and shall not constitute a conflict of interest.

Section 4-8-12. Protective Services and Placement.

1. An elder or vulnerable adult may be placed under protective services or in a protective placement voluntarily until such time as the elder or vulnerable adult voluntarily withdraws consent to such services or placement when:

a. The elder or vulnerable adult requests the Department of Social Services to provide protective services or protective placement;

b. The Department of Social Services determines the elder or vulnerable adult is in need of such services or placement; and

c. The Department of Social Services determines that it has the resources and capability to provide such services or placement.

2. An elder or vulnerable adult may be placed under protective services or in a protective placement involuntarily on an emergency basis, temporarily, or on a permanent basis through a guardian only if:

a. The elder or vulnerable adult is a victim of domestic or family violence;

b. The circumstances of the domestic or family violence necessitate or require protective services or protective placement;

c. The Tribal Court orders such services or placement in a proceeding under this Chapter; and

d. If such services or placement is to be provided by the Department of Social Services, the Department of Social Services determines that it has the resources and capability to provide such services or placement.

3. If the Court orders an elder or vulnerable adult to be placed under protective services or protective placement, the Court shall set a review hearing every sixty (60) days while such order is in effect until permanent care is made for the elder or vulnerable adult. An elder or vulnerable adult shall be considered under permanent care if:

a. The elder or vulnerable adult is returned to the care of his or her caretaker;

b. A guardian is appointed for the elder or vulnerable adult;

c. The elder or vulnerable adult is placed with a caretaker and is intended to remain with the caretaker; or

d. The elder or vulnerable adult is in another permanent living situation which no longer necessitates the Court's review.

4. In any protective placement of an elder or vulnerable adult, preference shall be given to placement in the following order:

a. An immediate or extended family member of the elder or vulnerable adult;

b. A friend of the elder or vulnerable adult or his or her family;

c. A residential care facility or nursing home licensed or approved by the Tribe;

d. Another residential care facility or nursing home; or

e. A twenty-four (24) hour health facility, such as a hospital.

5. Subject to the preferences in this Section, when any elder or vulnerable adult is placed outside of his or her home or residence or that of his or her family or household member or caretaker, the elder or vulnerable adult shall be placed in a home:

a. Which is the least restrictive to the liberty and rights of the elder or vulnerable adult and provides the most independence consistent with his or her welfare and needs;

b. Which strengthens the elder's or vulnerable adult's capacity for self-maintenance;

c. If possible, that is a familiar environment;

d. In which the elder's or vulnerable adult's needs may be met;

e. That facilitates and encourages visitation; and

f. That is in close proximity to the home of the elder's or vulnerable adult's family, unless the best interests or special needs of the elder or vulnerable adult require otherwise.

6. When an elder or vulnerable adult is provided protective services, such services shall be those appropriate to ensure that the elder or vulnerable adult is protected from serious injury or death due to suspected or actual domestic or family abuse, that remedies the effects of such domestic or family abuse in accordance with the elder's or vulnerable adult's needs, and seeks to maintain the elder or vulnerable adult in his or her familiar environment by strengthening, to the extent possible, his or her capacity for self-maintenance, including:

a. Social services case management by case managers and workers, domestic and family violence advocates, and/or other domestic and family violence workers;

b. The development of an appropriate individualized service plan;

c. Appropriate referrals, including to legal services and advocates;

d. Emergency services;

e. Counseling and psychological services;

f. Temporary shelter, alternative housing, and housing assistance;

g. Respite and other in-home supportive services;

h. Transportation; and

i. Other health-related services.

7. Protective services may be delivered to the family or caretaker of an elder or vulnerable adult in order to protect the elder or vulnerable adult.

8. Where no other suitable guardian or conservator is available, the Department of Social Services may be appointed as public guardian or public conservator of an elder or vulnerable adult who is a victim of domestic or family abuse, temporarily or permanently, provided that the Department of Social Services shall not be appointed unless it determines that it has the resources and capability to serve as such public guardian or public conservator.

Section 4-8-13. Authority of Court. The Court has jurisdiction to issue orders for protection when the petitioner and/or respondent resides or is domiciled in the territory of the Tribe or when the domestic or family abuse occurred within the territory of the Tribe.

Section 4-8-14. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

b. The petitioner and his or her legal counsel;

c. Legal counsel requesting discovery as permissible under the laws of the Tribe;

d. The Department;

e. The Department of Social Services;

f. The Tribal Attorney;

g. Another court having jurisdiction over an action involving the parties to the action;

h. A law enforcement agency of the Tribe or another government; or

i. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a party's child to another person if the Court has reason to believe that the release of the information

to that person may result in domestic or family abuse or physical or emotional harm to the party or the party's child.

4. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 4-8-15. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

1. The parties and their legal counsel;

2. An advocate accompanying a person seeking an order for protection;

3. Any person accompanying a person seeking an order for protection if his or her presence is requested by the person seeking the order for protection;

4. Witnesses; and

5. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-8-16. Privileges.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a spouse testifying against his or her spouse or any privilege of confidentiality between spouses in any proceeding under this Chapter.

2. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner in any proceeding under this Chapter.

Section 4-8-17. Advocate-Victim Privilege.

1. Except as otherwise provided in this Section or elsewhere in the laws of the Tribe, confidential oral communications between a victim of domestic or family abuse and an advocate, and written records and reports concerning the victim are privileged. The privilege can be claimed by:

a. The victim; or

b. The person who was the advocate at the time of the communication, unless the victim is deceased or waived the privilege.

2. The privilege provided under this Section does not relieve a person from any duty imposed pursuant to applicable law requiring reporting of child abuse or neglect.

3. No person may claim the privilege provided in this Section when providing evidence in any judicial proceeding involving an alleged abused or neglected child.

Section 4-8-18. Subpoenas and Visitation Warrants.

1. Upon request of the Department or the Department of Social Services and regardless of whether a proceeding has been initiated under this Chapter, the Court may issue subpoenas for the release of medical and financial records in order to facilitate a pending investigation of reported domestic or family abuse.

2. Upon the request of the Department or the Department of Social Services, the Court may issue a visitation warrant if it is shown:

a. There is reasonable cause to believe an elder or vulnerable adult is a victim of or subject to domestic or family abuse; and

b. The Department or the Department of Social Services has been denied or has not had open access to the elder or vulnerable adult or his or her residence.

3. A visitation warrant shall allow the Department or the Department of Social Services to enter the elder's or vulnerable adult's residence, assess the elder's or vulnerable adult's living conditions, and interview the elder or vulnerable adult without the consent of the family or household member or caretaker. Law enforcement may accompany the Department or the Department of Social Services in executing a visitation warrant and a visitation warrant may request or order such accompaniment by law enforcement. A visitation warrant shall be enforceable the same as any other order of the Court, including through contempt proceedings in accordance with the laws of the Tribe.

Section 4-8-19. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

Section 4-8-20. Initiation of Proceedings.

1. Proceedings in the Court to obtain an order for protection shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A person who is, has been, or reports being a victim of domestic or family abuse;

b. A parent, guardian, custodian, caretaker, or other representative on behalf of a minor, elder, or incapacitated person who is, has been, or reports being a victim of domestic or family abuse;

c. A caretaker of a person who is, has been, or reports being a victim of domestic or family abuse;

d. A next friend of a person who is, has been, or reports being a victim of domestic or family abuse;

e. The Department of Social Services on behalf of an elder or incapacitated person who is, has been, or reports being a victim of domestic or family abuse for the purposes of obtaining protective services or protective placement for such elder or incapacitated person; or

f. An advocate or the Department on behalf of a person who is, has been, or reports being a victim of domestic or family abuse.

3. Petitions for an order for protection shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, tribal affiliation and, except as provided herein, address of the petitioner;

b. The name, last known address, employer, employer address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. If the petition is filed on behalf of another, the relationship of the petitioner to the victim of domestic or family abuse;

d. The name, tribal affiliation, date of birth, and relationship to the petitioner and respondent of each child of each party;

e. The basis for the Court's jurisdiction;

f. A description of the relationship between the parties;

g. A statement listing each civil or criminal action involving both parties;

h. Information regarding the use, possession, and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent;

i. A statement, including dates, location, names of persons involved, and specific details of the domestic or family abuse alleged;

j. The basis for the petitioner requesting an order for protection; and

k. A request that the Court enter an order for protection in favor of the petitioner.

5. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include, such as letters, notes, text messages, and police reports.

6. The family or household member or caretaker who committed the alleged act of domestic or family abuse shall be included as the named respondent.

7. Two or more petitioners, including the Department and the Department of Social Services, may join in the filing of the

same petition involving the same person who is, has been, or reports being a victim of domestic or family abuse.

8. The Court shall not charge any filing fee for the filing of a pleading under this Chapter.

9. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-8-21. Emergency Protection Order.

1. The Court may issue an emergency order for protection ex parte without a hearing if it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. The respondent has been arrested for an act of domestic or family abuse which is the subject of the petition;

b. A person's life or health is in imminent danger before the matter can be heard on notice;

c. A person is in immediate danger of domestic or family abuse before the matter can be heard on notice;

d. The respondent has committed an act of domestic or family abuse within the past year or within a longer period of time if the Court finds that good cause exists to consider a longer period, provided that any time the respondent has been incarcerated or residing more than one hundred (100) miles away from the petitioner shall not be counted in determining the amount of time since the respondent committed an act of domestic or family abuse; or

e. In the case of an elder or vulnerable adult, the person:

i. Is at risk of imminent physical or emotional harm or exploitation before the matter can be heard on notice;

ii. Is incapacitated and cannot consent to protective services or protective placement; and

iii. Has no one known to the petitioner who is authorized by law or court order to give consent on an emergency basis.

2. If the Court issues an order for protection ex parte without a hearing, the Court shall:

a. Issue a summons to the respondent in accordance with this Title;

b. Issue an order to the respondent to show cause why the emergency order for protection should not remain in effect which states in bold-faced type or capital letters that the emergency order for protection shall automatically become a final order for protection without a hearing unless the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection; and

c. Cause the petition, the emergency order for protection, the order to show cause, and summons to be served on the respondent in a manner other than by publication.

3. If the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall set a date for a hearing on the petition:

a. Within fifteen (15) days after the request for a hearing if the emergency order for protection:

i. Awards temporary custody of a minor child to the petitioner;

ii. Excludes the respondent from the residence of the petitioner; or

iii. Awards possession and use of an automobile to the petitioner; or

b. Within thirty (30) days after the request for a hearing in all other cases.

4. If the respondent does not request a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall:

a. Enter a default against the respondent in accordance with the Tribal Rules of Civil Procedure; and

b. Enter a final protection order in accordance with this Chapter, provided that the terms of the final protection order shall be identical to the terms of the emergency order for protection except with respect to duration.

5. If the petitioner or the Court desires to include any matters in a final order for protection that were not included in an emergency order for protection issued ex parte without a hearing, the Court shall schedule and conduct a hearing on the petition in accordance with this Chapter.

6. An emergency order for protection issued ex parte without a hearing may not be dismissed without a hearing.

Section 4-8-22. Hearing on Petition.

1. Except in the case of an emergency order for protection which has been converted to a final order for protection in accordance with this Chapter, upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but no later than thirty (30) days from the date the petition was filed.

2. The primary purpose of a hearing on the petition is to determine whether an order for protection should be issued.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court may issue an order for protection if it finds by a preponderance of the evidence that domestic or family abuse has occurred or is likely to occur between the parties to the proceeding.

5. The Court may find that domestic or family abuse occurred regardless of whether the person alleged to have committed domestic or family abuse has been arrested, charged, or convicted.

6. The following shall not be considered a defense or otherwise prevent the issuance or enforcement of an order for protection:

a. Intoxication;

b. Substance abuse;

c. Spousal immunity; or

d. Provocation.

Section 4-8-23. Protection Order.

1. In addition to any other matters necessary for an order of the Court, an order for protection, including an emergency order, shall:

a. State the appearances of all parties and failures to appear;

b. Describe any prior orders of the Court relating to the parties which are superseded or altered by the order for protection, including custody decrees and visitation orders;

c. Include the following statements in bold-faced type or capital letters:

Violation of this order could result in confinement in jail and/or a fine of up to five hundred dollars ($500) for each violation or up to five thousand dollars ($5,000) for each subsequent violation.

If this order requires the respondent to leave the petitioner's residence or prohibits the respondent from entering or staying at the petitioner's residence, the respondent shall leave and not enter or stay at petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection.

2. An order for protection, including an emergency order, may include any of the following relief:

a. Enjoining the respondent from threatening to commit or committing acts of domestic or family abuse against the petitioner and any designated family or household member;

b. Prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

c. Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence;

d. Ordering the respondent to stay away from the residence of, school of, place of employment of, or any specified place frequented by the petitioner and any designated family or household member;

e. Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;

f. Ordering the respondent to surrender any dangerous weapon in his or her possession to law enforcement;

g. Ordering possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

h. Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures;

i. Granting temporary custody of a minor child to the petitioner;

j. In the case of an elder or vulnerable adult:

i. Removal of the elder or vulnerable adult from the place where domestic or family abuse has taken or is taking place, including the elder's or vulnerable adult's home or residence;

ii. Making the elder or vulnerable adult a ward of the Court and ordering temporary guardianship or conservatorship of the elder or vulnerable adult until the matter can be addressed through a guardianship or conservatorship proceeding;

iii. Ordering the commencement of a guardianship or conservatorship proceeding pursuant to Title III of the Code for the elder or vulnerable adult;

iv. Placing the elder or vulnerable adult under protective supervision where the elder or vulnerable adult is permitted to remain in the home where the Department of Social Services or other designated agent provides supervision and assistance to correct the domestic or family abuse, provided that the Department of Social Services shall only be ordered to provide supervision if the Department of Social Services determines that it has the resources and capability to do so;

v. Ordering protective services or protective placement for the elder or vulnerable adult in accordance with this Chapter; and

vi. Requiring the respondent or a caretaker or other appropriate person who is not a respondent to account for the elder or vulnerable adult's funds, assets, and/or property;

k. If the order is issued after notice and a hearing:

i. Specifying arrangements for visitation of any minor child by the respondent and require supervision of that visitation by a third party or deny visitation if necessary to protect the safety of the petitioner or child;

ii. Ordering the removal of a guardian or conservator who is the respondent;

iii. When there is a reasonable suspicion of drug and/or alcohol use, ordering the respondent to submit to alcohol and drug testing and attend and successfully complete alcohol and drug evaluation, education, and/or treatment;

iv. Ordering the respondent to attend and successfully complete appropriate counseling services;

v. Ordering the respondent to pay the petitioner's legal counsel's fees;

vi. Ordering the respondent to pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

vii. Ordering the respondent to reimburse the petitioner or other person for any expenses associated with the domestic or family abuse, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

viii. Requiring the respondent to pay restitution as compensatory damages to the victim of domestic or family abuse for any injuries or damages resulting from the respondent's acts;

ix. Ordering the respondent to pay the costs and fees incurred by the petitioner in bringing the action;

l. Ordering such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member; and

m. Ordering any other matters the Court deems necessary or appropriate.

3. No order issued under this Chapter shall in any manner affect title to any real property.

4. The Court shall not grant a mutual order for protection to opposing parties.

5. Unless the order provides a lesser time, an order for protection issued upon notice and hearing is effective for one year from the date of entry and no longer, provided that the petitioner may file a motion to renew a protection order on or after thirty (30) days before the expiration of the previous protection order.

6. The issuance of an order of protection under this Chapter or any relief authorized under this Chapter shall not preclude any other relief provided by the laws of the Tribe.

7. If a respondent is not served with an order for protection issued by the Court within sixty (60) days after the order for protection is issued, the Court, after notice to the

petitioner, shall vacate the order and dismiss the action without prejudice against the respondent or order that service be made within a specified time. But, if the petitioner shows good cause for the failure, the Court shall extend the time for service for an appropriate period.

8. An order for protection is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-8-24. Restitution.

1. When the Court orders restitution in an order for protection, such order shall direct the respondent to pay the victim the full amount of the victim's losses, including:

a. Medical services relating to physical, psychiatric, or psychological care;

b. Physical and occupational therapy or rehabilitation;

c. Necessary transportation, temporary housing, and child care expenses;

d. Lost income;

e. Legal counsel's fees plus any costs incurred in obtaining an order for protection;

f. Any funds, assets, or property lost as a result of exploitation of the victim; and

g. Any other losses suffered by the victim as a result of domestic or family abuse.

2. In the event the Tribe has provided any services to a victim subject to restitution under this Section, the order of restitution shall provide that the respondent pay such amount to the Tribe regardless of whether the Tribe is or becomes a party to the proceeding. The Department shall be permitted to submit any documentation of costs to the Tribe on behalf of the victim resulting from the respondent's acts for purposes of restitution and the Court shall accept such documentation in calculating the amount of restitution due the Tribe without requiring the Tribe to become a party to the proceedings. The Tribe shall be permitted

to intervene in any proceeding under this Chapter for the purposes of seeking such restitution.

3. An order for restitution shall be enforceable in the same manner as a judgment in a civil action and may be enforced by the victim named in the order even if the victim is not the petitioner.

Section 4-8-25. Delivery of Order.

1. Upon issuance of an order for protection, including an emergency order, the Court shall:

a. Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any and all appropriate law enforcement agencies or agencies designated by the petitioner;

b. Transmit, within twenty-four (24) hours, a copy of the order to the Department for inclusion in the central registry established under this Chapter; and

c. To the extent possible, transmit a copy of the order to the state registry for such orders.

2. The Court or any party in a proceeding under this Chapter may deliver an order for protection granted pursuant to this Chapter to any appropriate law enforcement agency at any time while the order is effective.

3. Each law enforcement agency which receives an order for protection issued by the Court under this Chapter shall have the authority to make such order and its contents available to other law enforcement officers for enforcement of such order.

4. If the Court vacates, dismisses, or modifies an order for protection, including an emergency order, the Court shall transmit the order vacating, dismissing, or modifying the order for protection to the same agencies and registries to which it transmitted the original order for protection in accordance with this Section.

Section 4-8-26. Effect of Action by Parties. If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to act contrary to the exclusion or order does not waive or nullify an order for protection.

Section 4-8-27. Court-Ordered Mediation Prohibited. The Court shall not order parties to a proceeding under this Chapter into mediation or traditional dispute resolution or refer them to mediation or traditional dispute resolution for resolution of the issues in a petition for an order for protection.

Section 4-8-28. Rights of Victims. A person's right to seek an order for protection under this Chapter shall not be affected by:

1. The departure of that person from the residence or household to avoid domestic or family abuse;

2. The person's use of reasonable force in self-defense against the perpetrator of domestic or family abuse;

3. Evidence that the person previously filed a petition under this Chapter and subsequently reconciled with the perpetrator of domestic or family abuse;

4. Solely a lapse of time between an act of domestic or family abuse and the filing of a petition under this Chapter;

5. Evidence that a married victim did not file an action for divorce, legal separation, and/or invalidity of marriage; or

6. Evidence that the victim left the territory of the Tribe.

Section 4-8-29. Effect of Other Proceedings.

1. At any hearing in a proceeding under this Chapter, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five (5) years that was not listed in the petition.

2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceedings.

3. A petitioner is not barred from seeking an order pursuant to this Chapter because of other pending proceedings.

4. Except as expressly provided in the laws of the Tribe, the Court shall not dismiss a proceeding under this Chapter or delay granting relief in such proceeding because of the existence of a pending action between the parties unless agreed to by all parties to the proceeding, including the victim.

Section 4-8-30. Modification of Order.

1. Any party to an order for protection issued under this Chapter or, if different, the petitioner in the proceeding in which such order was issued may, by motion in the same action in which the order for protection was issued, request the Court to modify or vacate the order in accordance with this Section, including extending such order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for modifying or vacating the order for protection.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may modify or vacate an order for protection pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that there are grounds for such modification or vacating.

5. If there has been no violation of the existing order for protection prior to the motion to modify or vacate, the Court shall take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court shall not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

Section 4-8-31. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates an order for protection or visitation warrant issued under this Chapter shall be subject to a civil fine not to exceed five hundred dollars ($500) for each such violation, provided that any subsequent violation of an order for protection or visitation warrant by the same person within one (1) year shall result in a civil fine not to exceed five thousand dollars ($5,000) for each such violation.

2. In addition to the civil fines provided herein, the Court may enforce an order for protection or visitation warrant issued under this Chapter using any and all other enforcement remedies available to enforce an order of the Court.

Section 4-8-32. Foreign Protection Orders.

1. Any person may request the Court to recognize and enforce a valid order for protection made by the court of another federally recognized Indian tribe or state by filing a certified copy of such order with the Court.

2. The Court shall act upon a valid order filed in accordance with this Section in the same manner as the Court acts upon an order for protection issued by the Court itself.

3. A valid order for protection filed in accordance with this Section has the same effect and must be enforced in the same manner as an order for protection issued by the Court.

4. An order for protection filed in accordance with this Section is valid if:

a. The court which issued the order has or had jurisdiction over the parties and the subject matter under the laws of the issuing tribe or state; and

b. The person against whom the order was issued had reasonable notice and an opportunity to be heard, provided that an order issued ex parte without a hearing is valid if notice and opportunity to be heard is provided within the time required by the laws of the issuing tribe or state and within a reasonable time after the order was issued.

5. An order for protection issued by another jurisdiction against one who has petitioned for an order for protection shall not be recognized or enforced by the Court if:

a. No cross or counter petition was filed seeking such an order for protection; or

b. A cross or counter petition was filed and the court did not make specific findings that each party was entitled to such an order.

6. The Court shall not recognize or enforce any provision of an otherwise valid order for protection filed under this Section which purports to determine or provide for ownership or right to possession of any property belonging to the Tribe or any of its members, including provisions excluding an individual from the residence of the parties, provided that the Court shall issue its own order providing for the right of possession to and excluding

any party from such property in accordance with the provisions of this Chapter.

7. The Court shall enforce all provisions of a valid order for protection filed under this Section whether or not such relief is available under this Chapter or otherwise within the territory of the Tribe.

8. The Court shall not notify or require notification of the party against whom an order for protection has been issued that the order for protection has been filed or recognized and enforced under this Section unless requested to do so by the party protected under such order.

9. The Court shall not make available publicly any information regarding the recognition and enforcement, filing of a petition for, or issuance of an order for protection under this Section if such publication would be likely to publicly reveal the identity or location of the party protected under such order, provided that the Court may share information contained in secure, governmental registries for purposes of enforcing the order for protection.

10. Any order for protection that is otherwise consistent with this Section shall be enforced the same as on order of the Court issued under this Chapter regardless of whether such order is filed in accordance with this Section.

11. Any order for protection issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

Section 4-8-33. Order for Possession.

1. Any party to a valid order for protection made by the court of another jurisdiction which either purports to determine or provide for ownership or right to possession of any property belonging to the Tribe or any of its members, including provisions excluding an individual from the residence of the parties, or does not make any provision for which party may remain in possession or shall be excluded from the residence of the parties to the order may request an order for possession from the Court by filing a petition for such order in accordance with this Section.

2. A petition filed under this Section shall include:

a. A certified copy of the valid order for protection;

b. Information concerning the residence of the parties and whether such residence is or was shared by the parties at the time the order for protection was made; and

c. Any specific requests with respect to possession or exclusion from the residence of the parties.

3. The Court shall issue an order for possession in the form of an order for protection under the same standards it would apply to a petition for an order for protection under this Chapter, taking into consideration:

a. Whether the parties cohabitated or resided together in the residence or on the property at the time the order for protection was issued; and

b. Any applicable laws, regulations or other authority, including leases, which may restrict which party is permitted to reside in the residence or on the property.

4. The Court shall have the authority to issue an order for possession under this Section ex parte without a hearing as part of a recognition and enforcement of a valid order for protection made by the court of another federally recognized Indian tribe or state pursuant to Section 4-8-23 of this Chapter. If the Court issues an order for possession ex parte without a hearing, the Court shall conduct a hearing on the possession of the residence or property if a party subject to such order files an objection to the order of possession within seven (7) days of receiving notice of such order, provided that such hearing shall be held within seven (7) days of the filing of such objection and the filing of such objection shall not stay or prevent the enforcement of such order for possession pending the hearing.

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Resolution 16-37

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Resolution 17-40

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Resolution 17-68

Revised 9/29/18
Resolution 18-69

TITLE V
HOUSING AUTHORITY

CHAPTER 1
GENERAL PROVISIONS

Section 5-1-1. Purpose. This Title shall be interpreted and construed to fulfill the following purposes:

1. To remedy unsafe and unsanitary housing conditions that are injurious to the public health, welfare, safety, and morals;

2. To remedy the outstanding shortage of decent, safe, and sanitary housing in the territory of the Tribe among persons of low income and the issues associated with such shortage;

3. To better Tribal economic security and health and welfare, especially housing, while ensuring lawfulness, fairness, transparency, and accountability;

4. To encourage private homeownership and make Tribal lands available to members of the Tribe for residential purposes;

5. To establish a housing authority of the Tribe and set forth the purposes, powers and duties of such housing authority;

6. To coordinate and administer expending and providing housing funds to other Tribal, local, nonprofit and for-profit housing organizations for the benefit of the Tribe and residents of the territory of the Tribe in accordance with Indian housing plans prepared pursuant to federal law;

7. To provide employment opportunities through the acquisition, construction, reconstruction, improvement, extension, alteration, repair, and operation of housing in the territory of the Tribe; and

8. To set forth the law governing the occupation of and eviction from dwelling units owned or managed by the Northern Ponca Housing Authority.

Section 5-1-2. Applicability.

1. This Title applies to, regulates, and determines rights, obligations, and remedies under a lease or tenancy for a dwelling unit where the Authority is the landlord, owner, or manager of the

premises and the premises subject of the lease or tenancy are located within the territory of the Tribe.

2. Where a law or regulation of the United States government applies to the renting, leasing, occupying, or using of premises where the Authority is the landlord, such law or regulation shall govern the renting, leasing, occupying, or using of such specific premises in addition to this Title and no provision of this Title shall be deemed inapplicable to the renting, leasing, occupying, or using of such specific parcel unless such provision is specifically superseded by or directly contrary to such law or regulation.

Section 5-1-3. Declaration of Need. It is hereby declared:

1. That there exists in the territory of the Tribe unsanitary, unsafe, and over-crowded dwelling accommodations resided in by members of the Tribe;

2. There is a shortage of decent, safe, and sanitary dwelling accommodations available at rents or prices which persons of low income can afford and such shortage forces such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations;

3. That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals and welfare and necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

4. That the shortage of decent, safe, and sanitary dwelling accommodations for persons of low income cannot be relieved through the operation of private enterprises;

5. That the providing of decent, safe, and sanitary dwelling accommodations for persons of low income are public uses and purposes for which money may be spent and private property acquired and are governmental functions of Tribal concern;

6. That residential construction activity and a supply of acceptable housing are important factors to general economic activity;

7. The undertakings authorized by this Title to aid the production of better housing and more desirable neighborhoods and community developments at lower costs will make possible a more

stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

8. That as a matter of legislative determination, the enactment of this Title is necessary in the public interest.

Section 5-1-4. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Authority" means the Northern Ponca Housing Authority and, where provisions of this Title apply to the Authority as landlord, includes any entity in which the Authority is a managing partner, member, or owner.

2. "Dwelling unit" means property leased to a tenant for use as a home, residence, or sleeping place by an individual or two or more individuals who maintain a common household, regardless of their relationship to each other, and includes:

a. A single family residence, together with fixtures and appurtenances, the land on which it is located, and any other structure on the land; and

b. A structure or part of a structure in which the tenant resides, together with fixtures and appurtenances, and any other area of the land on which the structure is located to which the tenant is given an exclusive right of possession during the term of the lease, including a designated parking space or storage area.

3. "Executive Director" means the Executive Director of the Authority.

4. "Good Faith" means honesty in fact in the conduct of the transaction concerned.

5. "Lease" means all tenancies and agreements, written or implied by law between the Authority and in which the Authority rents a dwelling unit to the tenant and includes a lease-to-own agreement, an amendment to the lease, and valid rules and regulations adopted by the Authority as provided in this Title.

6. "Periodic tenancy" means a tenancy created under a lease or arising by operation of law for month to month, week to week, or other successive periods.

7. "Premises" means a dwelling unit and/or any structures, parts, and appurtenances thereof, including, but not limited to, furniture and utilities where applicable, grounds, areas, existing facilities, and, to the extent owned by the Authority, any structure of which the premises is a part, including any area and structure associated with the structure in which the premises is located and held out by the Authority for the use of tenants generally.

8. "Rent" means all payments, except security deposits and damages, to be made to the Authority under a lease, including required fees.

9. "Security deposit" means funds other property provided to the Authority to secure payment or performance of a tenant's obligations under a lease and the identifiable proceeds of the funds or property, however denominated, and which is to be returned to the tenant upon termination of the lease, but does not include rent.

10. "Tenancy for a fixed term" means a tenancy under a lease for a fixed or computable period, regardless of the length of the period.

11. "Tenant" means:

a. A person that is a party to a lease of a dwelling unit with the Authority and is entitled to possession of the dwelling unit;

b. An assignee or sublessee of a tenant which has possession of the dwelling unit with the Authority's consent; and

c. A person who is a party to a mutual help and occupancy, lease purchase homeownership program, or similar agreement with the Authority as the home buyer, but has not yet obtained title to or ownership of the dwelling unit.

12. "United States government" means the government of the United States of America, including the Department of Housing and Urban Development ("HUD") and other agencies, instrumentalities, corporations, and entities of the United States of America.

Section 5-1-5. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the

remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 5-1-6. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2
NORTHERN PONCA HOUSING AUTHORITY

Section 5-2-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Board" means the Board of Commissioners of the Authority.

2. "Commissioner" means a member of the Board.

3. "Homebuyer" means an individual who has executed a lease-purchase agreement or other binding agreement to purchase a housing unit from the Authority and who has not yet achieved homeownership.

4. "Housing project" means:

a. Any work or undertaking to provide, or assist in providing, by any suitable method, decent, safe, and sanitary dwelling units, apartments, or other living accommodations for persons of low income, including but not limited to:

i. By rental or sale of individual units in single or multi-family structures under conventional condominium or cooperative sales contracts or lease-purchase agreements, loans or subsidizing of rents or housing charges; and

ii. Acquiring buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, streets, sewers, water service, utilities, parks, site preparation, landscaping, and administrative, community, health, recreational, welfare or other purposes;

b. Planning of buildings and improvements;

c. Acquisition of property or any interest therein;

d. Demolition of existing structures;

e. Construction, reconstruction, rehabilitation, alteration or repair of improvements or other property;

f. All other work and services provided in connection with a housing project; and

g. All other real and personal property and tangible or intangible assets held or used in connection with a housing project.

5. "Obligation" means any note, bond, interim certificate, debenture, or other form of obligation issued by the Authority pursuant to this Title.

6. "Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to the Authority property used in connection with a housing project, or any assignee of such lessor's interest or any part thereof.

7. "Participant" means a person who participates in a program or housing project of the Authority as a beneficiary of such program or housing project.

8. "Persons of low income" means persons whose income does not exceed the level set by applicable program requirements.

9. "Property" means land, buildings, or other real property owned or leased by the Authority and includes lands of the Tribe assigned to or for the use of the Authority, whether in fee, trust, or restricted status.

Section 5-2-2. Establishment.

1. There is hereby established a housing authority to be known as the Northern Ponca Housing Authority as an instrumentality of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Authority shall consist of a Board of Commissioners, Executive Director and such other personnel and employees as may be required.

3. The Authority shall be the tribally designated housing entity of the Tribe and shall have perpetual succession in its legal name.

4. The Authority shall require any officer, personnel or employee, including Commissioners, who will handle monies or revenues, sign checks, or verify vouchers to be bonded and/or insured in an amount determined by the Board with any premiums for such bonding and/or insurance to be paid from the Authority's budget.

Section 5-2-3. Board of Commissioners.

1. The Board shall manage the affairs of the Authority in accordance with this Title.

2. The Board shall consist of five (5) members appointed by the Tribal Council from geographic districts as follows:

a. One (1) Commissioner from District 1, which shall be comprised of the area consisting of Boyd, Knox, and Holt Counties of Nebraska, Charles Mix County of South Dakota, and Woodbury County of Iowa;

b. One (1) Commissioner from District 2, which shall be comprised of the area consisting of Douglas, Burt, and Sarpy Counties of Nebraska and Pottawattamie County of Iowa;

c. One (1) Commissioner from District 3, which shall be comprised of the area consisting of Lancaster and Hall Counties of Nebraska;

d. One (1) Commissioner from District 4, which shall be comprised of the area consisting of Madison, Stanton, Platte, and Wayne Counties of Nebraska; and

e. One (1) Commissioner at large.

3. Each Commissioner shall represent his or her respective District, except that the at-large Commissioner shall represent all areas within the territory of the Tribe where the Authority conducts housing activities.

4. The Tribal Council shall conduct interviews for all appointments to the Board. Upon appointment, the Secretary of the Tribal Council shall issue a certificate of the appointment, which shall be conclusive evidence of the due and proper appointment of the Commissioner.

Section 5-2-4. Qualifications.

1. To be qualified to be appointed a Commissioner, a person shall:

a. Be at least the age of twenty-five (25) years;

b. Not have plead guilty or no contest or been convicted of any felony, any sex-related offense, or any civil or criminal offense involving dishonesty or fraudulent representation to any persons;

c. Unless the Commissioner is an at large Commissioner, physically reside in the geographic district which the Commissioner would represent;

d. Not be a member of the Tribal Council or an employee or contractor of the Authority;

e. Not have an immediate family member currently serving as a Commissioner;

f. Be willing and able to comply with the ethical duties of Commissioners, as defined in this Chapter;

g. Be willing and able to perform the Board's duties in compliance with the laws of the Tribe; and

h. Have the time available to actively fulfill the duties of a Commissioner.

2. No person shall be barred from serving as a Commissioner on the grounds that he or she is a tenant, participant, or homebuyer of the Authority.

Section 5-2-5. Term of Office.

1. The term of office for Commissioners shall be four (4) years and staggered such that each year the term of one (1) Commissioner shall expire, except that, every fourth (4th) year, the terms of two (2) Commissioners shall expire.

2. The term of office of each Commissioner shall begin on June 1 and end on May 31 of the year the Commissioner's term expires.

3. Any Commissioner may be appointed to additional terms on the Board in accordance with this Title.

Section 5-2-6. Compensation. Commissioners shall be compensated at a rate set by the Tribal Council. In addition, Commissioners shall be paid for mileage for every Board meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

Section 5-2-7. Resignation and Removal.

1. Any Commissioner may resign from his or her position by delivering a written resignation to the Tribal Council.

2. The Tribal Council may, by majority vote, remove a Commissioner for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty or serious inefficiency;

c. Malfeasance or misfeasance in the handling of Authority matters;

d. Acceptance or solicitation of bribes;

e. Violation of the ethical duties or conflict of interest provisions of this Chapter;

f. Unexcused absence from three (3) or more Board meetings in a one (1) year period;

g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the Commissioner ineligible for appointment if the event had occurred prior to appointment.

3. The Tribal Council shall remove a Commissioner only after providing the Commissioner:

a. Written notice, which shall include the specific charges against him or her and the date of a hearing before the Tribal Council; and

b. A hearing before the Tribal Council no sooner than ten (10) days after written notice has been provided to the Commissioner.

4. At any hearing to remove a Commissioner, the Commissioner shall have the opportunity to be heard in person or through legal counsel and to present witnesses on his or her behalf. In the event the Tribal Council votes to remove the Commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed with the Secretary of the Tribal Council.

5. The Tribal Council's decision to remove a Commissioner shall be final and not subject to challenge, review, or appeal.

Section 5-2-8. Vacancies. In the event of a vacancy on the Board, whether by removal, resignation or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Commissioner being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 5-2-9. Officers.

1. The Board shall elect from its members a Chairperson, Vice-Chairperson, Secretary, and Treasurer at its first meeting after June 1 of each year. In the event of a vacancy in the position of any officer of the Board, the Board shall elect a replacement at the next meeting of the Board.

2. The Chairperson shall call and preside over meetings of the Board. The Chairperson shall report to the Tribal Council as required.

3. The Vice-Chairperson shall serve in the absence of the Chairperson.

4. The Secretary shall be responsible for assuring the timely and proper production, distribution, and storage of all written records of the Board. The Secretary shall keep full and accurate records of all meetings and actions taken by the Board. The Secretary shall preside over any meetings where both the Chairperson and Vice-Chairperson are absent.

5. The Treasurer shall be responsible for assuring the timely and proper production, distribution, and storage of all financial records of the Board and shall keep informed about the Authority's expenditures and budget.

Section 5-2-10. Ethics. Commissioners shall:

1. Avoid the appearance of impropriety;

2. Not act in an official capacity when a matter before the Board directly and specifically affects a Commissioner's own interests or the interests of his or her immediate family;

3. Not attempt to exceed the authority granted to Commissioners by this Title;

4. Recognize that the authority delegated by this Title is to the Board as a whole, not to individual Commissioners and, accordingly, the powers of the Board may only be exercised by the Board acting through the procedures established by this Title;

5. Not take action on behalf of the Board unless authorized to do so by the Board;

6. Not involve the Board in any controversy outside the Board's duties; and

7. Hold all confidential information revealed during the course of Authority business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Authority business.

Section 5-2-11. Recusal.

1. No Commissioner shall participate, except as a tenant, participant, or homebuyer of the Authority, in any action or decision by the Board:

   a. Concerning any matter involving the individual rights, obligations, or status of the Commissioner or a member of his or her immediate family as a tenant, participant, or homebuyer of the Authority; or

   b. Where such Commissioner would have a conflict of interest as set forth in this Title and the code of standards of conduct of the Authority.

2. Nothing in this Section shall preclude a Commissioner from participating in any action or decision by the Board which generally affects all tenants, participants, or homebuyers of the Authority, regardless of whether the Commissioner or a member of his or her immediate family is a tenant, participant, or homebuyer of the Authority.

3. A Commissioner may voluntarily recuse himself or herself and decline to participate in any action or decision by the Board when the Commissioner, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias; or

b. That there would be an appearance that he or she could not act fairly or without bias.

Section 5-2-12. Quorum. Three (3) Commissioners shall constitute a quorum for conducting business.

Section 5-2-13. Meetings.

1. The Board shall hold meetings at regular intervals in accordance with the bylaws of the Authority.

2. The Chairperson of the Board shall have the authority to call a meeting of the Board as he or she sees fit upon forty-eight (48) hours written notice. The Board, by unanimous consent or appearance at a meeting, may waive any notice requirement.

3. The Board may hold emergency meetings in accordance with the bylaws of the Authority.

4. The Board may conduct a meeting exclusively by telephone, video conference, or other electronic means provided that the notice of the Board meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

5. All decisions and actions of the Board shall be made by no less than a majority vote of the Commissioners attending the meeting, provided a quorum is present, unless otherwise provided in this Title or the bylaws of the Authority.

6. Matters dealing with personnel, enforcement, individual tenants, participants, or homebuyers, or other confidential matters shall be conducted in executive session and shall not be open to the public.

Section 5-2-14. Disbanding of Board.

1. The Tribal Council may disband the Board by an affirmative vote of two-thirds (2/3) of the entire Tribal Council excluding any vacant seats.

2. No notice or hearing shall be required for the Tribal Council to disband the Board.

3. In the event the Tribal Council disbands the Board, the affairs of the Authority shall be managed by the Tribal Council in accordance with this Title until the Tribal Council appoints a new Board.

4. The Tribal Council's decision to disband the Board shall be final and not subject to challenge, review, or appeal.

Section 5-2-15. Powers and Duties. The power, authority and duties of the Authority shall be as follows:

1. To adopt and use a seal;

2. To enter into agreements, contracts and understandings with any government or governmental agency, or with any person, partnership, or corporation;

3. To agree to any condition attached to financial assistance so long as said condition does not conflict with this Title or any other law of the Tribe;

4. To agree, notwithstanding anything to the contrary contained in this Title or in any other provision of applicable law, to any conditions attached to financial assistance relating to the determination of prevailing salaries, wages, or payment compliance with labor standards in the development or operation of housing projects and include in any contract made in connection with a housing project, stipulations requiring that the contractor and any subcontractors comply with requirements as to maximum hours or labor and any conditions which an awarding entity may have attached to its financial aid to the housing project;

5. To obligate itself in any contract with the United States government for annual contributions to the Authority and convey to the United States government possession of or title to the housing project to which such contract relates upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject; and such contract may provide that, in case of such conveyance, the United States government may complete, operate, manage, lease, convey, or otherwise deal with the housing project and funds in accordance with the terms of the contract, provided the contract requires that as soon as practicable after the United States government is satisfied that all defaults with respect to the housing project have been cured and that the housing project will thereafter be operated in accordance with the terms of contract, the United States government shall reconvey to the housing project as then constituted to the Authority;

6. To otherwise do any and all things necessary or desirable to secure the financial aid or cooperation of other governments in the undertaking, construction, maintenance, or operation of any housing project by the Authority;

7. To lease property from the Tribe and others for such periods as authorized by applicable law and to hold, manage, or sublease the same;

8. To borrow or lend money, issue temporary or long-term evidence of indebtedness, and repay the same, provided obligations shall be issued and repaid in accordance with the provisions of this Title;

9. To pledge assets and receipts of the Authority as security for debts and to acquire, sell, lease, exchange, transfer, or assign personal property or interests therein;

10. To purchase land or interests in land in the name of the Authority or in the name of the Tribe as provided in this Title or take the same as a gift and lease land or interests in land to the extent provided by applicable law;

11. To undertake and carry out studies and analyses of housing needs, prepare housing plans, execute the same, operate housing projects, and provide for the construction, reconstruction, improvement, extension, alteration, or repair of any housing project or any part thereof;

12. With respect to any dwelling units, accommodations, lands, buildings, or facilities embraced within any housing project, including individual, cooperative, or condominium units:

a. To lease, rent, sell, and enter into lease-purchase agreements or leases with option to purchase;

b. To establish and revise rents or required monthly payments;

c. To make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and the occupancy, rental, care, and management of housing units; and

d. To make any other rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this Title;

13. To finance home purchases by eligible homebuyers in accordance with the requirements of the Tribe and other applicable law, including obtaining mortgages and liens to secure repayment of such financing;

14. To terminate any lease or lease-purchase agreement when a tenant, participant, or homebuyer has violated the terms of the agreement or failed to meet any of its obligations thereunder, or when such termination is otherwise authorized under the provisions of such agreement and to bring an action for eviction against such tenant, participant, or homebuyer in the Tribal Court or other court of competent jurisdiction as may be provided by contract;

15. To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income or other families which may be eligible under applicable law;

16. To purchase insurance or participate in a risk management pool from any stock or mutual company for any property or against any risk or hazard;

17. To invest funds not required for immediate disbursement;

18. To establish and maintain such bank accounts as may be necessary or convenient;

19. To employ an Executive Director, technical and maintenance personnel and other officers and employees, permanent or temporary, as the Authority may require and delegate to such officers and employees powers or duties as the Board shall deem proper;

20. To engage in contracts for professional services including, but not limited to, accountants, management consultants, and legal counsel;

21. To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority;

22. To join or cooperate with any other public housing agency or agencies operating under the applicable laws of another government in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other agency or agencies for the purposes of financing (including, but not limited to, the issuance of notes or other obligations and giving security therefore), planning, undertaking, owning, constructing, or operating a housing project of the Authority or such other agency or agencies, or contracting with respect thereto;

23. To adopt, subject to the approval of the Tribal Council, such bylaws as the Board deems necessary and appropriate; and

24. To perform all other duties delegated or assigned to the Authority by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 5-2-16. Sovereign Immunity.

1. The Authority shall have sovereign immunity from suit to the same extent that the Tribe if the Tribe were engaged in the activities undertaken by the Authority and the Tribe confers such immunity on the Authority.

2. The Authority shall have the power to sue and consent to be sued in the Tribal Court or another court of competent jurisdiction, provided:

a. Any consent by the Authority to be sued or to waive its sovereign immunity must be unequivocal, expressed in writing, and narrowly construed and limited to its terms;

b. A waiver of sovereign immunity shall not by itself establish a consent to suit in any court, but shall be strictly limited to the court or courts and matters specified in such waiver;

c. Any waiver of sovereign immunity or consent to suit shall be limited to the assets, funds, revenues, or other property of the Authority which otherwise may be legally executed against or other assets, funds, revenues, or other property of the Authority specified in the waiver; and

d. Language in any contract or other document regarding arbitration or other dispute resolution shall not, by itself, constitute a waiver of sovereign immunity.

3. In no event shall any waiver of sovereign immunity or the authority to grant the same provided in this Section cause the Tribe to be liable for the debts, liabilities, or obligations of the Authority or allow the levy, attachment, or execution of any assets, funds, revenues, or other property of the Tribe.

4. No consent to suit or waiver of sovereign immunity by the Authority shall extend to the Tribe or in any way be deemed or construed as a limitation or waiver of the rights, privileges, or immunities of the Tribe.

5. The Tribe shall not be liable for the payment or performance of any of the debts, liabilities, or obligations of the Authority and no recourse shall be had against any assets, funds, revenues, or other property of the Tribe in order to satisfy the debts, liabilities, or obligations of the Authority.

Section 5-2-17. Obligations of the Authority.

1. The Authority may issue, from time to time in its discretion:

a. Obligations for any of its purposes; and

b. Refunding obligations for the purpose of paying or retiring obligations previously issued by it.

2. The Authority may issue such types of obligations as it may determine, including obligations on which principal and interest are payable:

a. Exclusively from the income and revenues of the housing project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the United States government to aid of such housing project;

b. Exclusively from the income and revenues of certain designated projects, whether or not financed in whole or in part with the proceeds of such obligations; or

c. From its revenues generally.

3. Any obligations issued by the Authority may be additionally secured by a pledge of any revenues of any housing project or other property of the Authority.

4. Neither the Commissioners nor any other person executing obligations issued by the Authority shall be personally liable on the obligations by reason of issuance thereof.

5. The notes and other obligations issued by the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

6. Obligations issued by the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities.

7. Obligations issued by the Authority shall be issued and sold in the following manner:

a. Obligations shall be authorized by a resolution adopted by a vote of a majority vote of the Commissioners at attendance in a meeting, provided a quorum is present;

b. Obligations may be issued in one or more series;

c. Obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form (either coupon or registered), carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption (with or without premium), as the resolution of the Board may provide;

d. Obligations may be sold at public or private sale at not less than face value; and

e. In the event any of the Commissioners whose signatures appear on any obligations cease to be Commissioners before the delivery of such obligations, the signatures shall be valid and sufficient for all purposes the same as if the Commissioner had remained in office until delivery.

8. Obligations issued by the Authority shall be fully negotiable.

9. In any suit, action, or proceeding involving the validity or enforceability of any obligation issued by the Authority or the security therefore:

a. Any such obligation reciting in substance that it has been issued by the Authority to aid in financing a housing project pursuant to this Title shall be conclusively deemed to have been issued for such purpose; and

b. The housing project for which such obligation was issued shall be conclusively deemed to have been planned, located, and carried out in accordance with the purposes and provisions of this Title.

10. In connection with issuing obligations or incurring obligations under leases and securing payment of such obligations, the Authority, subject to the limitations in this Title or elsewhere in the laws of the Tribe, may:

a. Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence;

b. Provide for the powers and duties of obligees and limit their liabilities;

c. Provide the terms and conditions on which such obligees may enforce any covenants or rights securing or relating to the obligations;

d. Covenant against pledging all or any part of its rents, fees, and revenues or personal property to which its title or right then exists or may thereafter come into

existence, or permitting any lien to be placed on such revenues or property;

e. Covenant with respect to limitations on its right to sell, lease, or otherwise dispose of any housing project or any part thereof;

f. Covenant as to the obligations to be issued and as to issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof;

g. Provide for the replacement of lost, destroyed, or mutilated obligations;

h. Covenant against extending the time for the payment of its obligations or interest thereon;

i. Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof;

j. Covenant concerning rents and fees to be charged in the operation of a housing project, the amount to be raised each year or other period of time by rents, fees, and other revenues, and the use and disposition to be made thereof;

k. Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the monies held in such funds;

l. Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto, and the manner in which such consent may be given;

m. Covenant as to the use, maintenance, and replacement of its real or personal property, the insurance to be carried thereon, and the use and disposition of insurance monies;

n. Covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

o. Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations

become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived;

p. Vest in any obligee or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations;

q. Exercise all, part, or any combination of the powers granted in this Section;

r. Make covenants other than and in addition to the covenants expressly authorized in this Section of like or different character; and

s. Make any covenant and do any act and thing necessary or convenient or desirable in order to secure its obligations, subject to review and approval of the Tribal Council, tending to make the obligations more marketable although the covenant, act or thing is not enumerated in this Section.

Section 5-2-18. Purchase and Sale of Lands.

1. Whenever the Authority purchases lands or otherwise acquires or obtains title to lands located within the territory of the Tribe:

a. Such lands may be purchased, acquired, or obtained in the name of the Tribe or in the name of the Authority unless the Tribal Council directs in whose name a particular piece or parcel of land shall be purchased, acquired, or obtained;

b. Any such lands purchased, acquired, or obtained in the name of the Tribe shall be deemed assigned to the Authority for its exclusive use and management in accordance with this Title and other laws of the Tribe;

c. The Authority shall pay, be responsible for, and indemnify the Tribe for the payment of any such lands purchased, acquired, or obtained in the name of the Tribe and any taxes, assessments, or other fees related to any such lands purchased, acquired, or obtained in the name of the Tribe or their purchase, acquisition, or obtainment unless and until the Authority relinquishes the assignment and use of such lands to the Tribe.

2. Notwithstanding that any lands of the Authority are acquired or held in the name of the Tribe pursuant to this Section, the Authority shall have the authority to sell, transfer, or otherwise alienate any such lands not held in trust for the Tribe by the United States or otherwise subject to a restriction against alienation and retain any income or revenues from such sale, transfer, or alienation.

Section 5-2-19. Property of Authority.

1. The property of the Authority is declared to be public property used for essential public and governmental purpose and such property and the Authority are exempt from all property taxes and special assessments of the Tribe.

2. All property acquired or held by the Authority pursuant to this Title shall be exempt from levy and sale by virtue of execution and no execution or other judicial process shall issue against the same nor shall any judgment against the Authority be a charge or lien upon such property, provided that the provisions of this subsection shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its property.

3. No part of the net earnings of the Authority shall inure to the benefit of any private person, provided that this subsection shall not limit any person's ability to participate in the Authority's various housing programs.

4. Upon dissolution of the Authority, title to all property owned and funds held by the Authority at the time of dissolution shall vest in and become the property and funds of the Tribe.

Section 5-2-20. Standards of Conduct.

1. The Authority shall develop and maintain a written code of standards of conduct governing the performance of the Board and the employees of the Authority engaged in the award and administration of contracts. Such code of standards of conduct shall be submitted to the Tribal Council for its review and approval.

2. The code of standards of conduct shall include provisions for the following:

a. No Commissioner, employee, official, or agent of the Authority or its grantee shall participate in selection,

award, or administration of a contract if such person has or would have a conflict of interest, real or apparent;

b. No Commissioner, employee, official, or agent of the Authority or its grantee shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements, provided that the Authority may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value;

c. A conflict of interest shall be deemed to arise when any of the following has a financial or other interest in the person selected for an award:

i. The employee, officer, or agent of the Authority;

ii. Any member of the immediate family of an employee, officer, or agent of the Authority; or

iii. An organization which employs or is about to employ an employee, officer, or agent of the Authority or any of their immediate family; and

d. Except where prohibited by the laws of the Tribe, penalties, sanctions, or other disciplinary actions for violations of the standards of conduct.

3. The Authority may provide additional prohibitions relative to real, apparent, or potential conflicts or interest in the code of standards of conduct.

Section 5-2-21. Rules and Regulations. The Authority shall promulgate rules and regulations, not inconsistent with this Title, and subject to the approval of the Board, as it deems necessary or desirable in the public interest in carrying out the duties of the Authority including, but not limited to:

1. Internal operating procedures;

2. Rules governing ethics and conflicts of interest of the Commissioners and officers and employees of the Authority;

3. Standards governing eligibility and selection of tenants and homebuyers;

4. Rules related to occupancy, rental, care, and management of housing units;

5. Rules of practice governing tenant, homebuyer, and participant grievances against the Authority;

6. Rules of practice governing enforcement actions by the Authority, including evictions, which may include multiple levels of administrative review and appeal of such actions prior to any judicial proceedings; and

7. Such rules and regulations as may be required to maintain compliance with funding requirements related to financial assistance received from the United States government.

Section 5-2-22. Meetings with Tribal Council. The Authority and the Tribal Council shall hold joint meetings as directed by the Tribal Council.

Section 5-2-23. Tribal Housing Plan.

1. The Authority shall submit tribal housing plans to the Tribal Council for its review and approval in one (1) year increments.

2. Each tribal housing plan submitted to the Tribal Council shall describe in detail the goals, objectives, and activities of the Authority with respect to providing safe, sanitary, and affordable housing to low income families residing within the territory of the Tribe.

Section 5-2-24. Reports.

1. No later than ninety (90) days after the end of each calendar year, the Authority shall submit an annual report signed by the Chairperson of the Board to the Tribal Council which shows the following:

a. A summary of the year's activities;

b. The financial condition of the Authority;

c. The condition of all properties owned, leased, managed, operated, or overseen by the Authority;

d. The number of units owned, leased, managed, operated, or overseen by the Authority and the number of vacancies in such units;

e. Any significant problems and accomplishments;

f. Plans for the future; and

g. Such other information as the Authority or the Tribal Council shall deem pertinent.

2. The Authority shall also submit financial and programmatic reports to the Tribal Council each quarter. Such reports shall be presented by the Chairperson of the Board and the Executive Director.

3. The finances of the Authority shall be subject to review and oversight by the Finance Department of the Tribe. At the direction of the Tribal Council, the Finance Department shall have the authority to request and require the Authority to submit financial and programmatic reports on a monthly basis.

Section 5-2-25. Audits. The Tribal Council may, in its discretion and at its own expense, require that an audit of the Authority's finances be conducted to ensure that appropriate and acceptable financial management practices have been implemented and are being adhered to by the Authority.

Section 5-2-26. Compliance with Funding Requirements. Each housing project developed or operated under a contract providing for financial assistance from the United States government shall be developed and operated in compliance with any and all requirements of such contract and any statutes or regulations of the United States government governing such financial assistance.

CHAPTER 3
TENANCIES OF AUTHORITY

Section 5-3-1. Obligations of Parties.

1. An aggrieved party under the provisions of this Title has a duty to mitigate damages.

2. Every lease or duty under this Title imposes an obligation of good faith in its performance and enforcement.

Section 5-3-2. Settlement of Claims. A claim or right arising under this Title or a lease, if disputed in good faith, may be settled by agreement of the Authority and the tenant without any additional consideration.

Section 5-3-3. Term of Tenancy. Unless a lease between the Authority and the tenant specifies a fixed term, a tenancy is a periodic tenancy for week to week if the tenant pays rent weekly and otherwise is a periodic tenancy for month to month.

Section 5-3-4. Required Authority Disclosures.

1. At or before commencement of the term of a tenancy, the Authority shall give the tenant written notice specifying:

   a. To whom and at what address rent and any notice or legal process permitted or required under this Title is to be delivered or served;

   b. The name and address of any person authorized to manage the premises;

   c. The name and address of the owner of the premises; and

   d. The name and address of any person authorized to act for and on behalf of the owner.

2. The information required to be furnished by this Section shall be kept current.

Section 5-3-5. Rent.

1. In the absence of a written agreement specifying the amount of rent, the occupants of a dwelling unit of the Authority shall pay to the Authority as rent the fair rental value for the use and occupancy of the dwelling unit determined at the commencement of the occupancy.

2. Rent shall be payable:

   a. At the time and place agreed in writing between the Authority and the tenant;

   b. Unless otherwise agreed in writing between the Authority and the tenant:

i. In its entirety at the commencement of any tenancy for a term of one (1) month or less; and

ii. At the beginning of each month for a tenancy longer than one (1) month.

Section 5-3-6. Prohibited Provisions.

1. A lease shall not provide that either party:

a. Authorizes a person to confess judgment on a claim arising out of the lease or this Title, unless federal law mandates otherwise;

b. Agrees to pay the other party's legal counsel's fees and costs other than those provided by this Title or other law of the Tribe;

c. Agrees to exculpate or limit a liability of the other party arising under this Title or other law of the Tribe or indemnify the other party for the liability and the costs connected with the liability; or

d. Agrees to the establishment of a lien on the property of the other party except where permitted by this Title.

2. A provision in a lease prohibited by this Section is unenforceable.

Section 5-3-7. Delivery of Possession.

1. The Authority shall deliver physical possession of the dwelling unit to the tenant at the commencement of the lease.

2. If the Authority does not deliver physical possession of the dwelling unit to the tenant, the tenant is not required to pay rent until possession is delivered and may:

a. Terminate the lease by giving written notice to the Authority at any time before the Authority delivers possession of the dwelling unit to the tenant and the Authority shall return all prepaid rent and any security deposit; or

b. Demand performance of the lease by the Authority and obtain possession of the dwelling unit from the Authority

or any person wrongfully in possession by an action in Tribal Court and recover actual damages.

3. Except as otherwise provided in this Title, the Authority may bring an action for possession against any other person wrongfully in possession and may recover damages.

Section 5-3-8. Change in Ownership of Premises.

1. A conveyance of real estate, or of any interest therein, by the Authority shall be valid without the tenant agreeing to acknowledge the grantee as the new landlord under the lease, but payment of rent by the tenant to the Authority at any time before written notice of the conveyance is given to the tenant shall be good against the grantee.

2. A tenant's agreement to acknowledge someone other than the Authority as the new landlord under the lease shall be void and shall not affect the possession of the Authority unless it is made:

a. With the consent of the Authority; or

b. Pursuant to a judgment, order, or decree of a court.

3. Unless otherwise agreed in writing and except as otherwise provided in this Title, upon termination of the Authority's interest in the dwelling unit, including, but not limited to, terminations of interest by sale, assignment, bankruptcy, appointment of a receiver, or otherwise:

a. The Authority shall be relieved of all liability and obligations under the lease and this Title as to events occurring subsequent to written notice to the tenant of termination of the Authority's interest;

b. The successor to the Authority shall be liable for all liability and obligations under the lease and this Title; and

c. Upon receipt by the tenant of written notice of the termination of the Authority's interest, the tenant shall pay all future rent to the successor to the Authority.

4. Unless otherwise agreed in writing and except as otherwise provided in this Title, a manager of premises that includes a dwelling unit is relieved of all liability and

obligations under a lease and this Title as to events occurring after written notice to the tenant of the termination of his or her management.

Section 5-3-9. Security Deposits.

1. Any security deposit required by the Authority must be kept in a bank account and maintained in a manner that allows the Authority to identify those specific funds on deposit for each tenant.

2. Except as otherwise provided in the lease, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply the security deposit at any time in lieu of payment of rent.

3. Upon termination of a tenancy:

a. Any security deposit and any unearned rent held by the Authority may be applied to the payment of accrued rent and the amount of damages which the Authority has suffered by reason of the tenant's noncompliance with this Title or the lease;

b. The tenant is entitled to the amount by which the security deposit and any unearned rent exceeds the amount the Authority is owed for accrued rent and damages;

c. Not later than thirty (30) days after the tenancy terminates and the tenant vacates the premises, the Authority shall determine the amount the Authority believes the tenant is entitled to under this subsection and:

i. Tender that amount to the tenant; and

ii. Send that amount by first-class mail, postage prepaid, to an address provided by the tenant;

d. If the amount paid to the tenant under this subsection is less than the tenant's security deposit and any unearned rent, the Authority shall provide the tenant on or before returning such amount to the tenant a written itemization specifying each item of property damage or other unfulfilled obligation of the tenant to which the security deposit or any unearned rent was applied and the amount applied to each item;

e. If the amount to which the tenant is entitled is greater than the amount paid to the tenant, the tenant may recover the difference;

f. If a security deposit and any unearned rent held by the Authority is insufficient to satisfy the tenant's obligations under the lease and this Title, the Authority may recover from the tenant the amount necessary to satisfy those obligations;

g. If the tenant fails to provide the Authority with an address for sending any amounts remaining from the security deposit and the Authority cannot locate the tenant to return any such amounts, the tenant shall have six (6) months to demand such amounts from the Authority and, if the tenant fails to do so, the Authority may retain such amounts and the interest of the tenant in his or her security deposit shall terminate at that time; and

h. If the Authority fails to comply with this subsection or fails to pay any amounts to which the tenant is entitled under this subsection, the tenant may recover the security deposit.

4. When the Authority's interest in a dwelling unit terminates, the Authority shall:

a. If the lease continues, not later than thirty (30) days after termination of the Authority's interest:

i. Transfer to the person succeeding the Authority's interest in the dwelling unit any security deposit being held by the Authority; and

ii. Notify the tenant in writing of the transfer, the successor's name and address, and the amount transferred; or

b. If the lease terminates as a result of the termination of the Authority's interest, comply with subsection (3) of this Section.

5. A successor to the Authority's interest in a dwelling unit has all rights and obligations of a landlord under applicable law with respect to any security deposit transferred by the Authority to the successor.

6. This Section does not preclude the Authority or tenant from recovering other damages to which either may be entitled under this Title.

Section 5-3-10. Rules and Regulations. The Authority, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, peace, and safety or welfare of the tenant in the premises, preserve the Authority's property from abusive use, or make a fair distribution of services and facilities held out for the tenant generally;

2. It is reasonably related to the purpose of which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct or fairly informs the tenant what such tenant must or must not do to comply;

5. It is not for the purpose of evading the obligations of the Authority; and

6. The Authority has provided written notice of the rule or regulation to the tenant:

a. By including such rule or regulation in the lease;

b. By delivering a copy of such rule or regulation to the tenant; or

c. By posting such rule or regulation conspicuously in any public area of the premises.

CHAPTER 4
TERMINATION OF TENANCIES OF AUTHORITY

Section 5-4-1. Termination of Tenancies.

1. Except as otherwise provided in this Title, in the absence of a provision in the lease or other written agreement signed by the Authority and tenant otherwise, the Authority or tenant may terminate a periodic tenancy:

a. For a period less than month to month, by giving the other party at least seven (7) days written notice of the party's intent to terminate the tenancy on a specified date; and

b. For month to month, by giving the other party at least thirty (30) days' written notice of the party's intent to terminate the tenancy at the end of the monthly period.

2. A tenancy for a fixed term continues until the end of the term, provided that the Authority or tenant may terminate a tenancy for a fixed term prior to the end of the term:

a. By mutual agreement;

b. Unless prohibited by this Title, as provided in the lease; or

c. As otherwise permitted in this Title.

3. Unless a specified form of service is required by other applicable law, if the Authority terminates a tenancy under this Section, the Authority shall serve the written notice required by this Section on the tenant as follows:

a. By delivering such notice to the tenant personally;

b. If the tenant cannot be located for personal service, by delivering the notice to any family member of the tenant over the age of majority residing with the tenant;

c. If service cannot be made personally or on a family member, by posting the notice at a conspicuous place on the dwelling unit of the tenant and mailing a copy of such notice to the tenant by certified mail.

4. Notwithstanding anything to the contrary in this Title, the Authority shall not deny or terminate a tenancy to a blind, deaf, or physically handicapped person because of the guide, signal or service dog of such person, unless such dog is found to be vicious or destructive of property.

5. Except as otherwise provided in this Title, whenever either party to a tenancy rightfully elects to terminate such tenancy, the duties of each party under the tenancy shall cease and be determined upon the effective date of the termination and

the parties shall discharge any remaining obligations under this Title as soon as practicable.

Section 5-4-2. Holdover Tenant.

1. If a tenant remains in possession without the Authority's consent after the expiration of the term of the lease or termination of a tenancy, the Authority may immediately bring an action for eviction and damages under this Title. If the tenant's holdover is willful and not in good faith, the Authority may also compute and prorate the rent on a daily basis for each month or portion thereof that the tenant remains in possession.

2. Unless the Authority and tenant otherwise agree in writing, if the tenant remains in possession with the Authority's consent after expiration of the term of the lease or termination of a tenancy, a periodic tenancy for month to month is created.

Section 5-4-3. Destruction of Dwelling Unit. Unless the damage or destruction is caused by the deliberate or negligent act or omission of the tenant, a member of the tenant's immediate or extended family, the tenant's animal or pet, or another person or animal on the premises with the tenant's consent, if the dwelling unit is damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

1. Vacate the premises immediately and, not later than seven (7) days after vacating the premises, give the Authority written notice of the tenant's intent to terminate the lease, in which case the lease terminates as of the date the tenant vacates the premises; or

2. If continued occupancy of the dwelling unit is possible, vacate that part of the dwelling unit unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair value of the dwelling unit.

Section 5-4-4. Abandonment.

1. If the tenant abandons the dwelling unit before the end of the term of the lease, the Authority may:

    a. Accept the tenant's abandonment of the dwelling unit by written notice given to the tenant, in which case the lease terminates on the date of abandonment; or

b. Treat the abandonment as wrongful.

2. If the Authority treats the abandonment as wrongful, the Authority shall make a reasonable effort to rent the abandoning tenant's dwelling unit, subject to the following rules:

a. If the Authority leases the dwelling unit to another person for a term beginning before the expiration of the term of the lease of the abandoning tenant, the lease of the abandoning tenant terminates as of the date of the new tenancy and the Authority and the other person may enter into a new lease;

b. If the Authority makes a reasonable effort to lease the dwelling unit but is unable to lease it or is able to lease it only for an amount less than the rent payable by the abandoning tenant, the Authority shall have a cause of action for damages against the abandoning tenant for the rent owed under the lease or, in the case of a periodic tenancy, the remaining amount of the relevant period of the tenancy;

c. If the Authority fails to make a reasonable effort to lease the dwelling unit, the lease terminates as of the date the Authority has knowledge of the abandonment.

Section 5-4-5. Disposition of Property.

1. If household goods, furnishings, fixtures, or any other personal property remains on the premises after the tenant vacates the premises at the termination of the tenancy, including pursuant to an eviction under this Title or court order, or the tenant abandons the premises under this Chapter and the Authority and tenant do not agree otherwise at the time of relinquishment, the Authority may take possession of the property and:

a. If, in the judgment of the Authority, any of the property has no ascertainable or apparent value, dispose of such property without any duty of accounting or any liability to any party;

b. If the dwelling unit or any of the property tests positive for the presence of any illegal drug or other dangerous substance, dispose of such property without any duty of accounting or any liability to any party;

c. Inventory any of the property not disposed of and store it on the premises or in another place of safekeeping and exercise reasonable care in moving or storing the property; and

d. Give the tenant written notice of the disposal of any property under this subsection and the tenant's right to retrieve any property not disposed of in accordance with this Section.

2. The notice required by this Section must be posted at the premises and:

a. Be sent to any forwarding address the tenant provided to the landlord, an address otherwise provided to the Authority by the tenant, another address of the tenant in the records of the Authority, or, if no address is provided or known, to the address of the premises;

b. Inform the tenant of the right to contact the Authority to claim the property within a stated period of time which is no less than fourteen (14) days after receipt of the notice, subject to payment of the Authority's inventorying, moving, and storage costs; and

c. Provide a telephone number, e-mail address, or mailing address at which the Authority may be contacted.

3. Unless located in a dwelling unit that tests positive for the presence of any illegal drug or other dangerous substance, if any abandoned personal property is of cultural, religious, or ceremonial significance, the Authority shall locate the former tenant's heir or nearest relative to return such property or, if such heir or relative cannot be located, deliver such property to the Culture Department of the Tribe.

4. If a tenant contacts the Authority to claim personal property not later than the time provided by the Authority in the notice to the tenant, the Authority shall permit the tenant to retrieve such property subject to the following:

a. The tenant shall pay the reasonable costs of any removal and storage of the property, unless the Authority waives such payment;

b. The Authority shall not condition the retrieval of the property on the payment of any costs or fees other than the costs of any removal and storage of the property; and

c. If the Authority attempts to condition retrieval of the property on payment of any cost or fee other than removal and storage, the Authority shall forfeit its right to recover the costs of removal and storage.

5. Any personal property of a former tenant not retrieved in accordance with this Section, including the payment of any costs of removal and storage, after the time provided by the Authority in the notice to the tenant shall be deemed to be abandoned and the Authority may:

a. Sell the property; or

b. Dispose of the property in any manner which the Authority deems reasonable and proper without any liability to any party.

6. If the Authority sells personal property pursuant to this Section, the Authority shall:

a. Upon request by the former tenant, provide the former tenant with pertinent information concerning the sale, including the time, date, and location of the sale;

b. Apply the proceeds from such sale to the costs of removal and storage of the property; and

c. Pay any proceeds from the sale in excess of the costs of removal and storage to the former tenant.

CHAPTER 5
RIGHTS AND DUTIES

Section 5-5-1. Authority Duties.

1. The Authority, as landlord, shall at all times during the tenancy:

a. Except in the case of a single-family residence, keep all common areas of its building, grounds, facilities, and appurtenances in a clean, safe, and sanitary condition;

b. Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition;

c. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by it;

d. Except in the case of a single family residence or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes;

e. Except in the case of a single-family residence or where the service is supplied by direct and independently metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat;

f. Not enter the dwelling unit unless:

i. Except where notice is impractical, entry is at a reasonable time and the Authority has provided the tenant at least one (1) day's notice of its intent to enter, provided that the Authority and its agents and employees may enter the dwelling unit without notice or consent of the tenant in the case of emergency;

ii. Entry is under a court order; or

iii. Entry is otherwise permitted under this Title.

2. The Authority and tenant may agree, by a conspicuous writing independent of the lease, that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling.

3. Any agreement, assignment, conveyance, trust deed, or security instrument which authorizes a person other than the Authority to act as a landlord of a dwelling unit or premises owned by the Authority shall not relieve the Authority of the duty to conform with this Title and any other law of the Tribe concerning the maintenance and operation of the premises.

Section 5-5-2. Authority's Noncompliance.

1. Except as otherwise provided in this Title, the Authority shall be in noncompliance if the Authority fails to comply with the lease or Section 5-5-1(1) of this Title.

2. Except as otherwise provided in this Title, if the Authority's noncompliance is material:

a. The tenant may deliver written notice to the Authority stating:

i. The acts and omissions constituting the material non-compliance; and

ii. That the lease will terminate on a specified date which is not less than thirty (30) days after the Authority's receipt of the notice if the non-compliance is not remedied within fourteen (14) days after the Authority's receipt of the notice; and

b. If the Authority fails to remedy the non-compliance within the time specified, the lease shall terminate.

3. Except as otherwise provided in this Title, if the Authority's noncompliance involves a repair which is less than one hundred dollars ($100.00):

a. The tenant may deliver written notice to the Authority stating:

i. The repair which constitutes the non-compliance; and

ii. That the tenant will make the repair and deduct the cost from the rent if the Authority fails to make the repair within fourteen (14) days after the Authority's receipt of the notice or, in the case of an emergency, or as promptly as conditions require;

b. If the Authority fails to make the repair within the time specified, the tenant may:

i. Make the repairs in a workmanlike manner;

ii. Submit an itemized statement of the cost of the repairs to the Authority; and

iii. Deduct the actual and reasonable cost of the repairs from the rent.

4. Except as otherwise provided in this Title, if, contrary to the lease, the Authority willfully or negligently fails to supply heat, running water, hot water, or electric, gas, or other essential service, the tenant may deliver written notice to the Authority stating the noncompliance and:

a. Terminate the lease immediately by stating in such written notice to the Authority of the tenant's intent to terminate the lease immediately;

b. Procure reasonable amounts of heat, running water, hot water, or electric, gas, or other essential service during the period of the Authority's noncompliance and deduct the actual and reasonable cost from the rent;

c. Recover damages based on the reduced fair rental value of the dwelling unit; or

d. Procure reasonable substitute housing during the period of the Authority's noncompliance, in which case the tenant is excused from paying rent for the period of the Authority's noncompliance.

5. Except as otherwise provided in this Title, if the Authority's noncompliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and the noncompliance is not remedied as promptly as conditions require, the tenant may terminate the lease immediately by giving written notice to the Authority of the tenant's intent to terminate the lease immediately.

6. If the Authority unlawfully enters the tenant's dwelling unit, enters the tenant's dwelling unit in an unreasonable manner, or harasses the tenant by making repeated unreasonable demands to enter the tenant's dwelling unit, the tenant may recover actual damages and either:

a. Obtain an order from the Tribal Court to prevent the recurrence of the conduct; or

b. Terminate the lease by giving written notice to the Authority.

7. If the Authority wrongfully removes or excludes a tenant from a dwelling unit, the tenant may recover two (2) times the average monthly rent or two (2) times the tenant's actual damages, whichever is greater and either:

a. Recover possession of the dwelling unit in a proceeding brought in the Tribal Court; or

b. Terminate the lease by giving written notice to the Authority.

8. If a lease is terminated under this Section, the Authority shall return any security deposit and prepaid and unearned rent to which the tenant is entitled under this Title.

9. The tenant shall have no rights under this Section:

a. If written notice is required under this Section, the tenant has given such written notice to the Authority; or

b. If the noncompliance or condition was caused by the deliberate or negligent act or omission of:

i. The tenant;

ii. A member of the tenant's immediate or extended family;

iii. The tenant's animal or pet; or

iv. Another person or animal on the premises with the tenant's consent.

Section 5-5-3. Tenant Duties. The tenant shall at all times during the tenancy:

1. Protect the property interest of the Authority and any person who resides within three hundred (300) feet of the dwelling unit;

2. Keep the dwelling unit as safe, clean, and sanitary as the condition of the premises permits;

3. Dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a safe, clean, and sanitary manner;

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits;

5. Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances on the premises, including elevators, in a safe and non-destructive manner;

6. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person, animal, or pet on the premises with the tenant's consent to do any such act;

7. Not disturb the quiet and peaceful enjoyment of the premises by another tenant or permit any person, animal, or pet on the premises with the tenant's consent to do the same;

8. Not commit any crime or allow any person on the premises with the tenant's consent to commit any crime;

9. Unless otherwise agreed, not use the dwelling unit for any purpose other than a place of abode;

10. Not unreasonably withhold consent of the Authority and its agents and employees to enter the dwelling unit in order to:

a. Inspect the premises;

b. Make necessary or agreed repairs, decorations, alterations, or improvements;

c. Supply necessary or agreed services; or

d. Exhibit the dwelling unit to prospective or actual purchasers, mortgagors, tenants, workmen, or contractors; and

11. Report to the Authority as soon as possible any defective condition of the premises which comes to the tenant's attention and which the tenant has reason to believe is unknown to the Authority.

Section 5-5-4. Tenant's Noncompliance.

1. Except as otherwise provided in this Title, the tenant shall be in noncompliance if the tenant fails to pay rent when due or comply with the lease or Section 5-5-3 of this Title.

2. If the tenant fails to pay rent when due, the Authority may:

a. Terminate the lease by giving written notice to the tenant of the Authority's intent to terminate the lease on a specified date which is at least ten (10) calendar days after such rent was due; and

b. Bring an action for recovery of the unpaid rent at any time, regardless of whether the Authority terminates the lease.

3. If the tenant refuses to allow the Authority to enter the dwelling unit as permitted in this Title, the Authority may:

a. Obtain an order from the Tribal Court to compel access; or

b. Terminate the lease by giving written notice to the tenant of the Authority's intent to terminate the lease on a specified date which is at least ten (10) days after receipt of such notice if the tenant does not allow entry.

CHAPTER 6
EVICTIONS BY AUTHORITY

Section 5-6-1. Grounds for Eviction. The Authority may evict a person from a dwelling unit for:

1. Nonpayment of rent under an agreement for the lease, purchase, or occupation of a dwelling unit when such payments are not made ten (10) or more calendar days after they are due;

2. Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more, provided that the receipt by the Authority of partial payments under an agreement shall not excuse the payment of any balance due upon demand;

3. Nuisance, intentional or reckless damage, destruction, or injury to the property of the Authority or other tenants, or disturbing another tenant's right to quiet enjoyment of the premises;

4. Repeated violations of the lease, any reasonable rules or regulations of the Authority adopted in accordance with this Title, or any applicable building or housing codes;

5. Occupation of any premises of the Authority without permission or agreement of the Authority following any reasonable demand by the Authority to leave;

6. Under other terms in the lease which do not conflict with the provisions of this Title;

7. The discovery of drug paraphernalia in the dwelling unit; or

8. The dwelling unit testing positive for any controlled substance at a level higher than the level indicated in the lease or otherwise recorded by the Authority from a test conducted prior to the commencement of the tenant's occupancy.

Section 5-6-2. Self-Help Eviction Prohibited. The Authority may not compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. The Authority shall give a notice to quit and obtain an order of the Tribal Court as provided in this Chapter.

Section 5-6-3. Procedure.

1. Discovery in proceedings under this Chapter shall be informal and reasonably provided on demand of a party.

2. Requests for discovery from an opposing party shall be made no later than three (3) calendar days after the Court sets a date for the hearing on the complaint.

3. Discovery shall be completed within five (5) calendar days before the date of the hearing on the complaint.

4. Extensive, prolonged, or time consuming discovery and pre-hearing procedures will not be permitted in proceedings under this Chapter unless the party requesting additional discovery or pre-hearing procedures demonstrates they are required in the interests of justice and there is good cause for the same.

5. The Tribal Court may enter orders requiring discovery or protecting the rights of the parties upon reasonable notice in accordance with the Tribal Court Rules of Civil Procedure.

6. Evidence in proceedings under this Chapter shall be governed by the Federal Rules of Evidence.

Section 5-6-4. Notice to Quit.

1. When the Authority desires to obtain possession of a dwelling unit and there exists one or more reasons to evict the tenant, the Authority shall give notice to the tenant to quit possession of the premises according to the provisions of this Section.

2. The notice to quit is intended to provide the tenant notice that the Authority is seeking to evict the tenant from the premises and to provide the tenant with the reasons for such eviction so that the tenant can understand how to advocate against the eviction process.

3. The notice to quit shall:

a. Be addressed to the tenant;

b. State the reasons for evicting the tenant; and

c. State the date by which the tenant is required to vacate and quit the premises.

4. The notice to quit shall be in writing and substantially the following form:

> I (or we) hereby give you notice that you are to quit possession or occupancy of the premises now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of an authorized official of the Authority, as well as the date and place of signing).

5. The notice to quit must be delivered within the following periods of time:

a. For failure to pay rent or other payments required, no less than seven (7) calendar days prior to the date to vacate and quit specified in the notice to quit;

b. For nuisance, serious injury to property, or injury to persons, no less than three (3) calendar days prior to the date to vacate and quit specified in the notice to quit;

c. For situations in which there is an emergency, such as a fire or condition making the dwelling unit unsafe or uninhabitable, or in which there is an imminent or serious threat to public health or safety, a period of time which is reasonable under the circumstances;

d. In all other situations, no less than fourteen (14) calendar days prior to the date to vacate and quit specified in the notice to quit.

6. A notice to quit shall be served upon the tenant by an adult authorized by the Authority by:

a. Personally delivering the notice to quit to the tenant, an adult living in the dwelling unit, or an adult agent of the tenant, with a copy also delivered to the tenant by mail;

b. If the notice to quit cannot be delivered personally or the tenant cannot be found:

i. Mailing the notice to quit by certified mail, return receipt requested, to the last known address of the tenant; or

ii. Securely fixing a copy of the notice to quit on the main entry door of the dwelling unit in such a manner that it is not likely to blow away, posting a copy of the notice to quit in some public place near the dwelling unit, such as a Tribal office, public store, or other commonly frequented place, and mailing a copy by first class mail, postage prepaid, to the tenant at the address of the dwelling unit.

7. The Authority shall keep a copy of the notice to quit and proof of service in accordance with this Section evidenced by affidavit or other manner recognized by the laws of the Tribe.

8. No notice to quit or other pre-eviction notice shall be required if the tenant or a person on the premises with the tenant's permission or under tenant's control does any of the following or allows another on the premises with the tenant's permission to do any of the following:

a. Create a serious risk of bodily harm to any person, including the tenant;

b. Create a clear and present danger that causes or threatens to cause extreme or irreparable harm to the Authority's property;

c. Create a clear and present danger that imminently threatens the health or safety of other tenants, the Authority, or the Authority's employees or agents; or

d. Engages in criminal activity.

9. If a notice to quit is not required under this Section, the Authority may evict the tenant in accordance with the following:

a. The Authority shall terminate the tenancy by giving written notice to the tenant which states:

i. The tenancy shall terminate on a specified date which is at least five (5) days after receipt of the written notice; and

ii. The tenant has no right to cure or correct the grounds for termination;

b. If the tenant does not vacate the premises within the time specified in the written notice of termination, the Authority may file a verified complaint for immediate eviction in the Tribal Court which:

i. Is supported by an affidavit and other sufficient proof of the existence of the grounds for immediate eviction without a notice to quit;

ii. Is designated in the caption as a complaint for immediate eviction; and

iii. Specifically references the subsection of this Section permitting eviction without a notice to quit;

c. The Tribal Court shall schedule a hearing on the complaint as soon as practicably possible without regard to any time requirements or constraints in this Chapter; and

d. The Tribal Court shall issue an order of eviction at the conclusion of such hearing if the Authority is entitled to such order as provided in this Chapter.

Section 5-6-5. Appeal of Notice to Quit.

1. A tenant may appeal a notice to quit to the Authority's Executive Director within fourteen (14) days of receiving the notice to quit and the Executive Director shall meet with the tenant and render a decision on the matter. Such meeting may take place by telephone or other remote form of instant communication. There is no protocol for such meeting and it may take whatever form reasonably allows the tenant to express the tenant's position to the Executive Director.

2. The Executive Director shall render a decision either upholding the notice to quit or overturning the notice to quit within five (5) days of meeting with the tenant. The Executive Director's decision shall be in writing and served upon the tenant in the same manner for service of the notice to quit provided in this Chapter. The decision of the Executive Director shall be the final decision of the Authority.

3. If a tenant fails to appeal a notice to quit within the time permitted in this Section, the notice to quit shall be the final decision of the Authority.

Section 5-6-6. Judicial Review.

1. If a tenant is not satisfied with the decision of the Executive Director, the tenant may petition the Tribal Court for review of the Executive Director's decision.

2. A petition for review must be filed with the Tribal Court within fourteen (14) days from the date the Executive Director's decision is served upon tenant.

3. A petition for review:

a. May assert any defense to the eviction set forth in this Chapter; and

b. Shall not be refused for filing or dismissed for failure to meet a particular form of pleading, provided the Tribal Court shall not be prevented from dismissing the petition for review for failure to state a claim.

4. The Authority shall file a responsive pleading to a petition for review. The Authority may include counterclaims against the tenant for unpaid rent, fees owed, destruction of property, and other damages.

5. The Tribal Court shall hold a hearing on a petition for review, including the Authority's counterclaims, no later than thirty (30) days after the filing of the petition for review, provided that additional time may be permitted to accommodate the Tribal Court's calendar and as required by due process.

6. Proceedings in the Tribal Court on a petition for review filed under this Section, including any counterclaims of the Authority, shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Chapter.

7. The tenant's filing of a petition for review with the Tribal Court pursuant to this Section shall stay an eviction while the review is pending.

8. The Authority may file a motion for relief from the stay of eviction provided under this Section. If the Authority shows the tenant's continued occupancy creates a risk to the health or safety of other persons, the Tribal Court shall order the stay lifted and may also order the immediate eviction of the tenant. If the Tribal Court orders the immediate eviction of the tenant pursuant to this subsection and the tenant prevails on the petition for review, the Tribal Court may order the tenant returned to possession of the dwelling unit. The Authority shall not be liable to the tenant for any damages resulting from the filing of a motion or obtaining an order of immediate eviction under this subsection.

9. In reviewing the Executive Director's decision on a petition for review, the Tribal Court shall take evidence and hear argument from the tenant and the Authority. The Tribal Court shall determine facts and apply the law.

10. If the Tribal Court determines that the facts and the law do not support the Executive Director's decision, the Tribal Court shall reverse and vacate the Executive Director's decision and order that the tenant remain in possession of the dwelling unit.

11. If the Tribal Court determines that the Executive Director's decision is supported by the facts and the law, the Tribal Court shall affirm the Executive Director's decision, order the immediate eviction of the tenant from the dwelling unit, and grant the Authority such other relief the Tribal Court finds appropriate based upon the facts and law.

12. If a tenant fails to file a petition for review within the time permitted in this Section, the Executive Directors' decision shall not be appealable.

Section 5-6-7. Initiation of Eviction Proceedings.

1. If a tenant remains in possession of premises without appealing the notice to quit or filing a petition for review within the time allowed, the Authority may file a complaint in the Tribal Court for an order of eviction to remove the tenant from the premises.

2. Such complaint may also include claims for money damages against the tenant for back rent, fees owed and damages to the Authority's property.

3. A complaint filed under this Section shall state at minimum:

a. The name(s) of the adult tenant(s) to be evicted;

b. A description of the tenancy or lease, if any;

c. The address or reasonable description of the location of the dwelling unit;

d. The grounds for eviction;

e. A statement showing the notice to quit, if required, has been delivered to the tenant in accordance with this Chapter;

f. A statement that any decision of the Executive Director related to the tenant's possession of the premises has been served in accordance with this Chapter;

g. A statement of the relief demanded, including any claim for possession of the premises, damages, fees, costs, or other special relief; and

h. A statement that the Authority has complied with all required regulatory processes prior to filing the complaint.

4. The Authority shall attach to the complaint any required notice to quit and the Executive Director's decision, if there is one, along with proof of service of all documents served.

5. The Tribal Court may, in its discretion, on motion from the Authority, order the tenant to pay into the Tribal Court rents for the use and occupancy during the pendency of the eviction case.

Section 5-6-8. Summons and Service of Process.

1. When a complaint is filed under this Chapter, it shall be presented to a judge of the Tribal Court on the date of filing or, if no judge is present, the first regular Tribal Court day after filing or when a judge may first be found.

2. Upon being presented with a complaint filed under this Chapter, the judge shall review the complaint and, if it appears to be in compliance with this Title, direct the Tribal Court Administrator to:

a. Issue a summons to all named tenants or other defendants in accordance with the general rules governing the issuance of summons by the Tribal Court; and

b. Set a date for the first hearing on the complaint for the first scheduled court day that is at least fifteen (15) calendar days after the date of issuance of the summons.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the complaint.

Section 5-6-9. Response to Complaint.

1. The tenant may contest the complaint in person before the Tribal Court or in writing.

2. Any written response shall state any defenses or factual disputes and shall be served upon the Authority within five (5) calendar days of the date set for the first hearing on the complaint.

Section 5-6-10. Defenses.

1. The Tribal Court shall grant the remedies allowed in this Title, unless it appears by the evidence that:

a. The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the Authority, that they constitute a

real and serious hazard to human health and safety and not a mere inconvenience;

b. The Authority has failed or refused to make repairs which are its responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises;

c. There are monies due and owing to the tenant because he or she has been required to make repairs which are the obligation of the Authority and the Authority has failed or refused to make them after a reasonable notice, provided such sums may be a defense only to the extent that such sums set off monies owed for occupancy and a tenant may be evicted after such a set off if he or she fails or refuses to pay the reasonable rental value of the dwelling unit;

d. That due to the conduct of the Authority, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards;

e. That there are such serious and material breaches of applicable housing law on the part of the Authority that it would be unjust to grant it a remedy;

f. The Authority is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled; or

g. The Authority terminated the tenancy in retaliation for the tenant's attempt to secure his or her rights under this Title or to force the Authority to comply with its duties under this Title.

2. Notwithstanding anything to the contrary in this Section, if the tenant has not filed a petition for review pursuant to this Title, the tenant shall have no right to challenge the final decision of the Authority, other than to challenge the service of the notice to quit or service of the Executive Director's decision, if any.

Section 5-6-11. Settlement.

1. After a notice to quit has been served upon a tenant and anytime before the entering of an order of eviction by the Tribal Court in a proceeding under this Chapter, the Authority and tenant may engage in discussions to avoid a proceeding to evict or otherwise settle the issues between the parties.

2. The Authority and the tenant are encouraged to maintain settlement negotiations throughout the eviction process. In reaching an agreement, the parties may consider, but are not limited to the following options:

a. The parties may employ the use of advocates or attorneys;

b. The parties may employ the use of a mediator or conciliator;

c. The parties may agree to arbitrate the issues in binding arbitration;

d. The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use and occupancy of the dwelling unit;

e. The parties may agree to dismiss the matter in exchange for any agreement reached;

f. The parties may agree to stipulate to a judgment to be entered by the Tribal Court.

3. The agreement to enter into discussions pursuant to this Section or otherwise will not affect the rights of the parties unless the parties agree expressly in writing to waive any of their rights.

Section 5-6-12. Continuance. A tenant may obtain continuance of a hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held for good cause shown and upon the payment of a reasonable sum for the fair rental value of the dwelling unit from the date on which the complaint was filed through the date of the hearing, provided that the Tribal Court:

1. May deny a continuance where the complaint is based upon a nuisance; and

2. Shall not continue the date of the hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

Section 5-6-13. Hearing on Complaint.

1. If the tenant makes no challenge to the service of the Authority's notice to quit or the Executive Director's decision, if any, the Tribal Court shall issue an order of eviction in accordance with this Chapter removing the tenant from the premises.

2. At the hearing, the Tribal Court shall inform the tenant that if he or she is evicted and does not vacate the premises voluntarily by the date set forth in the order of eviction, he or she and any other occupants will be subject to forcible eviction and their property will be subject to storage, sale, and disposal as set forth in this Title.

3. The Authority's claims for damages, if any, shall be determined in accordance with this Chapter.

4. The burden of proof in all proceedings under this Title shall be preponderance of the evidence.

Section 5-6-14. Judgment.

1. Within five (5) calendar days of the date of the hearing, the Tribal Court shall enter judgment granting all relief that the parties are entitled to as of the date of the judgment.

2. If a tenant fails to appear in person or in writing on or before the date of the hearing, the Tribal Court shall enter judgment in favor of the Authority following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

3. The judgment shall state the relief granted by the Tribal Court to any party. The judgment may:

a. Order the immediate eviction of a tenant and delivery of the premises to the Authority no later than fourteen (14) days after the entry of the judgment unless the parties agree otherwise;

b. Grant actual damages as provided in the agreement of the parties or this Title, including interest;

c. Order the parties to carry out an obligation required by applicable law;

d. Establish a payment plan for the tenant;

e. Order rent payments out of per capita payment or through garnishment;

f. Establish a power of attorney in another person or agency to fulfill rights or obligations of either the Authority or the tenant;

g. Order the payment of legal counsel fees and, where allowed by the laws of the Tribe or agreement of the parties, costs and expenses of litigation; and

h. Grant any other relief provided in this Title or allowed in the laws of the Tribe.

4. Appeals of judgments entered pursuant to this Chapter shall be in accordance with the Tribal Rules of Appellate Procedure.

Section 5-6-15. Stay of Judgment.

1. If judgment for possession of premises is entered in favor of the Authority, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the entry of the judgment, the tenant establishes:

a. Good and reasonable grounds affecting the well being of the tenant or his or her immediate family; or

b. There would be no substantial prejudice or injury to the Authority during the period of the stay; or

c. A bond is posted or monies paid to the Tribal Court to satisfy the judgment or payment for the reasonable use and occupancy of the dwelling unit during the period of time following the judgment.

2. The Tribal Court Administrator shall distribute any monies or bond deposited to the Authority in accordance with any order of the Tribal Court.

3. No stay may exceed three (3) months in the aggregate.

Section 5-6-16. Notice to Vacate.

1. Any notice to vacate premises shall be by written order of the Tribal Court.

2. A notice to vacate shall be delivered to the tenant as follows:

a. Personally by a law enforcement officer of the Tribe or an agency of the United States government or other person authorized by the Tribal Court; or

b. If the notice to vacate cannot be delivered personally or the tenant cannot be found:

i. Mailing the notice to vacate by certified mail, return receipt requested, to the last known address of the tenant; or

ii. Securely fixing a copy of the notice to quit on the main entry door of the dwelling unit in such a manner that it is not likely to blow away, posting a copy of the notice to quit in some public place near the dwelling unit, such as a Tribal office, public store, or other commonly frequented place, and mailing a copy by first class mail, postage prepaid, to the tenant at the address of the dwelling unit.

3. Delivery of a notice to vacate shall be effective when it is:

a. Personally delivered to the tenant with a copy delivered by mail; or

b. Personally delivered to an adult person residing in the dwelling unit with a copy delivered by mail; or

c. Personally delivered to an adult agent of the tenant with a copy delivered by mail.

Section 5-6-17. Enforcement of Eviction Order.

1. Where the Tribal Court orders an eviction and the tenant or any other occupant of the dwelling unit refuses to vacate the premises voluntarily by the date set in the order, the tenant and other occupants may be forcibly removed from the premises by a

Tribal law enforcement officer or law enforcement officer authorized by the Tribal Court.

2. An order of eviction may be executed by a duly authorized law enforcement officer or officer of the Tribal Court appointed by the Tribal Court for such a purpose.

3. To execute an order of eviction, the officer shall:

a. Remove all the evicted persons from the premises and verbally order them not to re-enter;

b. Provide a copy of the order of eviction to all adult tenants;

c. Post copies of the order of eviction on the doors of the dwelling unit if there is not any adult tenant present at the time of enforcement; and

d. Supervise the removal of the possessions of the evicted persons.

4. Any law enforcement officer shall, upon receipt of an order of eviction of the Tribal Court, enforce the order within five (5) calendar days of the date of the judgment or order and make a report to the Tribal Court on what was done to enforce it.

5. Following eviction, the Tribal Court may allow the Authority or the United States government access to any property leased by either of them for purposes of preserving and securing it.

6. All provisions of a judgment other than eviction entered pursuant to this Chapter shall be subject to enforcement in any manner provided under the laws of the Tribe.

Approved 9/20/15
Resolution 15-59

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Resolution 20-37

TITLE VI
JUDICIAL REMEDIES

CHAPTER 1
GENERAL PROVISIONS

Section 6-1-1. Purpose. The purpose of this title is to provide rules and procedures for certain forms of relief, including garnishment, injunctions, protection orders, declaratory judgments, mandamus and prohibition as well as provide procedures for notifying the Tribe of any action which involves the validity of a law of the Tribe. This Title shall not be construed as limiting other forms of judicial remedies and relief as are necessary for adjudication of individual rights.

Section 6-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court of Appeals and Trial Court.

2. "Court of Appeals" means the Court of Appeals of the Court.

3. "Trial Court" means the Trial Court of the Court.

Section 6-1-3. Procedure. Proceedings brought pursuant to or requesting relief permitted under this Title shall be brought by and governed by the rules of procedure for the Court which are not in conflict with this Title.

Section 6-1-4. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

   a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

   b. To introduce evidence;

   c. To be heard on his or her own behalf;

   d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

Section 6-1-5. Trial of Issues of Fact. When a proceeding under this Title involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court.

Section 6-1-6. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 6-1-7. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2
GARNISHMENT AND EXECUTION

Section 6-2-1. Power of Court. The Court may issue writs of garnishment and execution to satisfy judgments in accordance with this Chapter.

Section 6-2-2. Applicability. This Chapter does not apply to:

1. The debts owed by or obligations required to be performed by the Tribe or any of its departments, agencies, boards, commissions, instrumentalities, or economic enterprises or any of their employees in their official capacities;

2. Income withholding as result of a child support order subject to Title IV of this Code; or

3. Mandatory deductions under other provisions of the laws of the Tribe.

Section 6-2-3. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Creditor" means a person that has an enforceable money judgment against a debtor.

2. "Debtor" means a person against whom a creditor has an enforceable money judgment, but only under and to the extent of the judgment.

3. "Garnishee" means a person other than a debtor or creditor who is in possession of, controls, or has custody of funds or property of a debtor or owes funds or property to a debtor, including wages, which has been or is proposed to be garnished in accordance with this Chapter.

4. "Garnishment" means a proceeding whereby a debtor's money or credits, including salary and wages, in possession, under control, in the custody of, or owed by a garnishee are sought to be applied to payment of the debtor's debt to a creditor by properly authorized process against the debtor.

5. "Execution" means a proceeding whereby property belonging to and in the possession of a debtor or garnishee is attached by the Court to be sold in order to satisfy all or part of a judgment rendered against the debtor.

6. "Judgment" includes a judgment of the Court and any judgments of other jurisdictions recognized by the Court in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders and judgments.

Section 6-2-4. Jurisdiction. In addition to the Court's general jurisdiction, the Court shall have jurisdiction to issue a writ of garnishment or execution regardless of the Court's jurisdiction over the debtor, if:

1. The garnishee is subject to the personal jurisdiction of the Court; or

2. The funds or property to be garnished are subject to the jurisdiction of the Court or located within the territory of the Tribe.

Section 6-2-5. Limitations. A writ of garnishment or execution may not be issued or granted:

1. If the debtor is the Tribe or any of its departments, agencies, boards, commissions, instrumentalities, or economic enterprises or any of their employees in their official capacities;

2. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court in accordance with the laws of the Tribe applicable to the recognition and enforcement of foreign orders and judgments;

3. If the judgment on which the action is based is not filed with the Court;

4. If the judgment on which the action is based has been satisfied or a satisfaction of the judgment has been filed; or

5. If the judgment on which the action is based is only for non-monetary relief.

Section 6-2-6. Grounds for Garnishment. A writ of garnishment or execution may be issued to any person who has possession, custody or control of funds or property of the debtor or owes funds or property to the debtor if:

1. The creditor has obtained a judgment against the debtor;

2. The judgment is for the payment of money to the creditor;

3. The debtor has not paid the amount of money provided in the judgment or otherwise satisfied the judgment;

4. The funds or property of the debtor are not exempt from garnishment or execution; and

5. The creditor has otherwise complied with the procedures and requirements of this Chapter.

Section 6-2-7. Initiation of Proceedings.

1. Proceedings in the Court to obtain a writ of garnishment or execution shall be initiated by the filing of a complaint.

2. Complaints may be filed by the creditor and shall be captioned: "(name(s) of creditor(s)), Creditor(s) vs. (name(s) of debtor(s), Debtor(s) and (name(s) of garnishee(s)), Garnishee".

3. In addition to any other information required by the laws of the Tribe, all complaints under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the creditor;

b. The name, tribal affiliation, and last four digits of the social security number of the debtor, or a statement that the information is not known;

c. The physical and mailing addresses and employment of the debtor, or a statement that the information is not known;

d. The name and address of the garnishee, if any;

e. The basis for the Court's jurisdiction;

f. The total amount the creditor claims is owed by the debtor;

g. A description of the action and findings of the court which entered the judgment on which the action is based;

h. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court, allegations necessary for the Court to recognize the judgment in accordance with the laws of the Tribe governing recognition and enforcement of foreign judgments and a request to recognize the judgment;

i. A description of the funds or property sought to be garnished or executed against, the location of such funds or property, and the name of the person in possession of the funds or property;

j. Reasonable instructions on how to remit to the creditor any amount withheld from the funds or property of the debtor, if appropriate; and

k. A request that the Court enter a writ of garnishment or execution, as appropriate.

4. A complaint filed under this Section shall be accompanied by a copy of the judgment on which the action is based as an exhibit. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court, the copy of the judgment attached to the complaint must be a certified copy of the original judgment. If the foreign judgment on which the action is based has been recognized by the Court, a copy of

the order recognizing the judgment shall be included along with a copy of the foreign judgment on which the action is based.

5. Two (2) or more garnishees may be included in the same complaint for the same debtor.

6. A complaint which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 6-2-8. Summons and Service of Process. Upon the filing of a complaint, a summons shall be issued to and served upon the debtor and garnishee, if any, in accordance with the general rules governing the issuance of summons by the Court.

Section 6-2-9. Responsive Pleading.

1. The debtor and garnishee may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim.

Section 6-2-10. Hearing on Complaint.

1. Upon the filing of a complaint under this Chapter, the Court shall schedule and conduct a hearing on the complaint.

2. The primary purpose of a hearing on the complaint is to determine whether a writ of garnishment or execution should issue.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall determine whether a writ of garnishment or execution shall be issued in accordance with the provisions of this Chapter.

5. The burden of proof shall lie with a creditor to demonstrate that a writ of garnishment or execution should issue by a preponderance of the evidence.

Section 6-2-11. Writ.

1. In addition to any other matters necessary for an order of the Court, a writ of garnishment or execution shall include:

a. The name and address of the creditor;

b. The name, address, and last four digits of the social security number of the debtor;

c. The title and location of the court action under which the judgment on which the writ is based was issued;

d. The amount of the judgment on which the writ is based, including any applicable interest;

e. The name and address of the garnishee, if any;

f. A description of the funds or property to be garnished or executed against;

g. The address of the location of the funds or property;

h. If appropriate, an authorization for law enforcement to take possession of property to be executed against and deliver possession thereof to the creditor, if necessary;

i. The rate at which the funds will be garnished as provided in this Chapter, if applicable; and

j. The amount of any applicable costs allowed by the Court in obtaining the writ.

2. A writ of garnishment or execution is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-2-12. Service of Writ.

1. A writ of garnishment or execution shall be served on the garnishee as follows:

a. If the garnishee has not appeared in the proceeding, the writ shall be served in accordance with the rules of procedure of the Court governing service of a summons and original complaint, provided that service by publication shall not be permitted; and

b. If the garnishee has appeared in the proceeding, the writ may be served in accordance with the rules of procedure of the Court governing service of papers other than the summons and original complaint.

2. Unless an appeal is filed, a writ of garnishment or execution shall become effective as against the garnishee upon proper service of the writ on the garnishee and shall be effective to garnish all non-exempt property of the debtor or execute against the non-exempt property of the debtor described in the writ which is in the garnishee's possession, custody or control at the time of service of the writ.

3. Unless an appeal is filed, a writ of execution shall become effective as against the debtor upon proper service of the writ on the debtor and shall be effective to execute against the non-exempt property of the debtor described in the writ of execution which is in the debtor's possession, custody or control at the time of service of the writ.

Section 6-2-13. Execution.

1. A creditor may seek a writ of execution upon any specific property of the debtor, whether such property is in the possession, custody, or control of the debtor or a garnishee. Upon the writ becoming effective under this Chapter, the debtor or garnishee shall deliver such property to the creditor for sale in accordance with this Section.

2. Upon receipt of property as a result of execution, the creditor shall sell the property in any commercially reasonable manner. The creditor shall apply an amount equal to the proceeds of the sale or the fair market value of the property, whichever is more, as follows:

a. First, to satisfy any actual out of pocket costs of the sale;

b. Second, to satisfy any unpaid court costs;

c. Third, to satisfy any portion of the judgment still owing; and

d. Finally, to pay over to the debtor any amount remaining.

3. The debtor or garnishee shall execute any and all necessary documents to accomplish the transfer of any property subject to a writ of execution to the creditor or a purchaser from the creditor.

4. Nothing in this Section shall limit or prohibit law enforcement from taking possession of property described in a writ of execution to be executed against and deliver possession thereof to the creditor.

Section 6-2-14. Review of Garnishment.

1. A garnishee, creditor, or debtor may request a review of a garnishment any time, but no more frequently than every ninety (90) days, to determine whether the garnishment should be continued or revised.

2. A debtor may request a review of garnishment at any time to claim an exemption or limit under law, including this Chapter.

Section 6-2-15. Rate of Garnishment.

1. The Court shall determine the amount of money which may be withheld from all sources of income of a debtor in accordance with this Section. Factors which shall be considered in determining the amount of money to garnish shall include, but not be limited to:

a. Total income versus the amount of the debt for the debtor and the creditor each;

b. The priority of the debt in relation to other obligations owed;

c. The type of debt;

d. The needs of the creditor;

e. The needs of the debtor;

f. The nature of the income to be garnished; and

g. Other sources of financial support for the creditor and the debtor.

2. The maximum amount of money from all sources of income received by a debtor that may be subject to garnishment during any week is the lesser of:

a. Twenty-five percent (25%) of the total of all such sources of income for that week;

b. The amount by which the total from all such sources of income for that week exceeds forty (40) times the minimum hourly wage in effect in the location of the debtor at the time the income is payable; or

c. The amount by which the total from all such sources of income for that week exceeds the official federal poverty guideline for the family size and location of the debtor.

3. For any income received by a debtor at a rate other than weekly, the maximum amount subject to garnishment shall be determined by calculating a weekly amount of income based on the rate of receipt of such income.

4. Subject to the priority of child support and maintenance orders in this Chapter, which shall be paid to the maximum amount available for those orders before any withholding is made for another garnishment, when a debtor is subject to multiple orders for garnishment and withholding amounts from all garnishment orders will result in exceeding the maximum amount permitted under this Section, each creditor shall receive a pro rata share of the total amount withheld based on the writs of garnishment being enforced.

Section 6-2-16. Priority of Garnishment Orders. Except where another order is required to be given priority by applicable law, when a debtor is subject to multiple orders for garnishment or income withholding, the orders shall be given priority in the following descending order:

1. Child support orders issued or recognized and enforced by the Court pursuant to Title IV of the Code;

2. Any other child support order;

3. Other personal support orders, including spousal maintenance; and

4. All other garnishments in accordance with the time they are issued such that a garnishment issued first shall have priority over a garnishment issued later.

Section 6-2-17. Exempt Property.

1. The following property shall be exempt from garnishment and execution:

a. All wearing apparel and personal effects of every person in the family, but not to exceed five hundred dollars ($500.00) of value in furs, jewelry, beadwork, or personal ornaments for any one person;

b. Household goods and furniture, but not including televisions, radios, stereo equipment, tape recorders, more than two (2) firearms, works of art and other recreational or luxury items;

c. Domesticated animals which are bona fide pets;

d. Items of bona fide religious or cultural significance;

e. Fishing, hunting, or farming equipment of reasonable value;

f. A minimum amount of tools, instruments, and materials sufficient to allow a debtor to carry on his or her trade;

g. Provisions and fuel for the comfortable maintenance of the home for three (3) months;

h. Land or interests in land or other property held in trust by, or subject to restrictions on alienation imposed by, the United States;

i. Land and real property which is the debtor’s principal residence;

j. An automobile of reasonable value necessary for personal or family use;

k. Equitable interests in property;

l. Property in the custody of a court or law enforcement agency;

m. Property in the possession of a conservator or personal representative; and

n. Property constituting the subject matter of a trust.

2. The exemptions provided in this Section shall apply to any garnishment or execution under any law of the Tribe unless:

a. Such law expressly permits garnishment or execution against such property; or

b. The property, with the exception of land held in trust by or subject to restrictions on alienation imposed by the United States, was specifically pledged to the creditor as collateral or security.

Section 6-2-18. Collection of Funds.

1. Any funds recovered under a writ of garnishment shall be delivered directly to the creditor, except that the creditor may choose to have the funds delivered to the Tribal Court Administrator.

2. If funds are delivered to the Tribal Court Administrator, at the election of the creditor or otherwise, upon receipt of the funds the Tribal Court Administrator shall, at the election of the creditor, either:

a. Forward the funds to the creditor by whatever means is appropriate; or

b. Inform the creditor that the funds are in the custody of the Court and will be made available for pickup at a reasonable time.

3. In the event a creditor elects to have funds delivered to the Tribal Court Administrator, the Court may order that the Tribal Court Administrator deduct an appropriate amount, not to exceed five dollars ($5.00), from the funds upon each delivery to cover administrative costs.

Section 6-2-19. Penalties.

1. If a garnishee or debtor knowingly fails to withhold monies or remit property or withheld monies as required by this Chapter after being served with a writ of garnishment or execution, the Court may:

a. Find the garnishee or debtor, as appropriate, in contempt in accordance with the laws of the Tribe;

b. Hold the garnishee liable for one hundred percent (100%) of the amount of monies that should have been withheld; and

c. Impose a civil fine on the garnishee or debtor, as appropriate, in an amount not to exceed eight hundred dollars ($800).

2. It shall be a defense to any failure to withhold or remit monies or property that:

a. The writ of garnishment or execution is not enforceable under this Chapter or other applicable law;

b. The funds or property to be garnished or executed against are exempt from garnishment and execution; or

c. The garnishee or debtor did not have possession, custody, or control of any non-exempt funds or property of the debtor subject to the writ at the time the writ became effective and the garnishee or debtor did not transfer or convey the funds or property to avoid enforcement of the writ.

3. The Tribe shall withhold and remit funds in accordance with a writ of garnishment issued by the Court in accordance with this Chapter, provided that the Tribe shall not be subject to any fines, penalties, or other enforcement provisions in this Chapter, except that the Court may find an officer or employee of the Tribe responsible for withholding in contempt in accordance with the laws of the Tribe for refusal to comply with a writ of garnishment issued by the Court in accordance with this Chapter without regard to any immunity of such officer or employee.

Section 6-2-20. Protection of Employees.

1. An employer shall not discipline, discharge from employment, or refuse to employ any person because his or her wages are subject to garnishment.

2. An employer who disciplines, discharges from employment, or refuses to employ a person because of a writ of garnishment shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 6-2-21. Foreign Writ of Garnishment.

1. Any writ of garnishment or execution issued by a court of another jurisdiction may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally, provided that the Court shall not recognize a writ of garnishment or execution unless and until it recognizes the judgment on which the writ is based in accordance with the laws of the Tribe.

2. The provisions of this Chapter governing exempt property, the maximum amount of income that can be withheld, priority of garnishment orders, and any other provisions governing or related to the enforcement of a writ of garnishment or execution shall apply to the enforcement of any foreign writ recognized and enforced by the Court.

3. No writ of garnishment or execution issued by a foreign court shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

CHAPTER 3
INJUNCTIONS

Section 6-3-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, shall have the authority to grant injunctions:

   a. When it appears that the party applying for the injunction is entitled to the relief demanded and such relief, or any part thereof, requires the restraint of some act prejudicial to the party;

b. When it appears during litigation that a party is doing some act or has threatened or is about to do some act respecting the subject of the litigation that is in violation of the rights of another party and would tend to render the judgment ineffectual; and

c. In all other cases when a party is entitled to an injunction under the principles of equity.

2. Unless such injunction or order is specifically governed by another law of the Tribe, the provisions of this Chapter shall apply to all injunctions and orders enjoining or requiring conduct issued by the Court whether denominated permanent injunctions, final injunctions, mandatory injunctions, prohibitory injunctions, preliminary injunctions, interlocutory injunctions, temporary restraining orders, or otherwise.

3. Nothing in this Chapter shall be construed as creating a cause of action.

Section 6-3-2. Limitations. An injunction shall not be granted:

1. When there is no proper civil cause of action or actual controversy between the parties;

2. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of such proceedings;

3. To stay proceedings in a court or administrative agency of the Tribe except:

a. As expressly authorized by the laws of the Tribe;

b. When necessary to aid or protect the Court's jurisdiction; or

c. When necessary to protect or effectuate the Court's judgments;

4. To stay proceedings in another jurisdiction upon a judgment of a court of that jurisdiction;

5. To prevent, suspend, or restrain enforcement of a law of the Tribe by officials, officers, or employees of the Tribe for the public benefit;

6. To prevent or restrain breach of a contract, the performance of which would not be specifically enforced;

7. To prevent, suspend, or restrain the exercise of a Tribal office in a lawful manner by the person in possession;

8. To prevent, suspend, or restrain a legislative act by the Tribe or any of its branches, instrumentalities, agencies, or departments;

9. To prevent, suspend, or restrain the exercise of a discretionary act by an official, officer, or employee of the Tribe;

10. To prevent, suspend, or restrain the assessment, levy, or collection of any tax under the laws of the Tribe where an adequate remedy may be had under the laws of the Tribe; or

11. To enjoin a dispute concerning terms or conditions of employment between an employer and employee or person seeking employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application and there is no adequate remedy at law for the injury.

Section 6-3-3. Temporary Restraining Order.

1. The Court may issue an injunction in the form of a temporary restraining order without a hearing or notice to all parties sought to be enjoined only if the applicant demonstrates by specific facts shown by affidavit or complaint verified by oath:

a. That, assuming such specific facts are true, the applicant would be entitled to a preliminary injunction;

b. That such specific facts clearly and convincingly show that immediate and irreparable harm will result to the applicant before the parties sought to be enjoined can be heard;

c. That there are sufficient reasons to not require notice to the parties sought to be enjoined; and

d. That the plaintiff and/or his or her legal counsel attempted to give written notice to all parties sought to be enjoined and the methods attempted.

2. A temporary restraining order shall not be granted on the complaint unless it is verified by the oath of the plaintiff that he or she has read the complaint, or heard the complaint read, knows the contents thereof, and that it is true of his or her own knowledge, except the matters stated therein on information and belief, and that as to those matters, he or she believes the complaint to be true.

3. If no notice is provided to the parties enjoined by a temporary restraining order, a copy of the complaint and any affidavits shall be served with the temporary restraining order.

4. Unless earlier dissolved or vacated by the Court, a temporary restraining order issued without a hearing shall, unless the Court extends it for good cause shown or consent of all parties, expire at the earlier of:

a. The date and time provided in the order;

b. The issuance or denial of a preliminary injunction after hearing; or

c. Ten (10) days from the entry of the order.

5. Any party may move the Court to dissolve or modify a temporary restraining order any time after it is issued and the Court shall determine such motion as expeditiously as possible.

6. A temporary restraining order may be appealed in the discretion of the Court of Appeals in accordance with the laws of the Tribe governing civil appeals.

Section 6-3-4. Preliminary Injunction.

1. The Court shall not issue a preliminary injunction unless notice, together with a copy of the complaint or affidavits upon which the application for preliminary injunction is based, is served upon all parties sought to be enjoined.

2. The Court may issue a preliminary injunction only after a hearing where the applicant demonstrates by specific facts shown by affidavit, complaint verified by oath, testimony, or other evidence:

a. That the applicant is likely to succeed on the merits of his or her case;

b. That the applicant is likely to suffer irreparable harm in the absence of a preliminary injunction;

c. That there is no other remedy available to the applicant;

d. That the balance of equities tips in the applicant's favor; and

e. That the preliminary injunction is in the public interest.

3. A preliminary injunction shall not be granted on the complaint unless it is verified by the oath of the plaintiff that he or she has read the complaint, or heard the complaint read, knows the contents thereof, and that it is true of his or her own knowledge, except the matters stated therein on information and belief, and that as to those matters, he or she believes the complaint to be true.

4. Any preliminary injunction issued without notice to all parties sought to be enjoined shall be void and unenforceable as to those parties not notified and shall be dissolved immediately upon motion of any party.

5. Any party may move the Court to dissolve or modify a preliminary injunction after an answer or other responsive pleading is filed.

6. A preliminary injunction shall be subject to appeal in accordance with the laws of the Tribe governing civil appeals without regard to finality or the entry of a final judgment.

Section 6-3-5. Permanent Injunction.

1. A permanent injunction may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

2. A permanent injunction shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-3-6. Security. Except as otherwise provided by law, the Court shall not issue any preliminary injunction or temporary restraining order unless the applicant provides security in an

amount the Court considers proper to pay the costs and damages sustained by any party who is found to have been wrongfully enjoined or restrained, provided that no such security may be required of the Tribe.

CHAPTER 4
PROTECTION ORDERS

Section 6-4-1. Power of Court. The Court may issue orders for protection in accordance with this Chapter without regard to whether the parties are family or household members or otherwise related.

Section 6-4-2. Applicability. This Chapter does not apply to:

1. A case or controversy involving or growing out of a labor dispute;

2. Any activity, including speech, that is constitutionally protected or otherwise protected by another law of the Tribe;

3. The activities of the Tribe; or

4. Where the Court would be prohibited from issuing an injunction under this Title.

Section 6-4-3. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Assault" means, other than lawful acts of self-defense or defense of others:

   a. An attempt to cause or purposely, knowingly, or recklessly causing physical harm to another;

   b. Negligently, purposely, or knowingly causing physical harm to another with a deadly weapon; or

   c. Attempting by physical menace to put another in fear of imminent physical harm.

2. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, indicating a continuity of purpose.

3. "Credible threat of violence" means a knowing and willful

statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate or extended family, household member, friend, pet, service animal, emotional support animal, horse, or livestock.

4. "Department" means the Ponca Tribe of Nebraska Domestic Violence Department.

5. "Emotional abuse" means a pattern of ridiculing or demeaning, making derogatory remarks, verbally harassing, or threatening to inflict physical or emotional harm on another person.

6. "Emotional support animal" means an animal that is used to assist, support, or provide service to persons with disabilities and that is not a service animal or pet.

7. "Harassment" means willfully and maliciously engaging in a knowing course of conduct or series of acts over a period of time directed at a specific person that would cause a reasonable person to be seriously alarmed, annoyed, or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. A person's acts constitute harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

a. Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses;

b. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist;

c. Repeatedly commits an act or acts that harass another person or his or her pet, service animal, emotional support animal, horse, or livestock;

d. Surveils or causes another person to surveil a person for no legitimate purpose;

e. On more than one occasion makes a false report to a law enforcement, credit, or social service agency about the person or his or her pet, service animal, emotional support animal, horse, or livestock;

f. Engages in a pattern of attending public events after being notified that the person's presence at the event is harassing to another; or

g. Prevents an occupant of a dwelling from gaining access to or exiting from the dwelling or property on which the dwelling is located.

8. "Household member" means a person who lives or has lived with another person in the same residence.

9. "Intimidation" means communicating a threat to another person, with the intent:

a. That the other person engage in conduct against the other person's will;

b. That the other person be placed in fear of retaliation for a prior lawful act; or

c. Of causing the other person to evacuate or abandon a dwelling, building, or other structure.

10. "Pet" means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal, that is kept for pleasure rather than for commercial purposes.

11. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ, or any physical condition that imperils health or welfare.

12. "Service animal" means an animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, and that are directly related to the individual's disability, such as assisting with navigation and other tasks, alerting to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting during a seizure, alerting to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability, and preventing or interrupting impulsive or destructive behaviors, but excluding crime deterrence and the

provision of emotional support, well-being, comfort, or companionship.

13. "Stalking" means purposefully engaging in a course of conduct where a person maintains visual or physical proximity to a specific person or directs verbal, written, or other threats whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity. A person engages in stalking if the person purposely or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:

a. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock and that person in fact fears for his or her safety or the safety of that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock; or

b. Would cause a reasonable person to fear death of that person or that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock and that person in fact fears death of that person or that person's immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock.

14. "Targeted residential picketing" means, when committed on more than one occasion, marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Section 6-4-4. Subject Matter Jurisdiction.

1. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Chapter.

2. In any matter arising under this Chapter, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individuals, the Court shall decline to assert original subject matter jurisdiction

unless and until the prior action is dismissed or the court of the other jurisdiction otherwise declines to hear the matter.

Section 6-4-5. Personal Jurisdiction. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or by express provision elsewhere in the laws of the Tribe and in addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over the following persons under this Chapter:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

3. Individuals who have committed, are alleged to have committed, or are likely to commit conduct to be restrained within the territory of the Tribe;

4. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe where another party to the action is a member of the Tribe or is a member of another federally recognized Indian tribe who is residing or domiciled within the territory of the Tribe;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

6. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who does not reside and is not domiciled within the territory of the Tribe who:

   a. Is personally served with a summons within the territory of the Tribe;

   b. Consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

c. Is the parent of a child subject of the action and such child resides within the territory of the Tribe as a result of the acts or directives of the individual; or

d. Is otherwise subject to the personal jurisdiction of the Court consistent with the laws of the Tribe;

7. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings; and

8. Where the Court asserts jurisdiction over an individual under this Section, the individual's immediate or extended family member whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

Section 6-4-6. Procedure. The Court may issue orders under this Chapter by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 6-4-7. Summons and Service of Process.

1. Upon the filing of a petition in a proceeding under this Chapter, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Each respondent;

b. If the proceeding involves a child and his or her parent is not a petitioner or respondent, such child's parent, guardian, or custodian, except for parents whose parental rights to the child have been terminated; and

c. All known interested persons listed in the petition.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 6-4-8. Omission of Address from Pleadings.

1. Notwithstanding anything to the contrary in the laws of the Tribe, in any proceeding under this Chapter, if the petition states that disclosure of the petitioner's address could risk the safety of or result in physical or emotional harm to the petitioner, his or her child, any member of the petitioner's immediate or extended family or household, or the petitioner's pet, service animal, emotional support animal, horse, or livestock, the petitioner may omit his or her address from all documents filed with the Court, provided that the petitioner must provide the Court a mailing address in a separate document.

2. If a petitioner has not disclosed an address pursuant to this Section and is not represented by legal counsel, the respondent shall serve all pleadings and other documents on the petitioner by delivering the same to the Court or at an alternative address designated by the petitioner. The Court shall forward all such served documents received from the respondent to the petitioner.

3. If disclosure of a petitioner's address is necessary to determine jurisdiction in a proceeding under this Chapter, the Court may order the disclosure to be made:

a. After receiving the petitioner's consent;

b. Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or

c. After a hearing, if the Court takes into consideration the safety of petitioner, his or her child, any member of the petitioner's immediate or extended family or household or the petitioner's pet, service animal, emotional support animal, horse, or livestock and finds such disclosure is in the interests of justice.

4. If a petitioner's address is withheld or not disclosed pursuant to this Section, information regarding the petitioner's address shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

b. The petitioner and his or her legal counsel;

c. The Department;

d. The Department of Social Services;

e. The Tribal Attorney;

f. Another court having jurisdiction over an action involving the parties to the action;

g. A law enforcement agency of the Tribe or another government; or

h. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure confidentiality.

Section 6-4-9. Responsive Pleading.

1. The respondent and any person issued a summons may file a responsive pleading to any petition filed in a proceeding under this Chapter.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of civil procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 6-4-10. Confidentiality of Court Proceedings.

1. Upon request of a petitioner, the Court may order that proceedings in a case filed under this Chapter shall be confidential if the Court finds it necessary or advisable to protect the safety of or prevent the physical or emotional harm to the petitioner or his or her child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock.

2. If the Court orders that proceedings in a case filed under this Chapter shall be confidential:

a. The Court record of the proceedings shall be held confidential and shall not be provided or open to inspection to any but the following:

i. Personnel of the Court;

ii. The petitioner and his or her legal counsel;

iii. Legal counsel requesting discovery as permissible under the laws of the Tribe;

iv. The Department;

v. The Department of Social Services;

vi. The Tribal Attorney;

vii. Another court having jurisdiction over an action involving the parties to the action;

viii. A law enforcement agency of the Tribe or another government; or

ix. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records; and

b. The general public shall be excluded from all hearings in the proceeding and only the following shall be allowed to be present in the hearings:

i. The parties and their legal counsel;

ii. An advocate accompanying a person seeking an order for protection;

iii. Any person accompanying a person seeking an order for protection if his or her presence is requested by the person seeking the order for protection;

iv. Witnesses; and

v. Other persons determined to be appropriate by the Court, in its discretion.

3. Notwithstanding whether the Court orders that proceedings in a case filed under this Chapter shall be confidential, the Court shall not release information on the location or whereabouts of a party, or a party's child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock to another person if the Court has reason to believe that the release of the information to that person endanger the safety of or result in the physical or emotional harm to the party, his or her child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock.

4. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800) per occurrence.

Section 6-4-11. Privileges.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a spouse testifying against his or her spouse or any privilege of confidentiality between spouses in any proceeding under this Chapter.

2. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner in any proceeding under this Chapter.

Section 6-4-12. Conduct of Hearings. All hearings involving proceedings under this Chapter shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. A verbatim record shall be taken of all hearings; and

6. A child may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child.

Section 6-4-13. Witness Lists and Subpoenas.

1. In a proceeding under this Chapter, each party shall provide to each other party in the proceeding or their respective legal counsel with a list of names of all witnesses that will be called at any hearing under this Chapter. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of a party or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Chapter.

Section 6-4-14. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Chapter:

a. Any party to the proceedings, including the petitioner and their legal counsel or advocate;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian, or custodian of any child subject of the proceedings and their legal counsel;

d. Individuals providing care for a child subject of the proceedings; and

e. Any other person the Court may direct to be notified.

2. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Section 6-4-15. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings with the Court exercising both legal and equitable powers.

Section 6-4-16. Grounds for Protection Order. An order of protection may be issued if the respondent:

1. Has committed or is likely to commit assault, harassment, intimidation, stalking, or a credible threat of violence against the petitioner, his or her child, or his or her pet, service animal, emotional support animal, horse, or livestock;

2. Has placed or is likely to place the petitioner or his or her child in fear of physical harm to the petitioner, his or her child, or his or her pet, service animal, emotional support animal, horse, or livestock;

3. Has caused or is likely to cause the petitioner to engage in sexual activity:

a. Involuntarily;

b. Without consent;

c. By use of physical force, physical restraint, or an implied or express threat of physical force, physical injury, physical restraint, or other credible threat of violence;

d. By threatening to inflict physical injury on someone other than the petitioner or by threatening to commit any other crime of violence;

e. When the petitioner is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity, whether temporary or permanent; or

f. With consent obtained by force, threat of force, intimidation, fraud, or duress;

4. Has attempted to cause, is likely to cause, or purposefully, knowingly, or recklessly has caused emotional abuse to the petitioner or his or her child; or

5. Has committed or is likely to commit targeted residential picketing.

Section 6-4-17. Initiation of Proceedings.

1. Proceedings in the Court to obtain an order for protection shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A person seeking an order for protection for himself or herself;

b. A parent, guardian, custodian, caretaker, or other representative on behalf of a minor or incapacitated person seeking an order for protection;

c. A next friend of a person seeking an order for protection;

d. An advocate or the Department on behalf of a person seeking an order for protection; or

e. An employer on behalf of his or her employee for conduct which constitutes grounds for issuing an order for protection under this Chapter that can reasonably be construed to be carried out or to have been carried out at the workplace of the employer.

3. Petitions for an order for protection shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)", provided that if the petition is filed on behalf of another, the petitioner shall be designated as "(name(s) of person filing petition) ex rel. (name(s) of petitioner(s)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, tribal affiliation, and, except as provided in this Chapter, address of the petitioner;

b. The name, last known address, employer, employer address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. If the petition is filed on behalf of another, the relationship of the petitioner to the person filing the petition;

d. The basis for the Court's jurisdiction;

e. A statement listing each civil or criminal action involving both parties;

f. Information regarding the use, possession, and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent;

g. The grounds for the petitioner requesting an order for protection;

h. A statement, including dates, location, names of persons involved, and specific details supporting the grounds for an order for protection; and

i. A request that the Court enter an order for protection in favor of the petitioner.

5. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include, such as letters, notes, text messages, and police reports.

6. Two or more petitioners, including the Department, may join in the filing of the same petition involving the same person seeking an order for protection.

7. The Court shall not charge any filing fee for the filing of a pleading under this Chapter.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 6-4-18. Emergency Orders.

1. The Court may issue an emergency order for protection ex parte without a hearing if, and only if, it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. The respondent has been arrested for an act which constitutes grounds for issuing an order for protection under this Chapter;

b. The life or health of the petitioner, his or her child, immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock is in imminent danger before the matter can be heard on notice;

c. The petitioner or his or her child, immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock is in immediate danger of physical injury before the matter can be heard on notice; or

d. The respondent has committed an act which would constitute grounds for issuing an order for protection under this Chapter within the past year or within a longer period of time if the Court finds that good cause exists to consider a longer period, provided that any time the respondent has been incarcerated or residing more than one hundred (100) miles away from the petitioner shall not be counted in determining the amount of time since the respondent committed an act which would constitute grounds for issuing an order for protection under this Chapter.

2. If the Court issues an order for protection ex parte without a hearing, the Court shall:

a. Issue a summons to the respondent in accordance with this Chapter;

b. Issue an order to the respondent to show cause why the emergency order for protection should not remain in effect which states in bold-faced type or capital letters that the emergency order for protection shall automatically become a final order for protection without a hearing unless the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection; and

c. Cause the petition, the emergency order for protection, the order to show cause, and summons to be served on the respondent in a manner other than by publication.

3. If the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall set a date for a hearing on the petition:

a. If the emergency order for protection excludes the respondent from his or her residence shared with the petitioner, within fifteen (15) days after the request for a hearing; or

b. In all other cases, within thirty (30) days after the request for a hearing.

4. If the respondent does not request a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall:

a. Enter a default against the respondent in accordance with the Tribal Rules of Civil Procedure; and

b. Enter a final protection order in accordance with this Chapter, provided that the terms of the final protection order shall be identical to the terms of the emergency order for protection except with respect to duration.

5. If the petitioner or the Court desires to include any matters in a final order for protection that were not included in an emergency order for protection issued ex parte without a hearing, the Court shall schedule and conduct a hearing on the petition in accordance with this Chapter.

6. An emergency order for protection issued ex parte without a hearing may not be vacated or dismissed without a hearing.

Section 6-4-19. Hearing on Petition.

1. Except in the case of an emergency order for protection which has been converted to a final order for protection in accordance with this Chapter, upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but no later than thirty (30) days from the date the petition was filed.

2. The primary purpose of a hearing on the petition is to determine whether an order for protection should be issued.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court may issue an order for protection if it finds by a preponderance of the evidence that grounds exist for issuing an order for protection under this Chapter.

5. The Court may find that grounds exist for issuing an order for protection under this Chapter regardless of whether the person alleged to have committed acts which constitute grounds for issuing an order for protection under this Chapter has been arrested, charged, or convicted.

6. The following shall not be considered a defense or otherwise prevent the issuance or enforcement of an order for protection:

a. Intoxication;

b. Substance abuse;

c. Spousal immunity; or

d. Provocation.

Section 6-4-20. Order for Protection.

1. In addition to any other matters necessary for an order of the Court, an order for protection, including an emergency order, shall:

a. State the appearances of all parties and failures to appear;

b. Describe any prior orders of the Court relating to the parties which are superseded or altered by the order for protection, including custody decrees and visitation orders;

c. Include the following statements in bold-faced type or capital letters:

"Violation of this order could result in confinement in jail and/or a fine of up to five hundred dollars ($500) for each violation or up to five thousand dollars ($5,000) for each subsequent violation.

If this order requires the respondent to leave the petitioner's residence or prohibits the respondent from entering or staying at the petitioner's residence, the respondent shall leave and not enter or stay at petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection."

2. An order for protection, including an emergency order, may include any of the following relief:

a. Enjoining the respondent from threatening to commit or committing acts which constitute grounds for issuing an order for protection against the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner;

b. Prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

c. Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence;

d. Ordering the respondent to stay away from the residence of, school of, place of employment of, or any specified place frequented by the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner;

e. Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;

f. Ordering the respondent to surrender any dangerous weapon in his or her possession to law enforcement;

g. Granting temporary custody of a minor child in common between the petitioner and respondent to the petitioner;

h. In connection with a pet, service animal, emotional support animal, horse, livestock, or other animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner:

i. Grant the petitioner exclusive care, possession, or control of the animal; and

ii. Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal;

i. If the order is issued after notice and a hearing:

i. Specifying arrangements for visitation by the respondent of any minor child in common between the petitioner and respondent and requiring supervision of that visitation by a third party or denying visitation if necessary to protect the safety of the petitioner or child;

ii. Ordering the removal of a guardian or conservator who is the respondent;

iii. When there is a reasonable suspicion of drug and/or alcohol use, ordering the respondent to submit to alcohol and drug testing and attend and successfully complete alcohol and drug evaluation, education, and/or treatment;

iv. Ordering the respondent to attend and successfully complete appropriate counseling services;

v. Ordering the respondent to pay the petitioner’s legal counsel’s fees;

vi. Ordering the respondent to pay rent or make payment on a mortgage on the petitioner’s residence shared with the respondent and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

vii. Ordering the respondent to reimburse the petitioner or other person for any expenses associated with the conduct which constitutes grounds for issuing the order for protection, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

viii. Requiring the respondent to pay restitution as compensatory damages to the petitioner for any injuries or damages resulting from the respondent's acts;

ix. Ordering the respondent to pay the costs and fees incurred by the petitioner in bringing the action;

j. Ordering such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner as well as the petitioner's pet, service animal, emotional support animal, horse, or livestock; and

k. Ordering any other matters the Court deems necessary or appropriate.

3. On a showing of good cause, an order for protection, including an emergency order, issued under this Chapter may include other named immediate or extended family members, household members, or friends.

4. An order for protection issued against a respondent that is an entity or organization shall apply to all of the owners, members, partners, shareholders, officers, directors, employees, and agents of the entity or organization.

5. No order issued under this Chapter shall in any manner affect title to any real property.

6. The Court shall not grant a mutual order for protection to opposing parties.

7. Unless the order provides a lesser time, an order for protection issued upon notice and hearing is effective for one (1) year from the date of entry and no longer, provided that the petitioner may file a motion to renew a protection order on or after thirty (30) days before the expiration of the previous protection order.

8. The issuance of an order of protection under this Chapter or any relief authorized under this Chapter shall not preclude any other relief provided by the laws of the Tribe.

9. Unless the respondent has received actual notice of the existence and substance of the order through personal appearance in Court to hear the terms of the order from the Court, if a respondent is not served with an order for protection issued by the Court within sixty (60) days after the order for protection is issued, the Court, after notice to the petitioner, shall vacate the order and dismiss the action without prejudice against the respondent or order that service be made within a specified time. But, if the petitioner shows good cause for the failure, the Court shall extend the time for service for an appropriate period.

10. Unless otherwise provided in an order vacating, terminating, dismissing, or modifying an order for protection, an order vacating, terminating, dismissing, or modifying an order for protection shall have only prospective effect and shall not affect or implicate the validity of the order for protection prior to the entry or other effective date of the order vacating, terminating, dismissing, or modifying the order for protection.

11. An order for protection is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-4-21. Restitution.

1. When the Court orders restitution in an order for protection, such order shall direct the respondent to pay the victim the full amount of the victim's losses, including:

a. Medical services relating to physical, psychiatric, or psychological care;

b. Veterinary services relating to physical care for the victim's pet, service animal, emotional support animal, horse, or livestock;

c. Physical and occupational therapy or rehabilitation;

d. Necessary transportation, temporary housing, and child care expenses;

e. Lost income;

f. Legal counsel's fees plus any costs incurred in obtaining an order for protection;

g. Any funds, assets, or property lost as a result of exploitation of the victim; and

h. Any other losses suffered by the victim as a result of the conduct which constituted grounds for issuing the order for protection.

2. In the event the Tribe has provided any services to a victim subject to restitution under this Section, the order of restitution shall provide that the respondent pay such amount to the Tribe regardless of whether the Tribe is or becomes a party to the proceeding. The Department shall be permitted to submit any documentation of costs to the Tribe on behalf of the victim resulting from the respondent's acts for purposes of restitution and the Court shall accept such documentation in calculating the amount of restitution due the Tribe without requiring the Tribe to become a party to the proceedings. The Tribe shall have the right to intervene in any proceeding under this Chapter for the purposes of seeking such restitution.

3. An order for restitution shall be enforceable in the same manner as a judgment in a civil action and may be enforced by the victim named in the order even if the victim is not the petitioner.

Section 6-4-22. Delivery of Order.

1. Upon issuance of an order for protection, including an emergency order, the Court shall transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any and all appropriate law enforcement agencies or agencies designated by the petitioner.

2. The Court or any party in a proceeding under this Chapter may deliver an order for protection granted pursuant to this Chapter to any appropriate law enforcement agency at any time while the order is effective.

3. Each law enforcement agency which receives an order for protection issued by the Court under this Chapter shall have the authority to make such order and its contents available to other law enforcement officers for enforcement of such order.

4. If the Court vacates, dismisses, or modifies an order for protection, including an emergency order, the Court shall transmit the order vacating, dismissing, or modifying the order

for protection to the same agencies and registries to which it transmitted the original order for protection.

Section 6-4-23. Effect of Action by Parties. If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to act contrary to the exclusion or order does not waive or nullify an order for protection.

Section 6-4-24. Court-Ordered Mediation Prohibited. The Court shall not order parties to a proceeding under this Chapter into mediation or traditional dispute resolution or refer them to mediation or traditional dispute resolution for resolution of the issues in a petition for an order for protection.

Section 6-4-25. Rights of Victims. A person's right to seek an order for protection under this Chapter shall not be affected by:

1. The departure of that person from the residence or household to avoid conduct which constitutes grounds for an order for protection under this Chapter;

2. The person's use of reasonable force in self-defense against the perpetrator of conduct which constitutes grounds for an order for protection under this Chapter;

3. Evidence that the person previously filed a petition under this Chapter or any similar law and subsequently reconciled with the perpetrator of conduct constituting grounds for an order for protection under this Chapter;

4. Solely a lapse of time between an act constituting grounds for an order for protection and the filing of a petition under this Chapter;

5. Evidence that a married victim did not file an action for divorce, legal separation, and/or invalidity of marriage; or

6. Evidence that the victim left the territory of the Tribe.

Section 6-4-26. Effect of Other Proceedings.

1. At any hearing in a proceeding under this Chapter, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five (5) years that was not listed in the petition.

2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceedings.

3. A petitioner is not barred from seeking an order pursuant to this Chapter because of other pending proceedings.

4. Except as expressly provided in the laws of the Tribe, the Court shall not dismiss a proceeding under this Chapter or delay granting relief in such proceeding because of the existence of a pending action between the parties unless agreed to by all parties to the proceeding, including the victim.

Section 6-4-27. Modification of Order.

1. Any party to an order for protection issued under this Chapter or, if different, the person filing the petition in the proceeding in which such order was issued may, by motion in the same action in which the order for protection was issued, request the Court to modify, terminate, or vacate the order in accordance with this Section, including extending such order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for modifying, terminating, or vacating the order for protection.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may modify, terminate, or vacate an order for protection pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that there are grounds for such modification, termination, or vacating.

5. If there has been no violation of the existing order for protection prior to the motion to modify or vacate, the Court shall take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court shall not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

Section 6-4-28. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates, or attempts or intends to knowingly, willfully, or

purposely violate, an order for protection issued under this Chapter shall be subject to a civil fine not to exceed five hundred dollars ($500) for each such violation, provided that any subsequent violation of an order for protection by the same person within one (1) year shall result in a civil fine not to exceed five thousand dollars ($5,000) for each such violation.

2. In addition to the civil fines provided herein, the Court may enforce an order for protection issued under this Chapter using any and all other enforcement remedies available to enforce an order of the Court.

Section 6-4-29. Foreign Protection Orders.

1. An order for protection made by the court of another federally recognized Indian tribe or state may be recognized and enforced in accordance with the provisions governing foreign protection orders in Chapter 8 of Title IV of this Code.

2. Any order for protection issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

CHAPTER 5
DECLARATORY RELIEF

Section 6-5-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

2. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

3. The declaration in a declaratory judgment or decree may be either affirmative or negative in form and effect and such declarations shall have the force and effect of a final judgment or decree.

4. Nothing in this Chapter shall be construed as creating a cause of action.

Section 6-5-2. Limitations. The Court shall not issue or grant a declaratory judgment:

1. When such judgment would be solely advisory or answer moot or abstract questions;

2. When there is no proper civil cause of action or actual controversy between the parties;

3. When the party seeking relief does not have a legally protectable interest; or

4. When the facts upon which such judgment would be based are hypothetical or contingent facts which may or may not arise in the future.

Section 6-5-3. Granting of Relief.

1. The Court may refuse to issue or enter a declaratory judgment or decree where such judgment or decree, if issued or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

2. The Court may grant further relief based on a declaratory judgment or decree whenever necessary or proper. The request for such further relief shall be by complaint or appropriate pleading. If the request is sufficient, the Court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted.

3. Subject to the granting of further relief as provided in this Section, a declaratory judgment or decree may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

4. All orders, judgments, and decrees issued pursuant to this Chapter may be reviewed as other orders, judgments, and decrees including, where available, by appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-5-4. Parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

CHAPTER 6
WRIT OF MANDAMUS

Section 6-6-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, may issue writs of mandamus, which may be alternative, peremptory, or continuing, in accordance with this Chapter.

2. Nothing in this Chapter shall be construed as creating a cause of action or conferring jurisdiction upon the Court.

Section 6-6-2. Limitations. A writ of mandamus may not be issued or granted:

1. Where there is or was an adequate remedy at law;

2. To provide monetary damages or retroactive relief;

3. When there is no proper civil cause of action or actual controversy between the parties;

4. Where it would control or dictate discretion committed by law to an officer or employee, inferior tribunal or court, business entity, or board or commission;

5. To review a decision or ruling of an inferior court or tribunal which can or could have been reviewed by appeal;

6. Directly against the Tribe or any of its branches, departments, agencies, boards, commissions, instrumentalities, or economic enterprises; or

7. Without a hearing.

Section 6-6-3. Grounds for Mandamus.

1. A writ of mandamus may be issued to any officer or employee of the Tribe, any inferior court or tribunal of the Tribe, any business entity, or board or commission to compel performance of an act if:

   a. Applicable law specially imposes a duty to perform the act requested on the officer, employee, inferior court or tribunal, business entity, or board or commission which is

clear, plainly defined, imperative, nondiscretionary, and ministerial;

b. The party requesting the writ has a clear and undisputable legal right under the applicable law not possessed by members or the public generally to the performance of the duty imposed on the officer, employee, inferior court or tribunal, business entity, or board or commission;

c. The party requesting the writ only requests prospective relief and does not seek or request monetary damages or retroactive relief;

d. There is, and was in the past, no other remedy available; and

e. The Court finds that issuing the writ is otherwise appropriate under the circumstances.

2. The Court may issue a writ of mandamus to any inferior court or tribunal to review a decision or ruling of the inferior court or tribunal before a final order or judgment is issued if:

a. There is no other remedy available or the matter cannot be reviewed meaningfully on appeal from a final order or judgment;

b. The inferior court or tribunal is about to exceed its jurisdiction resulting in irreparable harm;

c. Action of the inferior court or tribunal may effectively decide the case; or

d. Review of the decision of the inferior court or tribunal will settle or establish a new rule of practice affecting other litigants.

Section 6-6-4. Form of Writ.

1. A writ of mandamus may be alternative, peremptory, or continuing.

2. In addition to any other matters necessary for an order of the Court, all writs of mandamus shall state the facts and law showing the obligation of the defendant to perform the act and his or her omission to perform it.

3. An alternative writ shall command the defendant to do the act required to be performed immediately upon receipt of the writ or at some other specified time or else show cause before the Court at a specified time and place why he or she has not done so.

4. A peremptory writ shall command the defendant to do the act required to be performed immediately upon receipt of the writ or at some other specified time and shall not require the defendant to show cause why he or she has not done as commanded. A peremptory writ may only be issued when the right to require the performance of the act is clear and it is apparent that no valid excuse for nonperformance can be given. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

5. A continuing writ shall command the defendant to do the act required to be performed from the receipt of the writ or from some other specified time and continuing for an unspecified period of time or until performance is fully satisfied.

Section 6-6-5. Granting of Relief.

1. Upon the filing of a complaint requesting a writ of mandamus, the Court shall review the complaint and if it finds the complaint insufficient to justify relief under this Chapter, may deny it without an answer.

2. If the Court determines that the complaint is sufficient to justify relief under this Chapter, a summons shall be issued to and served on the defendant in accordance with the general rules governing the issuance of summons by the Court.

3. Subject to the Court permitting an expedited proceeding in accordance with this Chapter, the defendant shall be permitted to file an answer to the complaint in accordance with the rules of procedure of the Court.

4. If the defendant fails to respond or file an answer, the Court may issue a writ of mandamus against the defendant, provided that no writ of mandamus shall be granted by default and the action shall be heard by the Court even if the defendant does not appear.

5. Except as otherwise provided in this Chapter, proceedings for a writ of mandamus shall be heard by the Court in the same manner as other civil actions.

6. A writ of mandamus may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

7. A writ of mandamus, unless issued by the Court of Appeals, shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-6-6. Expedited Proceedings.

1. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order that any proceeding for a writ of mandamus be expedited with respect to some or all procedural steps if the Court finds there is good cause to expedite and a failure to expedite is likely to result in irreparable harm to a party.

2. Any party filing a motion under this Section shall:

a. Describe the circumstances justifying expediting the proceedings;

b. Describe the irreparable harm that would result if the motion is not granted; and

c. Submit affidavits to support any representations of fact with the motion.

Section 6-6-7. Review of Continuing Mandamus.

1. If the Court grants the privilege of the writ of continuing mandamus, the Court may require the defendant to submit periodic reports detailing the progress and execution of the judgment, and the Court may evaluate and monitor compliance through review hearings conducted after issuance of the writ. The plaintiff may submit its comments or observations on the execution of the judgment and appear at any hearing to evaluate and monitor compliance.

2. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order the entry of satisfaction of judgment in accordance with the rules of procedure of the Court if the performance required by the continuing writ of mandamus has been satisfied.

3. The Court shall not require periodic reports under this Section for a writ of continuing mandamus which requires performance for an unspecified period of time.

CHAPTER 7
WRIT OF PROHIBITION

Section 6-7-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, may issue writs of prohibition, which may be alternative or peremptory, in accordance with this Chapter.

2. Nothing in this Chapter shall be construed as creating a cause of action or conferring jurisdiction upon the Court.

Section 6-7-2. Limitations. A writ of prohibition may not be issued or granted:

1. Where there is or was an adequate remedy at law;

2. To provide monetary damages or retroactive relief;

3. When there is no proper civil cause of action or actual controversy between the parties;

4. Where it would control or dictate discretion committed by law to an officer or employee, inferior tribunal or court, business entity, or board or commission;

5. To review or challenge a decision or ruling of an inferior court or tribunal which can or could have been reviewed by appeal;

6. Directly against the Tribe or any of its branches, departments, agencies, boards, commissions, instrumentalities, or economic enterprises; or

7. Without a hearing.

Section 6-7-3. Grounds for Prohibition. A writ of prohibition may be issued to any officer or employee of the Tribe, any inferior court or tribunal of the Tribe, or any business entity, or board or commission exercising judicial or quasi-judicial functions to halt proceedings before such officer, employee, inferior court or tribunal, business entity, or board or commission if:

1. The officer, employee, inferior court or tribunal, business entity, or board or commission is about to exceed its jurisdiction or legitimate power and authority under the law;

2. The party requesting the writ only requests prospective relief and does not seek or request monetary damages or retroactive relief;

3. There is, and was in the past, no other remedy available; and

4. The Court finds that issuing the writ is otherwise appropriate under the circumstances.

Section 6-7-4. Form of Writ.

1. A writ of prohibition may be alternative or peremptory.

2. In addition to any other matters necessary for an order of the Court, all writs of prohibition shall state the facts and law showing the lack of jurisdiction or authority of the defendant.

3. An alternative writ shall command the defendant to desist or refrain from further proceedings in the action or matter specified in the writ immediately upon receipt of the writ or at some other specified time or else show cause before the Court at a specified time and place why he or she has not done so.

4. A peremptory writ shall command the defendant to desist or refrain from further proceedings in the action or matter specified in the writ immediately upon receipt of the writ or at some other specified time and shall not require the defendant to show cause why he or she has not done as commanded. A peremptory writ may only be issued when the lack of jurisdiction or power and authority is clear and it is apparent that no valid excuse for continuing the proceedings can be given. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

Section 6-7-5. Granting of Relief.

1. Upon the filing of a complaint requesting a writ of prohibition, the Court shall review the complaint and if it finds the complaint insufficient to justify relief under this Chapter, may deny it without an answer.

2. If the Court determines that the complaint is sufficient to justify relief under this Chapter, a summons shall be issued and served in accordance with the general rules governing the issuance of summons by the Court to the defendant.

3. Subject to the Court permitting an expedited proceeding in accordance with this Chapter, the defendant shall be permitted to file an answer to the complaint in accordance with the rules of procedure of the Court.

4. If the defendant fails to respond or file an answer, the Court may issue a writ of prohibition against the defendant, provided that no writ of prohibition shall be granted by default and the action shall be heard by the Court even if the defendant does not appear.

5. Except as otherwise provided in this Chapter, proceedings for a writ of prohibition shall be heard by the Court in the same manner as other civil actions.

6. A writ of prohibition may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

7. A writ of prohibition, unless issued by the Court of Appeals, shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-7-6. Expedited Proceedings.

1. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order that any proceeding for a writ of prohibition be expedited with respect to some or all procedural steps if the Court finds there is good cause to expedite and a failure to expedite is likely to result in irreparable harm to a party.

2. Any party filing a motion under this Section shall:

a. Describe the circumstances justifying expediting the proceedings;

b. Describe the irreparable harm that would result if the motion is not granted; and

c. Submit affidavits to support any representations of fact with the motion.

CHAPTER 8
CERTIFICATIONS OF QUESTIONS OF LAW

Section 6-8-1. Power of Court.

1. The Trial Court or Court of Appeals, on the motion of a party to pending litigation or on its own motion, may certify a question of law to the highest court of another jurisdiction if:

a. The pending litigation involves a question to be decided under the law of the other jurisdiction;

b. The answer to the question may be determinative of an issue in the pending litigation; and

c. The question is one for which an answer is not provided by a controlling law of the other jurisdiction.

2. The Court of Appeals may answer a question of law certified to it by a court of another jurisdiction if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling law of the Tribe.

3. The Court of Appeals may reformulate a question of law certified to it.

Section 6-8-2. Certification Order.

1. The court certifying a question of law to the Court of Appeals shall issue a certification order and forward it to the Tribal Court Administrator. Before responding to a certified question, the Court of Appeals may require the certifying court to deliver all or part of its record to the Tribal Court Administrator.

2. A certification order must contain:

a. The question of law to be answered;

b. The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

c. A statement acknowledging that the Court of Appeals, acting as the receiving court, may reformulate the question; and

d. The names and addresses of legal counsel of record and parties appearing without legal counsel.

3. If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

Section 6-8-3. Response. The Court of Appeals, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

Section 6-8-4. Procedures.

1. After the Court of Appeals has accepted a certified question, proceedings shall be governed by the rules and statutes governing briefs, arguments, and other appellate procedures which are not in conflict with this Title.

2. The Court of Appeals or the Tribe may request that the Tribe appear as an amicus curiae and file a brief to assist the Court of Appeals in answering the certified question.

3. Procedures for certification from the Tribe to a receiving court are those provided in the rules and statutes of the receiving forum.

Section 6-8-5. Opinion. The Court of Appeals shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, legal counsel of record, and parties appearing without legal counsel.

Section 6-8-6. Costs. Fees and costs shall be the same as in civil cases before the Court and must be equally divided between the parties unless otherwise ordered by the certifying court.

CHAPTER 9
CHALLENGE TO TRIBAL LAW

Section 6-9-1. Service on Tribe. In any proceeding in the Court in which a law of the Tribe or an action of the Tribal Council or

the Tribe is alleged to be unconstitutional or invalid under the Indian Civil Rights Act or other law, the Tribe and the Tribal Attorney shall each be served with a copy of the pleading, motion, or document containing the allegation at the same time the other parties in the action are served and shall be entitled to be heard.

Section 6-9-2. Notice With Service. If a pleading, motion, or document containing an allegation of unconstitutionality or invalidity is served on the Tribe and the Tribal Attorney pursuant to this Chapter, a notice of claim of unconstitutionality shall be attached to the pleading, motion, or document as the cover page and shall include the following:

1. The name, address, and telephone number of the party and his or her legal counsel alleging the unconstitutionality or invalidity;

2. The case name, court name, caption, and case number of the proceeding;

3. A brief statement of the basis for the claim of unconstitutionality or invalidity;

4. A brief description of the proceeding;

5. Attached copies of any orders in the proceeding if the claim of unconstitutionality or invalidity is asserted in a pleading, motion, or document other than the pleading, motion, or document that initiated the proceeding;

6. The date, time, location, judge, and subject of the next hearing in the proceeding, if any.

Section 6-9-3. Failure to Serve. If the Tribe and the Tribal Attorney are not served in a timely manner with notice pursuant to this Chapter, on motion by the Tribe, the Court shall vacate any finding of unconstitutionality or invalidity and shall give the Tribe a reasonable opportunity to prepare and be heard.

Section 6-9-4. Tribe as Party. This Chapter shall not be construed to compel the Tribe to intervene as a party in any proceeding or to permit the Tribe to be named as a party in a proceeding. The Tribe may intervene as a party, may file briefs in the matter, or may choose not to participate in a proceeding that is subject to the notice requirements of this Chapter.

CHAPTER 10
CIVIL FINE ENFORCEMENT

Section 6-10-1. Power of Court. The Court shall have the authority to impose civil fines in accordance with this Chapter whenever such fines are provided for in the laws of the Tribe.

Section 6-10-2. Initiation of Proceedings.

1. Proceedings in the Court to impose, enforce, or collect a civil fine upon any person shall be initiated by the filing of a complaint and shall proceed as a civil cause of action in accordance with the Tribal Rules of Civil Procedure.

2. Unless the law establishing or governing the civil fine provides otherwise, a complaint to impose, enforce, or collect a civil fine may only be filed by the Tribal Attorney on behalf of the Tribe.

3. If the law establishing or governing the civil fine provides that a private party may bring an action to enforce or collect the civil fine, such private party may file a complaint to impose, enforce, or collect such civil fine in the name of the Tribe and shall caption the cause of action as "Ponca Tribe of Nebraska ex rel. (name(s) of private party(s)) vs. (name(s) of violator(s)), Defendant(s)".

4. Notwithstanding anything to the contrary in this Section, on its own initiative, the Court may impose a civil fine in accordance with the law establishing or governing the civil fine against any party to a proceeding before the Court.

Section 6-10-3. Judgment of Civil Fine.

1. The Court shall impose a civil fine on a violator in accordance with the law establishing or governing the civil fine if a preponderance of the evidence demonstrates that the violator has violated the law establishing or governing the civil fine.

2. Subject to the maximum fine set forth in the law establishing or governing the civil fine, the Court shall consider the following factors in determining the amount of the civil fine:

a. The gravity of the violation;

b. Any actions taken by the violator to correct the violation; and

c. Any previous violations committed by the violator.

3. Any violation of a law establishing or governing a civil fine and any civil fine imposed by the Court shall be set forth in a formal judgment of the Court and shall be enforceable the same as any other judgment of the Court.

Section 6-10-4. Effect of Civil Fine. For purposes of appointment to any Tribal office, agency, board, commission, or committee, a finding of a violation of a law establishing or governing a civil fine shall constitute the commission of:

1. A violation of the laws of the Tribe; and

2. A crime constituting the conduct proscribed by the law governing or establishing the civil fine.

Section 6-10-5. Disposition of Civil Fines. Any civil fine collected, in whole or in part, shall be remitted to the Tribe and expended only as directed by the Tribal Council in accordance with the laws and practices of the Tribe governing appropriation of Tribal funds.

Section 6-10-6. Savings.

1. If any provision of the law establishing or governing a particular civil fine is contrary to any provision of this Chapter, the provision of the law establishing or governing the civil fine shall govern.

2. This Chapter shall not apply to civil fines imposed by departments, agencies, boards, and commissions of the Tribe where the laws of the Tribe permit such department, agency, board, or commission to impose a civil fine, provided that this Chapter shall be available to any such department, agency, board, or commission to enforce or collect a civil fine imposed by such department, agency, board, or commission.

3. The provisions of this Chapter shall not be construed to limit the power of the Tribe to proceed in any other civil or criminal proceeding or in any other forum or manner to obtain enforcement of the laws of the Tribe, including laws of the Tribe providing for the imposition of civil fines.

CHAPTER 11
CLAIMS INVOLVING INSURANCE

Section 6-11-1. Power of Court. The Court shall have authority to review an insurer's denial of a claim in accordance with this Chapter.

Section 6-11-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Claimant" means a person who has a claim for injury or damages and includes a claimant's heirs, devisees, successors, and assigns.

2. "Insurance policy" means a contract whereby a person or entity, for consideration, undertakes to indemnify the Tribe or to pay a specified or ascertainable amount or benefit on behalf of the Tribe upon determinable risk contingencies and includes a self-insurance plan, but does not include:

a. Workers' compensation insurance;

b. Health insurance; or

c. An agreement or provision in an agreement providing for indemnification of the Tribe by another party which is not otherwise a contract for insurance.

3. "Insurer" means a person or entity whom the Tribe has engaged by contract in the form of an insurance policy.

Section 6-11-3. Applicability and Exclusivity.

1. This Chapter does not apply to:

a. Claims or reviews of claims involving a health care plan or program; or

b. Claims or reviews of claims where applicable law provides another remedy or procedure for the particular claim.

2. Except for claims set forth in subsection 1 of this Section:

a. The remedy and procedures provided in this Chapter are exclusive of any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy; and

b. Any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy is precluded without regard to when or where the act or omission occurred.

Section 6-11-4. Invalidity of Contract Provisions.

1. No term, clause, provision, or endorsement of any contract, insurance policy, or self-insurance program shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

2. Any term, clause, provision, or endorsement of a contract, insurance policy, or self-insurance program which conflicts with or purports to alter any of the provisions of this Chapter shall be void and unenforceable and severed from the contract, insurance policy, or self-insurance program.

Section 6-11-5. Payment of Claim as Bar. The payment of any claim by an insurer and acceptance thereof by the claimant shall constitute a complete bar to any action by the claimant, by reason of the same occurrence or subject matter, against the insurer or the Tribe and shall require dismissal of any action commenced prior to or subsequent to such payment and acceptance.

Section 6-11-6. Subject Matter Jurisdiction.

1. The Court shall have original and exclusive subject matter jurisdiction over all matters arising under this Chapter.

2. In any matter arising under this Chapter, if a prior action on the same matter has been or was commenced in the court of another jurisdiction involving the same claim, cause of action, or occurrence:

a. The Court shall assert original subject matter jurisdiction under this Chapter, but shall require the prior action to be dismissed prior to proceeding with the claim under this Chapter;

b. The filing of the prior action shall not toll any limitations period or other time limit applicable to the claim or cause of action; and

c. The cause of action shall not be deemed commenced under this Chapter unless and until the prior proceeding is dismissed, including for purposes of any time limit or limitations period.

Section 6-11-7. Personal Jurisdiction. The Court shall have personal jurisdiction over any insurer for a claim brought in accordance with this Chapter. Notwithstanding any provision of law or the applicable insurance policy to the contrary, an insurer shall be deemed to have consented to the personal jurisdiction of the Court for matters related to such insurance policy by accepting payments from the Tribe for the insurance policy.

Section 6-11-8. Initiation of Proceedings.

1. Except as otherwise provided in this Chapter, a claimant may seek review of an insurer's denial of a claim in the Court by filing a complaint in the manner provided for civil causes of action in the Rules of Civil Procedure.

2. In addition to any other requirements of the laws of the Tribe, a complaint seeking review of an insurer's denial of a claim shall:

a. Name the appropriate insurer as the party against whom relief is sought;

b. Be captioned: "(name(s) of claimant(s)), Plaintiff(s) vs. (name of insurer(s), Defendant(s)";

c. State that it is a review of an insurer's denial of a claim;

d. State the date of filing or initiating the claim with the insurer or that such filing has not occurred and the reasons therefor;

e. Include a short, plain statement of information regarding the insurer's denial of the claim or the fact the insurer has not denied the claim or otherwise remains pending with the insurer;

f. Make only claims and request only relief covered and permitted in the applicable insurance policy; and

g. Request no more monetary compensation than is permitted in the amounts or limits of the insurance policy, provided that the complaint need not specify a precise amount of damages or money compensation sought.

Section 6-11-9. Proper Parties.

1. Relief may be sought only against the insurer in any action under this Chapter. The Tribe shall not be named or considered a necessary or indispensable party to any claim or cause of action under this Chapter.

2. In the event a claimant names or otherwise purports to join the Tribe to a claim or cause of action under this Chapter without the Tribe's express and unequivocal consent, the Court shall, upon the Court's own motion or the motion of the Tribe, prior to any other proceedings in the matter, including discovery:

a. Dismiss the Tribe from the action and complaint; and

b. If necessary, substitute the insurer for the Tribe as the proper party.

3. A cause of action shall not be deemed filed under this Chapter for any purpose, including the periods of time in which an answer, reply, or other pleading or response of any kind is required or discovery may be sought, until the insurer has been properly named as a party and served in accordance with the Rules of Civil Procedure.

Section 6-11-10. Summons and Service of Process. The summons shall be issued by the Court to and served, with a copy of the complaint, upon the insurer in accordance with the Rules of Civil Procedure governing the issuance of summons and service of process.

Section 6-11-11. Stay Pending Insurer Review.

1. If a claim subject to a complaint filed under this Chapter has not been presented to the insurer for review or action:

a. The proceedings shall be stayed for fifteen (15) days to permit the claimant to present his or her claim to the insurer;

b. Upon presentation of the claim to the insurer, the claimant shall file notice with the Court and the Court shall extend the stay for at least thirty (30) days to permit the insurer to make a determination of the claim; and

c. If the claimant fails to present his or her claim to the insurer by the expiration of the stay, the Court shall dismiss the complaint with prejudice unless the claimant shows good cause for the failure.

2. If a claim subject to a complaint filed under this Chapter has been presented to the insurer for review or action, but the insurer has not denied or otherwise responded to or determined the claim:

a. The proceedings shall be stayed for at least thirty (30) days to permit the insurer to make a determination of the claim; and

b. Upon determination of the claim, the insurer shall file its determination with the Court and the Court shall lift the stay.

3. If an insurer fails to make a determination on a claim by the expiration of any stay made under this Section for such purpose, the Court shall treat the failure as a denial of the claim and lift the stay, unless the insurer shows good cause for the failure or the parties agree to extend the stay.

4. During a stay under this Section, nothing limits or prevents:

a. The parties from agreeing to a separate stay or extension of the stay in order to negotiate a settlement or otherwise resolve the claim or other issues raised in the complaint;

b. The claimant from voluntarily dismissing the complaint in accordance with the Rules of Civil Procedure;

c. The insurer paying the claim and the claimant accepting such payment; or

d. The parties from entering into a settlement agreement or otherwise resolving the claim and agreeing to dismissal of the complaint.

Section 6-11-12. Proceedings on Complaint.

1. Except as modified by this Chapter, the Court shall hear a review of an insurer's denial of a claim as it hears other civil matters.

2. Except where provided otherwise in this Chapter, the laws of the Tribe, including the Rules of Civil Procedure, governing the conduct of Court proceedings shall apply to any review of an insurer's denial of a claim under this Chapter, provided that the provisions of the Rules of Civil Procedure applicable to the Tribe in any civil cause of action governing the awarding of costs, stays, and periods of time shall apply and be available to the insurer in an action brought under this Chapter.

3. Any matter or information relevant and material to the subject matter of the proceeding is admissible and may be received in evidence. Hearsay evidence will not be excluded as long as it is reasonably reliable.

Section 6-11-13. Obtaining Evidence. In any proceeding under this Chapter, by order upon motion and showing of sufficient relevancy and admissibility, and subject to applicable laws related to privilege and confidentiality, the Court may:

1. Require the appearance and testimony of any official, officer, agent, or employee of the Tribe with personal and first-hand knowledge necessary to the proper resolution of the claim; and

2. Require any official, officer, agent, or employee of the Tribe to deliver to the Court documentary or physical evidence necessary to the proper resolution of the claim, provided that any such documentary or physical evidence shall be kept under seal and not made available to the public and shall be returned to the Tribe upon termination of the proceedings before the Court.

Section 6-11-14. Defenses of Insurance Carrier.

1. In any action or proceeding under this Chapter, an insurer may assert any defense that would be available to the Tribe if the Tribe were the defendant in the action or proceeding, except that an insurer shall not be permitted to assert:

a. The Tribe's sovereign immunity with respect to any claim, judgment, damages, or other relief within the terms, coverage, or limits of the applicable insurance policy;

b. Any lack of personal jurisdiction of the Court over the Tribe; or

c. Any lack of subject matter jurisdiction of the Court over an action or proceeding involving the Tribe.

2. Notwithstanding anything to the contrary in this Title, an insurer shall have the right and authority to waive any and all defenses available to it under this Chapter or other law of the Tribe, provided any such waiver shall not extend to the Tribe directly.

Section 6-11-15. Decision of Court.

1. After hearing a review of an insurer's denial of a claim, the Court may determine all issues properly before it, including fault, and enter judgment as it enters judgment in other civil proceedings, subject to the following:

a. The Court may award damages, enter judgment, or grant other relief only against or in favor of the insurer and/or the claimant;

b. The Court shall not have jurisdiction over the Tribe or any cause of action brought against the Tribe or to award damages, enter judgment, or grant any other relief against the Tribe, regardless of any fault or conduct of the Tribe;

c. The Court shall not have jurisdiction to award damages, enter judgment, or grant other relief for events, occurrences, acts, or omissions not covered by the applicable insurance policy;

d. The Court shall not have jurisdiction to award any damages or other monies in an amount in excess of the amounts of coverage in the applicable insurance policy; and

e. Any award of damages, judgment, or other relief granted a claimant shall be enforceable only against the insurer and only for events, occurrences, acts, and omissions, and in such amounts, established by the applicable insurance policy.

2. Nothing in this Section shall limit or prohibit the Court from construing the insurance policy as necessary to properly resolve the proceedings.

Section 6-11-16. Limitations of Actions.

1. An action brought under this Chapter must be commenced within the limitations period applicable to the underlying cause of action as if the Tribe were a party.

2. For purposes of determining whether a cause of action under this Chapter has been timely filed:

a. The cause of action shall not be deemed to have been commenced unless and until any prior proceeding not brought under this Chapter in any jurisdiction, including the Court, is dismissed or, for an action in the Court, the complaint amended to comply with this Chapter;

b. The cause of action shall not be deemed to have been commenced unless and until the insurer has been joined as a party and, if named, the Tribe dismissed as a party; and

c. The failure to properly name the insurer or bring the cause of action under, pursuant to, and in accordance with this Chapter shall not toll any period of limitations.

3. If no complaint is filed under this Chapter within the time allowed, any decision or determination of the insurer is final and not subject to any challenge or appeal in any court, provided that the insurer may, in its sole discretion, pay a claim notwithstanding the expiration of any limitations period applicable to the claim.

CHAPTER 12
DISPUTE RESOLUTION AGREEMENTS

Section 6-12-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Adhesion contract" means any contract or any provision therein or amendment thereto, including a dispute resolution agreement contained in a contract or standing alone, drafted with non-negotiable terms and conditions or otherwise whereby any party

must adhere to the original terms without negotiation, renegotiation, or amendment.

2. "Arbitration" means a process in which parties submit a dispute between or among them to an arbitrator for the purpose of the arbitrator deciding the same.

3. "Arbitration agreement" means any written agreement to settle a dispute by arbitration or otherwise submit such dispute to an arbitrator, whether set out as a standalone agreement or contained in a contract.

4. "Arbitrator" means a neutral individual, other than a judge of a court of a jurisdiction serving in such capacity, who serves impartially to decide a dispute between or amongst parties and invested with power to decide the same, whether such arbitrator is chosen by the parties, a court, or dispute resolution provider organization, and includes a panel of arbitrators.

5. "Award" means:

a. A written agreement resolving a dispute reached in negotiation or mediation and signed by all parties to the negotiation or mediation to be bound thereby; and

b. A written decision and award rendered and made by an arbitrator in an arbitration.

6. "Consumer" means an individual who seeks, uses, or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

7. "Contract" means a contract, agreement, or other instrument and includes a contract that has been extended or renewed by an oral or implied agreement.

8. "Dispute" means a claim, dispute, or controversy and includes any question arising between parties to a contract whether the question is one of law or fact or both.

9. "Dispute resolution" means negotiation, mediation, or arbitration.

10. "Dispute resolution agreement" means a negotiation agreement, mediation agreement, or arbitration agreement, but does include an agreement to submit a dispute to a court or other tribunal of a governmental jurisdiction.

11. "Dispute resolution provider organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers mediation, arbitration, or other dispute resolution proceedings or is involved in the appointment of arbitrators, mediators, or other dispute resolution neutrals.

12. "Drafting party" means the person that included a dispute resolution agreement in a contract and includes any third party relying upon or otherwise subject to the dispute resolution agreement.

13. "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

14. "Mediation agreement" means any written agreement to settle a dispute by mediation or otherwise submit such dispute to a mediator, whether set out as a standalone agreement or contained in a contract.

15. "Mediator" means a neutral individual who serves impartially and assists parties to reach a mutually acceptable resolution of their dispute, whether such mediator is chosen by the parties, a court, or dispute resolution provider organization and includes a panel of mediators.

16. "Negotiation agreement" means any written agreement to settle a dispute by negotiation between the parties themselves without a mediator, arbitrator, or other neutral third party, whether set out as a standalone agreement or contained in a contract.

Section 6-12-2. Applicability.

1. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, this Chapter applies to:

a. Any dispute resolution agreement:

i. Which is made in the territory of the Tribe;

ii. To which the Tribe is a party;

iii. To which any member of the Tribe residing or domiciled in the territory of the Tribe is a party; or

iv. Which provides that it is subject to, governed by, or will be enforced in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular; and

b. Any dispute resolution:

i. Which is held in the territory of the Tribe;

ii. To which the Tribe is a party; or

iii. Which provides that it is subject to, governed by, or will be conducted in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular.

2. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, a person shall be deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over them in an action arising under or subject to this Chapter if such person:

a. Resides in the territory of the Tribe;

b. Transacts, conducts, or performs any business or activity, either in person or by an agent or representative, within the territory of the Tribe or with the Tribe, with respect to any matter arising from such business or activity;

c. Owns, uses, leases, or possesses any property within the territory of the Tribe, with respect to any matter arising from such ownership, use, lease, or possession;

d. Is a licensee or permitee of the Tribe, with respect to any matter arising from such person's activities as a licensee or permitee of the Tribe;

e. Enters into a contract, agreement, or other consensual relationship with the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship;

f. Enters into a contract, agreement, or other consensual relationship with a member of the Tribe residing or domiciled in the territory of the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship; or

g. Acts under Tribal authority.

3. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, any dispute resolution agreement which is made in the territory of the Tribe, to which the Tribe is a party, or to which any member of the Tribe residing or domiciled in the territory of the Tribe is a party shall be deemed made, entered into, and performed in the territory of the Tribe.

Section 6-12-3. Invalidity of Contract Provisions.

1. The provisions of this Chapter shall supersede any contrary provision of any dispute resolution agreement or any contract and no provision of a dispute resolution agreement or a contract which purports to exempt or avoid the provisions of this Chapter shall be valid, including a provision providing for:

a. A particular law to govern or be utilized with respect to the dispute resolution agreement or the contract;

b. A particular law to be utilized for the construction or interpretation of the dispute resolution agreement or the contract;

c. The holding of or location of a dispute resolution proceeding in a particular jurisdiction or outside the territory of the Tribe; or

d. The resolution of disputes or enforcement of an award in a particular court or jurisdiction.

2. No term, clause, or provision of any dispute resolution agreement or any contract shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

3. Any term, clause, or provision of a dispute resolution agreement or a contract which conflicts with or purports to alter any of the provisions of this Chapter shall render the dispute resolution agreement void and unenforceable in its entirety and severed from any contract containing such dispute resolution

agreement. No such term, clause, or provision may be reduced and/or narrowed in scope or the like to be made enforceable, unless expressly authorized in this Chapter.

Section 6-12-4. No Waiver of Immunity.

1. Nothing in this Chapter limits, waives, or abrogates, and shall not be deemed or construed to limit, waive, or abrogate, the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

2. Notwithstanding anything to the contrary in this Chapter or any law of any jurisdiction, no dispute resolution agreement shall limit, waive, or abrogate, or be deemed or construed to limit, waive, or abrogate, the sovereignty or sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

3. Any waiver of the sovereign immunity of the Tribe with respect to any dispute resolution agreement, including the enforcement of the same, must comply with all of the following to be valid and enforceable:

a. The waiver must be explicitly expressed in the language of the dispute resolution agreement or the contract subject to or containing such agreement with language specifically referring to a waiver of sovereign immunity;

b. The waiver must expressly state what dispute resolution actions are subject to the waiver, including compelling dispute resolution and enforcement of any award;

c. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the waiver;

d. The resolution must identify the specific contract subject to or containing such dispute resolution agreement and expressly affirm and agree to the waiver by explicit language referring to such;

e. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized

to agree to waive the immunity of the enterprise or instrumentality, the full board of directors of the enterprise or instrumentality, excluding any vacant positions; and

f. The waiver must comply with all other requirements under applicable law.

Section 6-12-5. Subject Matter Jurisdiction. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Chapter.

Section 6-12-6. Personal Jurisdiction. In addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over any person:

1. Who has or is deemed to have consented to the application of this Chapter;

2. Who is deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over him or her as provided in this Chapter;

3. Who is a party to a dispute resolution agreement entered into:

a. Within the territory of the Tribe;

b. With a person residing or domiciled in the territory of the Tribe; or

c. With the Tribe; and

4. Who seeks to enforce a dispute resolution agreement under this Chapter, against the Tribe, or against any member of the Tribe residing or domiciled in the territory of the Tribe.

Section 6-12-7. Right to Representation.

1. A party to a dispute resolution has the right to be represented by legal counsel at any proceeding in dispute resolution.

2. Any provision of a dispute resolution agreement which purports to waive the right or ability of a party to be represented by legal counsel in dispute resolution or in any matter related to

a dispute resolution or dispute resolution agreement prior to the dispute arising shall be void and unenforceable.

3. A waiver of the right to be represented by legal counsel at any proceeding in a dispute resolution or in any matter related thereto or to a dispute resolution agreement may be revoked at any time prior to the conclusion of the dispute resolution or expiration or termination of the dispute resolution agreement.

Section 6-12-8. General Validity of Dispute Resolution Agreements. A dispute resolution agreement is valid, enforceable, and irrevocable except:

1. Upon such grounds as exist for the revocation of any contract; or

2. As otherwise provided in this Chapter or expressly in the laws of the Tribe.

Section 6-12-9. Validity of Certain Dispute Resolution Agreements. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An oral dispute resolution agreement shall not be enforceable;

2. An arbitration agreement which is not in writing shall be void and unenforcable;

3. At the election of any person who did not sign, an arbitration agreement not signed by all parties to be bound thereby shall be void and unenforcable;

4. There shall be no implied consent to arbitrate and any claim or assertion of implied consent shall be unenforceable;

5. A dispute resolution agreement made with respect to any dispute or matter which is a regulatory or other law enforcement action shall not be valid or enforceable, provided that nothing in this Chapter shall limit or prevent a regulatory or law enforcement agency or authority from negotiating the settlement of any dispute;

6. A dispute resolution agreement with respect to a dispute or review of a dispute where applicable law provides another

exclusive or specific remedy or procedure for the dispute shall not be valid or enforceable;

7. At the election of the person alleging conduct constituting a sexual harassment or assault dispute, a dispute resolution agreement made prior to the dispute arising shall not be valid or enforceable with respect to the sexual assault or harassment dispute; and

8. In the case of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract:

a. The dispute resolution agreement shall be revocable at law by the party who is not the drafting party; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed:

i. As an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the party who is not the drafting party and not compulsory, mandatory, or exclusive on the part of the party who is not the drafting party; and

ii. Strictly against the drafting party and solely in favor of the other party with all doubts and ambiguities resolved in favor of the party who is not the drafting party.

9. Any provision of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract which purports to waive the right or ability of a party who is not the drafting party to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

10. The drafting party of a dispute resolution agreement subject to this Chapter which is an adhesion contract or contained in an adhesion contract shall be required to pay all costs and fees of the dispute resolution, including the compensation of the mediator or arbitrator.

11. A consumer who is a party to a dispute resolution agreement subject to this Chapter shall not be required to pay any costs or fees of a dispute resolution, the compensation of the

mediator or arbitrator, or any costs or fees of any kind of another party.

12. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-10. Requirements of Dispute Resolution Agreement with Tribe. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An arbitration agreement shall not be valid or enforceable against the Tribe unless it complies with all of the following:

a. The Tribe is a full party to the arbitration agreement;

b. The arbitration agreement shall explicitly state the specific disputes or classes of disputes subject to arbitration or be strictly limited to matters directly related to the contract subject to or containing the arbitration agreement;

c. The arbitration agreement shall explicitly limit the amount that can be awarded in arbitration to a specific dollar amount not to exceed the dollar amount of the contract subject to or containing the arbitration agreement or to other specific, limited non-monetary relief;

d. The arbitration agreement shall not permit any third parties or others not full parties to the arbitration agreement or contract subject to or containing such agreement to bring disputes in arbitration against the Tribe;

e. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the arbitration agreement;

f. The resolution must identify the specific contract subject to or containing such arbitration agreement and

expressly affirm and agree to the arbitration agreement by explicit language referring to such; and

g. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, a majority of the full board of directors of the enterprise or instrumentality, excluding any vacant positions;

2. A dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be narrowly construed and strictly limited to its terms, including with respect to the issues and disputes subject to dispute resolution, the extent to which dispute resolution is permitted or required, and the courts which may hear any matter related to the dispute resolution agreement;

3. Any reference to courts generally or courts of competent jurisdiction in a dispute resolution agreement to which the Tribe is a party or contract subject to or containing a dispute resolution agreement shall mean the Court and not include any court which could not exercise jurisdiction over the Tribe or the matter in the absence of the dispute resolution agreement or the contract subject to or containing the dispute resolution agreement;

4. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be construed to extend to:

a. Any dispute or matter which is a regulatory or other law enforcement action or matter, including the imposition of a civil fine under this Code; or

b. Any dispute or review of a dispute where applicable law provides another exclusive or specific remedy or procedure for the dispute;

5. No arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any claim or recovery for indirect, incidental, special, exemplary, punitive, consequential, or other non-direct damages, including loss of profit, loss of business, and loss of goodwill through arbitration;

6. If an arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe or a contract

subject to or containing an arbitration agreement limits the amount of recovery the Tribe may seek or obtain against the other party, such limit shall also apply to the amount of recovery the other party may seek or obtain against the Tribe and any claim for amounts over such limit against the Tribe shall not be subject to arbitration or actionable or enforceable against the Tribe in any manner;

7. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any dispute to be brought against the Tribe in dispute resolution by third parties or others not full parties to the dispute resolution agreement;

8. No person may join or interplead the Tribe or otherwise force it to participate in any dispute resolution between other parties without the express written agreement of the Tribe;

9. No third party may join, intervene, or otherwise become a party to dispute resolution against or involving the Tribe without the express written agreement of the Tribe, even if the Tribe is already a party to the dispute resolution;

10. The authority to enter into an arbitration agreement shall not and can not be delegated by the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality, to any department, agency, commission, board, subdivision, official, officer, agent, or employee;

11. No department, agency, commission, board, subdivision, official, officer, agent, or employee of the Tribe or any enterprise or instrumentality of the Tribe has the authority to enter into any arbitration agreement on behalf of the Tribe, enterprise, or instrumentality;

12. No term, provision, or language in a dispute resolution agreement asserting, declaring, or agreeing that the dispute resolution agreement or any provision therein is irrevocable, valid, or enforceable shall supersede the provisions of this Chapter;

13. A dispute resolution agreement made in violation of this Section shall be illegal, made without legal capacity or authority, and void, provided that if a dispute resolution agreement made in violation of this Section cannot be deemed void or unenforceable for any reason:

a. Notwithstanding anything to the contrary in its terms, the dispute resolution agreement shall be revocable at law by the Tribe; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed in accordance with the following:

i. The dispute resolution agreement shall be deemed an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the Tribe and not compulsory, mandatory, or exclusive on the part of the Tribe;

ii. The dispute resolution agreement and all doubts and ambiguities therein shall be strictly construed against the other party and solely in favor of and to the benefit of the Tribe and against submission to or compelling of dispute resolution;

iii. Any waiver of sovereign immunity with respect to the dispute resolution agreement, including compelling dispute resolution and confirmation or other enforcement of any award, shall be void and unenforceable and severed from the dispute resolution agreement or contract subject to or containing such agreement, or construed as revocable at law by the Tribe; and

iv. The dispute resolution agreement may only be enforced in the Court and any provision in the dispute resolution agreement purporting to permit enforcement in, or be a consent to jurisdiction to, any court shall be unenforceable and severed or construed as revocable by the Tribe or, if not revocable, solely an agreement to permit enforcement in and/or consent to jurisdiction to the Court.

14. Any provision of a dispute resolution agreement to which the Tribe is a party or a contract with the Tribe subject to or containing a dispute resolution agreement which purports to waive the right or ability of the Tribe to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

Section 6-12-11. Law Applicable.

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon all or any of the following:

a. The jurisdiction whose substantive law will be utilized for the construction and interpretation of the dispute resolution agreement, contract subject to or containing such agreement, or any dispute; and

b. The jurisdiction whose substantive law will be utilized for the enforcement of the dispute resolution agreement, contract subject to or containing such agreement, any dispute, or any award.

2. A choice of substantive law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is valid and enforceable, provided:

a. If the dispute resolution agreement is an adhesion contract or contained in an adhesion contract or is with a consumer, the jurisdiction agreed upon is that where the party who is not the drafting party or consumer is located, resides, or is domiciled;

b. At least one of the parties to the dispute resolution agreement, contract, or dispute is closely connected to the jurisdiction agreed upon, except that if the Tribe is a party, only the jurisdiction of the Tribe shall be deemed closely connected under this provision;

c. The dispute resolution agreement or the contract is made, entered into, to be performed, or actually performed in the jurisdiction agreed upon;

d. The dispute arose in the jurisdiction agreed upon; or

e. The subject matter of the dispute resolution agreement, contract, or dispute is otherwise closely connected to the jurisdiction agreed upon.

3. A choice of law in a dispute resolution agreement subject to this Chapter or a contract subject to or containing a dispute resolution agreement which is otherwise valid and enforceable is subject to the following:

a. If such law is not the laws of the Tribe exclusive of choice of law principles, language such as "governed by," "subject to," or similar import shall mean solely for construction and interpretation of the dispute resolution agreement or the contract and shall not include enforcement, jurisdiction, or authority;

b. If such law is not the laws of the Tribe exclusive of choice of law principles, such law will be limited to the use of the substantive law of the jurisdiction specified solely as a reference for the purpose of construction and interpretation and shall not in any manner constitute or be construed as:

i. A consent or agreement to the jurisdiction, authority, or applicability of such law to any party;

ii. Authorization for the enforcement of any such law against any party or the exercise of any regulatory authority over any party;

iii. An agreement to enforcement of the dispute resolution agreement, including compelling dispute resolution and enforcement of any award, pursuant to such law or in the jurisdiction whose law is specified, unless expressly and unequivocally stated otherwise; or

iv. An agreement to submit any dispute or other matter to the courts or other tribunals of the jurisdiction whose law is specified;

c. Any such law which conflicts with this Chapter shall not be applied or used and the provisions of this Chapter shall govern, apply, and be used;

d. If the use or application of any principle, portion, or provision of such law would result in a party being in violation of or acting contrary to the laws of the Tribe otherwise applicable to the party, such principle, portion, or provision of such law shall not be applied or used; and

e. Any other limitations or requirements in the laws of the Tribe regarding choice of law in a contract.

4. If a choice of law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is not valid and enforceable, the dispute resolution agreement or the contract shall be deemed to not specify any law to be utilized for its construction and interpretation or enforcement.

5. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law to be utilized for the construction and interpretation of the dispute resolution agreement, the dispute resolution agreement shall be construed and interpreted in accordance with the following:

a. If the contract specifies the substantive law governing it or its interpretation and construction, such specified law shall be utilized for the construction and interpretation of the dispute resolution agreement, subject to the limitations in this Section or elsewhere in the laws of the Tribe;

b. If the contract does not specify any substantive law governing it or its interpretation and construction, the dispute resolution agreement shall be governed by and interpreted and construed exclusively in accordance with the laws of the Tribe, including this Chapter and exclusive of any choice of law principles, regardless of:

i. The location where the dispute resolution is or may be held; or

ii. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement or the contract.

6. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law governing or to be utilized for enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming or enforcing any award, this Chapter shall exclusively govern enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming and enforcing any award, regardless of:

a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including

the law governing or to be utilized for either of their interpretation or construction;

b. The location where the dispute resolution is or may be held; or

c. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement, contract, or an award.

7. In any proceeding where a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is subject to interpretation and construction or enforcement in accordance with the law of another jurisdiction as provided in this Section, the Court shall apply the substantive law of the other jurisdiction in accordance with this Section, but the proceedings will otherwise be governed by the rules of procedure for the Court.

Section 6-12-12. Choice of Tribunal.

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement.

2. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement, the Court shall have exclusive jurisdiction to hear any dispute or any enforcement action, including compelling dispute resolution and confirming or enforcing any award, regardless of:

a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including the law governing or to be utilized for either of their interpretation or construction or for enforcement; or

b. The location where the dispute resolution is or may be held.

Section 6-12-13. Breach of Dispute Resolution Agreement.

1. If a party is in material breach of a dispute resolution agreement or otherwise in default of the dispute resolution, the party waives the party's right to compel dispute resolution under the dispute resolution agreement.

2. If a dispute resolution agreement requires, either expressly or through application of any law of any jurisdiction or any rule of the dispute resolution provider organization, a particular party to pay certain fees and costs before the dispute resolution can proceed, if the fees or costs to initiate dispute resolution are not paid within thirty (30) days after the due date, the party is in material breach of the dispute resolution agreement and in default of the dispute resolution.

3. If a party materially breaches the dispute resolution agreement or is in default under the dispute resolution, the other party may do any of the following:

a. Properly refuse to negotiate, mediate, or arbitrate the dispute, or withdraw the dispute from an existing dispute resolution, and proceed in a court of appropriate jurisdiction with the statute of limitations governing any dispute brought in dispute resolution tolled as of the date of the first filing of the dispute in dispute resolution; or

b. Compel dispute resolution with the breaching or defaulting party required to pay all reasonable attorney's fees and costs related to the dispute resolution and compelling thereof.

Section 6-12-14. Appointment of Mediator or Arbitrator.

1. If a dispute resolution agreement provides a method of appointing a mediator or arbitrator, that method shall be followed.

2. If a dispute resolution agreement does not provide a method for appointing a mediator or arbitrator, the parties to the dispute resolution agreement who are to participate in the dispute resolution may agree on a method of appointing a mediator or arbitrator and that method shall be followed.

3. In the absence of an agreed method for appointing a mediator or arbitrator, if the agreed method fails or for any reason cannot be followed, or if a mediator or arbitrator appointed fails to act and a successor has not been appointed, any party to

the dispute resolution agreement who is to participate in the dispute resolution may file a complaint for appointment of a mediator or arbitrator and the Court shall appoint a mediator or arbitrator as provided in this Section.

4. When the Court will appoint a mediator or arbitrator under this Chapter, the Court shall nominate five (5) persons from lists of persons supplied jointly by the parties to the dispute resolution or obtained from a governmental department, agency, or branch or from a disinterested dispute resolution provider organization. The parties who will participate in the dispute resolution may within five (5) days of receipt of notice of the nominees from the Court jointly select the mediator or arbitrator whether or not the mediator or arbitrator is among the nominees. If the parties fail to select a mediator or arbitrator within the five (5) day period, the Court shall appoint the mediator or arbitrator from the nominees.

5. A party shall have the right to disqualify one court-appointed mediator or arbitrator without cause in any single mediation or arbitration, and may petition the Court to disqualify a subsequent appointee only upon a showing of cause.

Section 6-12-15. Conduct of Mediators and Arbitrators.

1. A person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to such rules or code of conduct adopted by or designated by the Law and Justice Committee of the Tribe. In the absence of such rules or code of conduct, a person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to the same rules or code of conduct governing judges of the Court.

2. In any dispute resolution pursuant to a dispute resolution agreement subject to this Chapter, within ten (10) calendar days of service of notice of a proposed nomination or appointment, a proposed mediator or arbitrator shall disclose, by written declaration under penalty of perjury, all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed mediator or arbitrator would be able to be impartial, including all of the following:

a. The existence of any ground specified in the laws of the Tribe for disqualification of a judge;

b. Any financial or personal interest in the outcome of the dispute resolution;

c. Whether or not the proposed mediator or arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two (2) years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding;

d. The names of the parties to all prior or pending cases in which the proposed mediator or arbitrator served or is serving as a mediator or arbitrator for any party to the dispute resolution or for legal counsel for a party and the results of each case mediated or arbitrated to conclusion, including the date of the award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any; and

e. Any existing or past relationship the proposed mediator or arbitrator or his or her immediate family has or has had with any party to the dispute resolution agreement or dispute resolution, their legal counsel or representatives, or any witness.

3. A mediator or arbitrator has a continuing obligation to disclose the information required in this Section and any facts which a reasonable person would consider likely to affect the impartiality of the arbitrator to all parties to the dispute resolution agreement and dispute resolution that the mediator or arbitrator learns after accepting appointment.

4. An appointed mediator or arbitrator who does not disclose information required by this Section, any other known, direct, and material interest in the outcome of the dispute resolution, or a known, existing, and substantial relationship with a party is presumed to act with evident partiality and bias.

5. A proposed mediator or arbitrator shall be disqualified if he or she fails to comply with the disclosure requirements of this Section and any party entitled to receive the disclosure serves a notice of disqualification within fifteen (15) calendar days after the proposed mediator or arbitrator fails to comply.

6. A proposed mediator or arbitrator shall be disqualified on the basis of the disclosure statement required under this Section after any party entitled to receive the disclosure serves

a notice of disqualification within fifteen (15) calendar days after service of the disclosure statement.

7. If any ground specified for disqualification of a judge under the laws of the Tribe exists, a mediator or arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the dispute resolution.

8. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-16. Negotiation and Mediation Privilege.

1. Except as otherwise provided in this Section, a statement, whether oral, in writing, verbal, or nonverbal, made during a negotiation or mediation or for purposes of negotiation or mediation is confidential, privileged, and not subject to discovery or admissible in evidence in any proceeding unless waived.

2. The privilege under this Section may be claimed, and a statement prevented from disclosure, as follows:

a. A party to the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of anyone;

b. A mediator may refuse to disclose a privileged statement by anyone and may prevent any other person from disclosing a privileged statement of the mediator;

c. Another participant in the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of the participant.

3. A privilege under this Section may be waived in writing or orally during a proceeding if it is expressly waived by all parties to the negotiation or mediation and:

a. In the case of the privilege of a mediator, expressly waived by the mediator; and

b. In the case of the privilege of a participant in the negotiation or mediation who is not a party, expressly waived by the participant.

4. The privilege in this Section does not apply to a statement that is:

a. In a written agreement signed by all parties to the agreement, including a dispute resolution agreement;

b. In a written award signed by all the parties to be bound thereby;

c. Made during a session of a negotiation or mediation which is open, or is required by law to be open, to the public;

d. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

e. Intentionally used to plan, commit, attempt to commit, or conceal a crime, criminal activity, or violation of law punishable by civil fine;

f. Offered or used in a court proceeding related to or involving the negotiation or mediation, provided that the court takes all necessary actions to protect the privileged statement from disclosure to third parties not entitled to the statement;

g. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator, negotiation or mediation party, other participant in the negotiation or mediation, or representative of a party based on conduct occurring during a negotiation or mediation;

h. Sought or offered to prove or disprove a claim or complaint of validity or invalidity of a mediation award based on the partiality, bias, corruption, or misconduct of the mediator; or

i. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation.

5. If a statement is not privileged under this Section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted.

6. The privilege provided in this Section does not relieve a person from any duty imposed pursuant to applicable law requiring reporting of abuse, neglect, abandonment, or exploitation.

7. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-17. Authority of Arbitrator.

1. Except as otherwise provided in this Chapter, an arbitrator shall have only the power and authority granted by the parties in the arbitration agreement.

2. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, an arbitrator may certify a question of law to the Court as provided in this Title the same as any court of another jurisdiction, including questions regarding the applicability, interpretation, and construction of this Chapter.

3. Subject to any limitations in this Chapter or the arbitration agreement, an arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the dispute, to the same extent and under the same conditions as if the dispute were the subject of a civil action, provided that a party to an arbitration proceeding may move the Court for a provisional remedy if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

4. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no arbitrator has the power or authority to:

a. Declare any law of the Tribe unconstitutional or unenforceable;

b. Determine whether an arbitration agreement is subject to this Chapter;

c. Determine the validity or enforceability of an arbitration agreement subject to this Chapter; or

d. Hear, determine, make or issue an award upon, or in any manner conduct an arbitration related to any dispute not subject to arbitration or other dispute resolution under this Chapter or the terms of the arbitration agreement.

Section 6-12-18. Conduct of Arbitration.

1. Unless the arbitration agreement provides otherwise or the parties to the arbitration otherwise provide by separate written agreement:

a. An arbitration shall be by a single neutral arbitrator;

b. If there is more than one arbitrator:

i. The powers and duties of the arbitrators may be exercised by a majority of the arbitrators; or

ii. By unanimous agreement of the arbitrators, the powers and duties of the arbitrators may be delegated to one of them, provided the power to make or correct the arbitration award may not be so delegated;

c. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective;

d. If an arbitrator permits discovery as provided in this subsection, the arbitrator may order a party to the arbitration to comply with the arbitrator's discovery-related orders and take action against a noncomplying party to the extent the Court could under the Tribal Rules of Civil Procedure;

e. The arbitrator shall appoint a time and place for the hearing on the merits and cause notice thereof to be served in the same manner as service of a summons under the Tribal Rules of Civil Procedure on the parties to the arbitration not less than sixty (60) days before the hearing,

provided that appearance at an arbitration hearing waives any right to notice;

f. Each party shall within fifteen (15) days of receipt of notice of a hearing on the merits have the right to demand in writing that the other party provide a list of witnesses it intends to call, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing, with a copy of such demand and all such lists served on the arbitrator and all listed documents made available for inspection and copying at reasonable times prior to the hearing;

g. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding;

h. An arbitrator may hold conferences with the parties to the arbitration before the hearing;

i. The arbitrator may adjourn a hearing from time to time as necessary;

j. On request of a party to the arbitration for good cause, or upon the arbitrator's own determination, the arbitrator may postpone the hearing to a time not later than the date fixed for making the arbitration award or to a later date if the parties to the arbitration consent;

k. The arbitrator shall preside at the hearing, rule on the admission and exclusion of evidence and on questions of hearing procedure, and exercise all powers relating to the conduct of the hearing;

l. Rules of evidence and rules of judicial procedure need not be observed;

m. On request of any party to the arbitration, the testimony of witnesses shall be given under oath;

n. Upon request of a party to or a witness in an arbitration, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be summoned for or is unable to attend a hearing, provided the arbitrator shall determine the conditions under which the deposition is taken;

o. An arbitrator may decide a request for summary disposition of a dispute or particular issue:

i. If all interested parties agree; or

ii. Upon request of one party to the arbitration if that party gives notice to all other parties to the arbitration and the other parties have a reasonable opportunity to respond; and

p. If an arbitrator intends to base an arbitration award upon information not obtained at the hearing, the arbitrator shall disclose the information to all parties to the arbitration and give the parties an opportunity to respond to it and present evidence on the information.

2. The parties to an arbitration are entitled to be heard, present evidence, and cross-examine witnesses appearing at the hearing.

3. An arbitrator may not determine the dispute or issue an award based solely on the default of a party. However, if a court has ordered a person to arbitrate a dispute, the arbitrator may hear and determine the dispute upon the evidence produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear.

4. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent the Court could if the controversy were the subject of a civil action in the Court. A party may petition the Court to confirm such protective order and enter the same as an order of the Court. If an arbitrator fails or refuses to enter a protective order, a party may seek such protective order from the Court.

5. An arbitrator may issue a summons in writing for the attendance of a witness and for the production of records and other evidence at any hearing or discovery proceeding authorized by the arbitration and may administer oaths. A summons from an arbitrator shall:

a. Be issued in the name of and signed by the arbitrator;

b. Be directed to the person required to attend and testify or provide documentary or physical evidence;

c. Describe with particularity any documentary or physical evidence to be provided; and

d. Be served in the same manner as subpoenas issued by the Court.

6. If a person summoned as provided in this Section refuses to appear or testify or to provide the evidence set forth in the summons, the arbitrator may request the Court to issue a subpoena requiring attendance and testimony of such person or the production of evidence, as the case may be. Upon a showing of sufficient relevancy and admissibility and subject to applicable laws related to privilege and confidentiality, the Court shall issue such subpoena which shall be served and have the same effect as a subpoena issued for a proceeding pending before the Court.

7. A party to an arbitration has the right to have a certified reporter transcribe any deposition, proceeding, or hearing. The transcript shall be the official record of the deposition, proceeding, or hearing. In the case of an arbitration agreement which is an adhesion contract or contained in an adhesion contract or with a consumer, notwithstanding any provision of the arbitration agreement or contract to the contrary, the drafting party shall incur the expense and pay for the certified reporter and transcript. In all other cases, if the arbitration agreement does not provide for a certified reporter, the party requesting the transcript shall incur the expense of the certified reporter. If an arbitrator refuses to allow a party to have a certified reporter transcribe any deposition, proceeding, or hearing pursuant to this subsection, the party may petition the Court for an order to compel the arbitrator to grant the party's request.

8. An arbitration award shall include a determination of all the questions submitted to the arbitrator the decision of which is necessary in order to determine the dispute.

9. The arbitrator shall serve a signed copy of the arbitration award on each party to the arbitration personally or by registered or certified mail or as provided in the agreement.

10. The arbitrator shall make an arbitration award within the time fixed therefor by the arbitration agreement or other agreement of the parties or, if not so fixed, within such time as the Court orders on petition of a party to the arbitration. The

parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an arbitration award was not made within the time required unless the party gives the arbitrator written notice of the party's objection prior to the service of a signed copy of the arbitration award on the party. The making of an arbitration award after such objection does not render the arbitration award timely.

11. If an arbitrator ceases or is unable to act during the arbitration, a replacement arbitrator must be appointed in accordance with this Chapter to continue the arbitration and resolve the dispute.

12. Notwithstanding any dispute resolution agreement, any contract, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no costs, expenses, or fees of another party may be awarded against Tribe and any provision of an arbitration agreement, contract, or arbitration award providing otherwise shall be void and unenforceable.

13. Except where this Section expressly permits an arbitration agreement to provide otherwise, before a dispute arises that is subject to an arbitration agreement, a party to the agreement may not waive any provision of this Section. Notwithstanding the foregoing, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, a party to an arbitration agreement may not agree to waive or unreasonably restrict any right under this Section to notice of the initiation of an arbitration, conference, or hearing.

Section 6-12-19. Requirements of Award.

1. An award in negotiation shall be in writing and signed by all parties to the negotiation who agree to the award or are to be bound thereby.

2. An award in mediation shall be in writing and signed by the mediator and all parties to the mediation who agree to the award or are to be bound thereby. If there is more than one mediator, the award must be signed by all mediators.

3. An award in arbitration shall be in writing and signed by the arbitrator. If there is more than one arbitrator, the award must be signed by all arbitrators concurring therein, which must be a majority of the arbitrators or such higher number required by

the arbitration agreement or other written agreement of the parties.

4. Unless and until confirmed or vacated as provided in this Chapter, an award has the same force and effect as a contract in writing between the parties to the dispute resolution or signing the award.

5. The provisions of this Section may not be waived.

Section 6-12-20. Stay of Proceedings.

1. If any cause of action or proceeding is brought in the Court upon any issue referable to dispute resolution under a dispute resolution agreement, upon being satisfied that the issue involved in such cause of action or proceeding is required to be referred to dispute resolution under such agreement and the provisions of this Chapter, the Court shall, on motion of one of the parties, stay the action or proceeding until such dispute resolution has been had in accordance with the terms of the dispute resolution agreement and the provisions of this Chapter, provided that the applicant for the stay is not in breach of the dispute resolution agreement or in default of such dispute resolution.

2. If a court in another jurisdiction has ordered dispute resolution of an issue which is an issue in an action or proceeding pending before the Court, the Court shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the dispute resolution is had in accordance with the order to submit to dispute resolution or until such earlier time as the Court specifies, provided the order of the other court is otherwise enforceable by the Court pursuant to the laws of the Tribe and does not violate the provisions of this Chapter.

3. If an issue which is subject to dispute resolution under a dispute resolution agreement is severable from the remainder of the cause of action or proceeding, a stay issued under this Section may be with respect to that issue only.

Section 6-12-21. Compelling Dispute Resolution.

1. A party to a dispute resolution agreement who seeks dispute resolution as specified in the dispute resolution agreement may seek an order compelling another party to the dispute resolution agreement to submit a dispute between them to dispute resolution as designated in the dispute resolution agreement by

filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A description of the dispute between the parties alleged to be subject to the dispute resolution agreement;

b. A valid copy of the alleged dispute resolution agreement which requires the parties to submit the dispute to the form of dispute resolution requested, attached as an exhibit;

c. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

d. Information demonstrating that the plaintiff has demanded or requested dispute resolution in accordance with the dispute resolution agreement;

e. Information demonstrating that the defendant has refused to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement; and

f. A request that the Court order the defendant to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement.

3. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

4. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the

complaint to obtain an order to compel dispute resolution even in the event of a default on the part of any defendant.

5. The Court shall hear a complaint filed under this Section as it hears other civil matters.

6. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by or a party to the dispute resolution agreement.

7. Except as otherwise provided in this Section, the Court shall issue an order that the plaintiff and defendant participate in dispute resolution as provided in the dispute resolution agreement with respect to the dispute set forth in the complaint if the Court determines that:

a. A valid and enforceable dispute resolution agreement exists between the parties;

b. The dispute resolution agreement requires or mandates the parties to submit a dispute between them to the particular dispute resolution requested and is not optional or discretionary on the part of the defendant; and

c. The dispute set forth in the complaint is a dispute subject to dispute resolution under the dispute resolution agreement, including the particular form of dispute resolution requested; and

d. The plaintiff is otherwise entitled to compel the defendant to submit the dispute to the dispute resolution requested.

8. The Court shall not enter an order to submit to dispute resolution if the Court determines that:

a. The right to compel dispute resolution has been waived by the plaintiff;

b. The dispute resolution agreement, by its terms or as a matter of law, only provides for the defendant to submit a dispute to dispute resolution at the discretion, option, request, or consent of the defendant and the defendant has not exercised such discretion or option, made such request, or given such consent;

c. The dispute resolution agreement, by its terms or as a matter of law, otherwise does not mandate or require dispute resolution of the dispute;

d. The dispute is not subject to dispute resolution by the terms of the dispute resolution agreement or pursuant to this Chapter or other applicable law;

e. The terms of the dispute resolution agreement do not provide for the particular form of dispute resolution requested, provided the Court may order the proper form of dispute resolution if otherwise authorized under this Section;

f. The dispute resolution agreement is void, invalid, or otherwise unenforceable against the defendant; or

g. Grounds exist for rescission of the dispute resolution agreement and the defendant has not waived or declined to exercise such rescission; or

h. The plaintiff is otherwise not entitled to compel the defendant to submit the dispute to the dispute resolution requested

9. If the dispute resolution agreement is an arbitration agreement and the Court determines that a party to the arbitration agreement is also a party to a pending action or proceeding with a third party, arising out of the same transaction or series of related transactions, and there is a possibility of conflicting rulings on a common issue of law or fact, including a pending action or proceeding initiated by the party refusing to arbitrate after the complaint was filed, but prior to a final hearing on the complaint, the Court shall not enter an order to arbitrate, but may:

a. Refuse to enforce the arbitration agreement and order intervention or joinder of all parties in a single action or proceeding;

b. Order intervention or joinder as to all or only certain issues;

c. Order arbitration among the parties who have agreed to arbitration and stay the pending action or proceeding pending the outcome of the arbitration proceeding; or

d. Stay arbitration pending the outcome of the action or proceeding.

10. If the Court determines that a valid and enforceable dispute resolution agreement between the parties exists and governs the dispute, an order to submit that dispute to dispute resolution may not be refused on the ground that the plaintiff's contentions lack substantive merit.

11. If the Court determines that there are other issues between the plaintiff and defendant, or involving either of them, which are not subject to dispute resolution as provided in the dispute resolution agreement and which are the subject of a pending action or proceeding between the plaintiff and defendant and that a determination of such issues may make the dispute resolution unnecessary, the Court may delay its order to submit to dispute resolution until the determination of such other issues or such earlier time as the Court specifies.

12. An order issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-22. Consolidating Arbitrations.

1. A party to an arbitration agreement may petition the Court to consolidate separate arbitration proceedings, and the Court may order consolidation of separate arbitration proceedings when separate arbitration agreements or proceedings exist between the same parties and either:

a. The disputes arise from the same transaction or occurrence or series of related transactions or occurrences; or

b. There is one or more common issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator.

2. If all of the applicable arbitration agreements name the same arbitrator or dispute resolution provider organization, the Court shall order the consolidated arbitration to be heard before the arbitrator or dispute resolution provider organization agreed to by the parties. If the applicable arbitration agreements name separate arbitrators or dispute resolution provider organizations, the Court shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an

arbitrator for the consolidated arbitration in accordance with this Chapter.

3. In the event that the arbitration agreements governing consolidated arbitrations contain inconsistent provisions, the Court shall resolve such conflicts and determine the rights and duties of the various parties to achieve substantial justice under all the circumstances, subject to the provisions of this Chapter.

4. The Court may exercise its discretion under this Section to deny consolidation of separate arbitration proceedings or to consolidate separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

Section 6-12-23. Confirmation of Award.

1. Any party to dispute resolution in which an award has been made may seek an order confirming the award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. A complaint to confirm an award shall name as defendants all parties to the dispute resolution. The complaint may also name as defendants any other persons bound by the award.

3. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the dispute resolution agreement attached as an exhibit;

b. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. If the award is from mediation or arbitration:

i. The names of all mediators or arbitrators, as the case may be, who made the award; and

ii. Information on the selection or appointment of the mediator or arbitration;

d. Each extension of time, if any, agreed to or granted to make the award;

e. A valid copy of the award, signed as required by this Chapter, attached as an exhibit;

f. If the award is an arbitration award:

i. Any written opinion of the arbitrator, attached as an exhibit; and

ii. Evidence that the award was served on each party to the dispute resolution as required by this Chapter; and

g. A request that the Court confirm the award and issue a judgement thereon.

4. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

5. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order confirming an award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to vacate, modify, or correct the award in accordance with this Chapter.

6. The Court shall hear a complaint filed under this Section as it hears other civil matters.

7. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the award and was not a party to the dispute resolution.

8. Except for vacating, modifying, or correcting an award as provided in this Chapter, an award shall not be subject to

review by or appeal to the Court unless the dispute resolution agreement expressly provides otherwise, but shall be confirmed as rendered by the parties, mediator, or arbitrator.

9. The Court shall confirm an award under this Section as made, whether rendered in the territory of the Tribe or another jurisdiction, and enter a judgment accordingly, unless:

a. The award was made with respect to a dispute or including an issue which is not permitted to be resolved by dispute resolution pursuant to this Chapter or other applicable law;

b. The award does not meet the requirements of this Chapter, including signing requirements;

c. The award is required to be vacated, modified, or corrected in accordance with this Chapter and is so vacated, modified, or corrected; or

d. The proceedings are dismissed.

10. A judgment entered on an award under this Section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the Court and may be enforced like any other judgment of the Court.

11. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-24. Vacating and Modifying Arbitration Award.

1. An arbitrator, upon written application of a party to the arbitration, may modify or correct an arbitration award upon any of the grounds set forth in this Section, because the arbitrator has not made a final and definite award upon a dispute submitted by the parties to the arbitration, or to clarify the award. Such an application must be submitted not later than thirty (30) days after service of a signed copy of the arbitration award on the applicant. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the arbitration. Any party to the arbitration may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The arbitrator shall either deny the application or correct the arbitration award in writing and signed

by the arbitrator or, if there is more than one, all arbitrators concurring therein. The arbitrator shall serve a signed copy of such denial or correction on each party to the arbitration personally or by registered or certified mail or as provided in the arbitration agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct an arbitration award and the decision of an arbitrator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to an arbitration in which an arbitration award has been made may seek an order vacating, modifying, or correcting the arbitration award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct an arbitration award shall name as defendants all parties to the arbitration. The complaint may also name as defendants any other persons bound by the arbitration award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the arbitration agreement attached as an exhibit;

b. If the arbitration agreement is with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. The names of all arbitrators who made the arbitration award;

d. Information on the selection or appointment of the arbitrator;

e. A valid copy of the arbitration award and written opinion of the arbitrator, if any, attached as an exhibit;

f. The basis for vacating, modifying, or correcting the arbitration award, as the case may be;

g. Unless the plaintiff requests the arbitration award be vacated, the manner in which the plaintiff seeks the arbitration award be modified or corrected, as appropriate; and

h. A request that the Court vacate, modify, or correct the arbitration award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting an arbitration award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the arbitration award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

9. The Court shall vacate an arbitration award if the Court determines any of the following:

a. The arbitration award was procured by corruption, fraud, or other undue means;

b. There was:

i. Evident partiality or bias by an arbitrator;

ii. Corruption by an arbitrator; or

iii. Misconduct by an arbitrator prejudicing the rights of a party;

c. The arbitration award does not meet the requirements of this Chapter, including being made or signed by the required number of arbitrators;

d. The arbitrator exceeded the arbitrator's powers or authority and the arbitration award cannot be corrected without affecting the merits of the decision upon the dispute submitted;

e. The rights of the party were substantially prejudiced by the refusal of the arbitrator to postpone the hearing upon sufficient cause being shown therefor;

f. The rights of the party were substantially prejudiced by the refusal of the arbitrator to hear evidence material to the dispute;

g. The arbitration was conducted without proper notice of the initiation of an arbitration or the hearing so as to substantially prejudice the rights of the party;

h. The rights of the party were substantially prejudiced by other conduct of the arbitrator;

i. An arbitrator making the arbitration award either:

i. Failed to disclose a ground for disqualification of which the arbitrator was then aware; or

ii. Was subject to disqualification but failed upon receipt of timely demand to disqualify himself or herself;

j. There was no arbitration agreement, unless the defendant participated in the arbitration without raising an objection within a reasonable time of knowing there was no valid arbitration agreement; or

k. The arbitration agreement was void, invalid, or unenforceable, unless the basis for the agreement being void, invalid, or unenforceable was waivable and the defendant participated in the arbitration without raising an objection

within a reasonable time of knowing it was voidable, invalid, or unenforceable.

10. If the Court vacates an arbitration award, the arbitration award shall be void, unenforceable, and not subject to confirmation or enforcement in any jurisdiction, provided that the Court may order a rehearing before a new arbitrator if not contrary to the arbitration agreement.

11. Unless it vacates the arbitration award pursuant to this Section, the Court shall modify or correct an arbitration award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the arbitration award;

b. The arbitrator made an award on a dispute or issue not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the dispute or issue submitted;

c. The arbitrator exceeded the arbitrator's power or authority but the arbitration award may be corrected without affecting the merits of the decision upon the dispute submitted;

d. The arbitration award is imperfect in a matter of form, not affecting the merits of the dispute; or

e. Modification or correction is necessary so as to make the arbitration award comply with this Chapter or other applicable law or to affect the intent of the arbitration award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-25. Vacating and Modifying Mediation Award.

1. A mediator, upon written application of all parties bound by the award or provision to be corrected, may correct a mediation award upon any of the grounds set forth in this Section or to clarify the award not later than thirty (30) days after the award is signed by all parties to the mediation. Upon or before

making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the mediation not joining in the application. Any party to the mediation not joining in the application may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The mediator shall either deny the application or correct the award in writing and signed by the mediator. The mediator shall serve a signed copy of such denial or correction on each party to the mediation personally or by registered or certified mail or as provided in the mediation agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct a mediation award and the decision of the mediator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to a mediation in which a mediation award has been made may seek an order vacating, modifying, or correcting the mediation award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct a mediation award shall name as defendants all parties to the mediation. The complaint may also name as defendants any other persons bound by the mediation award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the mediation agreement attached as an exhibit;

b. The name of the mediator who made the mediation award;

c. Information on the selection or appointment of the mediator;

d. A valid copy of the mediation award, attached as an exhibit;

e. The basis for vacating, modifying, or correcting the mediation award, as the case may be;

f. Unless the plaintiff requests the mediation award be vacated, the manner in which the plaintiff seeks the mediation award be modified or corrected, as appropriate; and

g. A request that the Court vacate, modify, or correct the mediation award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting a mediation award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the mediation award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the mediation award and was not a party to the mediation.

9. The Court shall vacate a mediation award if the Court determines any of the following:

a. The mediation award was procured by corruption, fraud, or other undue means;

b. The mediation award does not meet the requirements of this Chapter, including being signed by the mediator and all parties to be bound thereby; or

c. The party did not freely assent to the award as a result of:

i. Evident partiality, bias, or corruption in the mediator;

ii. Misconduct of the mediator substantially prejudicing the rights of the party;

iii. The mediator failing to disclose a ground for disqualification of which the mediator was then aware; or

iv. The mediator being subject to disqualification and failing upon receipt of timely demand to disqualify himself or herself.

10. If the Court vacates a mediation award, the mediation award shall be void, unenforceable, and not subject to confirmation in any jurisdiction, provided that the Court may order a new mediation before a new mediator if not contrary to the mediation agreement.

11. Unless it vacates the mediation award pursuant to this Section, the Court shall modify or correct a mediation award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the mediation award;

b. The mediation award is imperfect in a matter of form, not affecting the substance of the award as agreed between the parties; or

c. Modification or correction is necessary so as to:

i. Make the mediation award comply with this Chapter or other applicable law;

ii. Affect the actual agreement of the parties resulting from the mediation; or

iii. Affect the intent of the mediation award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-26. Limitations of Actions.

1. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, law, or this Chapter provides a shorter time, dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement must be commenced within six (6) months of the date the dispute accrues.

2. In the event the period of limitations under this Section for commencing dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement has expired or run, the dispute may be brought as a cause of action in a court otherwise having jurisdiction within the period of limitations applicable to the dispute as though the dispute resolution agreement did not exist or had been lawfully revoked.

3. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, or law provides a shorter time, an action to confirm, vacate, modify, or correct an award must be commenced within one (1) year after the award is made or, in the case of an arbitration award, served on the party seeking confirmation, vacation, modification, or correction, provided that the limitations period in this paragraph shall not bar or otherwise prevent a party from seeking vacation, modification, or correction of an award as a defense or response to an action seeking confirmation or other enforcement of the award or judgment confirming the award.

Approved 8/23/09
Resolution 09-44

Amended 9/23/19
Resolution 19-70

Amended 6/15/20
Resolution 20-42

Amended 11/15/22
Resolution 22-71

Amended 5/23/23
Resolution 23-40

TITLE VII
WORKERS' COMPENSATION

CHAPTER 1
GENERAL PROVISIONS

Section 7-1-1. Purpose. The purpose of this Title is:

1. To address injuries to employees arising out of and in the course of employment for all employers within the territory of the Tribe or doing business with the Tribe;

2. To establish the rights and benefits of employees of the Tribe and other employers subject to this Title for injuries, death, and occupational disease arising out of and in the course of employment;

3. To establish a systematic and uniform procedure for administration of compensation provided to employees of the Tribe and other employers subject to this Title injured in the course of employment;

4. To provide medical treatment for employees injured in the course of employment and fair compensation to employees injured in the course of employment and their dependents;

5. To create a process whereby disputes over compensation provided to injured employees can be resolved in a fair and unbiased manner; and

6. To restore employees injured in the course of employment physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

Section 7-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Administrator" means the insurance carrier providing coverage for employees of the Tribe, third party administrator, or agency, department, commission, or employee of the Tribe responsible for administering this Title and the Tribe's workers' compensation program or any designee of the foregoing.

2. "Child" means, unless the parental rights of the covered employee have been terminated or relinquished, an individual:

a. Who is a natural descendant of a covered employee in the first generation;

b. Who has been adopted by a covered employee pursuant to the laws of the Tribe or another jurisdiction;

c. Who has been adopted by a covered employee in accordance with the customs and traditions of the Tribe where a decree recognizing the adoption has been issued by the Tribal Court pursuant to the laws of the Tribe; and

d. With whom a covered employee otherwise has a legal parent-child relationship under the laws of the Tribe or another jurisdiction where the covered employee is the parent.

3. "Claimant" means a covered employee or, in event of death, his or her dependents who files a claim for compensation under this Chapter or would receive compensation from a claim filed under this Chapter.

4. "Course of employment" means activity engaged in by an employee that has to do with, and originates in, the activities of the employer, is directly related to the employee's employment by the employer, and is performed by the employee in the furtherance of the affairs or business of the employer, but does not include:

a. Preparing for work;

b. Transportation to or from the place of employment, unless the employee is directed by the employer, as part of the employee's employment, to proceed from one place of work to another and the employee does not deviate from a reasonably direct route of travel and is otherwise acting in the interest of the employer during such employer directed travel; or

c. Voluntary participation in any off-duty recreational, social, or athletic activity not constituting a part of the employee's work related duties, except where the employee is paid for his or her attendance at such activity by the employer or such activity is a reasonable expectancy of, or expressly or impliedly required by, the employee's employment or employer.

5. "Compensation" means the medical benefits, wage benefits, funeral benefits, and other compensation provided under this Title.

6. "Covered employee" means, regardless of whether work is performed in or outside the territory of the Tribe, every person who has entered into the employment of or performs work for an employer; works under a contract of hire, express or implied, oral or written, with an employer; enters into an apprenticeship with an employer; is an executive officer of an employer elected or appointed and empowered under and in accordance with the organic documents of an entity that is an employer, including a person holding an official position with an employer or standing in a representative capacity of an employer; elected and appointed officials of the Tribe compensated with wages or salary and not a stipend or reimbursable expenses; or is otherwise employed by an employer, but does not include:

a. A volunteer or other person performing work or services for an employer without receiving compensation;

b. A consultant or independent contractor working under an express or implied contract for an employer, unless a written agreement between the consultant or independent contractor and the employer expressly provides:

i. The employer shall provide coverage under this Title to the consultant or independent contractor;

ii. Specifically to whom, when, where, and why coverage will be provided by the employer; and

iii. All third parties and employees provided coverage agree to all terms, conditions, and provisions of this Title; or

c. Another person not considered an employee of the employer.

7. "Cumulative injury" means an injury from repetitive motion or activity which occurs over a period of time.

8. "Death" means the fatality of a person, but excludes any death resulting primarily from the natural aging process, an injury or normal daily activities not performed in the course of employment, or recreational or social activities.

9. "Dependent" means a person who, at the time of the occurrence of the injury, is:

a. A spouse or domestic partner of a covered employee recognized as such under the laws of the Tribe;

b. A minor child of a covered employee who is not emancipated;

c. A child of a covered employee who is over the age of majority, but under twenty-five (25) years of age, and enrolled as a full time student in a primary, secondary, or post-secondary school, including college or university;

d. A person who is over the age of majority, but under twenty-five (25) years of age, resides in the same household as a covered employee, and either:

i. Requires substantial care because of a mental or physical disability and is not capable of self-support; or

ii. Is otherwise economically dependent upon the earnings of the covered employee.

10. "Disability" means an incapacity resulting in the inability of a covered employee to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising the covered employee's ability to perform the necessary duties of the job and may be temporary or permanent, partial or total.

11. "Employer" means any employer subject to the provisions of this Title and includes the Tribe and its Tribal Council, commissions, boards, agencies, departments, divisions, instrumentalities, and economic enterprises.

12. "Health care provider" means:

a. A doctor of medicine or osteopathy, chiropractor, podiatrist, physical therapist, occupational therapist, nurse practitioner, or physician assistant who is authorized to practice under the law of the jurisdiction where the health care is provided and performing within the scope of his or her practice as defined under such law; or

b. Any health care provider from whom an employer, insurance carrier, or the Administrator will accept certification of the existence of an injury to substantiate a claim for compensation under this Title.

13. "Injury" means physical harm or damage to a person's body which may be traumatic or cumulative and includes death and occupational disease, but excludes any injury resulting primarily from the natural aging process, normal daily activities not performed in the course of employment, or recreational or social activities.

14. "Insurance carrier" means an insurer, insurance company, self-insurance plan, or other person who issues, provides, or enters into a contract in the form of a policy of insurance to provide insurance coverage to an employer.

15. "Insurance coverage" means a policy of insurance or self-insurance plan which provides coverage and compensation for injuries sustained by an employee arising out of and in the course of employment.

16. "Intoxication" means:

a. Blood alcohol content in excess of two hundredths of one percent (0.02%);

b. Conviction of the offense of driving while intoxicated or its equivalent by any jurisdiction; or

c. Loss of the normal use of a person's mental and/or physical faculties resulting from the voluntary introduction into the body of an alcoholic beverage, controlled substance, mind-altering drug, hallucinogen, abusable glue or aerosol, or other similar substance.

17. "Occupational disease" means a disease that is due to causes and conditions characteristic of and peculiar to a particular trade, occupation, process, or employment, but not the ordinary diseases to which the general public is exposed.

18. "Traumatic injury" means an injury from a sudden, specific incident.

Section 7-1-3. Requirement of Coverage.

1. Any employer, other than the Tribe, located within the territory of the Tribe, employing any employee within the territory of the Tribe, conducting business or engaging in a business transaction in the territory of the Tribe or with the Tribe, or entering into a consensual relationship with Tribe shall purchase

and maintain insurance coverage which complies with the laws of the jurisdiction where such employer is located or primarily employs employees or, in the absence thereof, provides coverage and compensation at least equal to the coverage and compensation provided under this Title.

2. The Tribe shall provide compensation to its employees in accordance with the provisions of this Title, including maintaining insurance coverage which provides coverage and compensation at least equal to the coverage and compensation required under this Title.

3. Any employer subject to this Section who fails or refuses to purchase and maintain insurance coverage in accordance with this Section shall forfeit such employer's right to conduct business in the territory of the Tribe or with the Tribe.

Section 7-1-4. Terms of Insurance Policy Void. Any term, clause, provision, or endorsement of insurance coverage which conflicts with or purports to alter any of the provisions of this Title, other than to provide additional or greater benefits than required under this Title, shall be void and unenforceable and severed from the policy of insurance.

Section 7-1-5. Exclusive Jurisdiction. No agency, court, or tribunal or workers' compensation program of any jurisdiction, other than the Administrator and Tribal Court as provided in this Title, shall have any jurisdiction or authority to hear any claim or cause of action against the Tribe, its insurance carrier, or the Administrator arising out of injuries sustained by an employee of the Tribe in the course of employment for the Tribe.

Section 7-1-6. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 7-1-7. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

CHAPTER 2
COVERAGE AND LIABILITY

Section 7-2-1. Exclusiveness of Remedy.

1. The right to recover compensation under this Title for injuries sustained by an employee in the course of employment is the exclusive remedy against the employer and its representatives, insurers, guarantors, and sureties.

2. There shall be no civil cause of action against an employer or its officers, agents, or employees arising out of injuries sustained by an employee in the course of employment and no court shall have subject matter jurisdiction over any such cause of action.

3. Any employee or dependent or representative of an employee who accepts compensation under this Title for an injury arising out of and in the course of employment waives the right to exercise any other legal remedy for such injury.

4. Any employee or dependent or representative of an employee who exercises any other legal remedy against an employee, agent, or official of his or her employer waives any right to compensation under this Title.

Section 7-2-2. Agreement to Coverage.

1. All employees shall be conclusively presumed to have elected to receive compensation in accordance with the provisions of this Title, including the schedule of benefits, exclusive of any other claims the employee may have with regards to the injury by virtue of employment with the employer.

2. All employees acknowledge that the Tribe is a federally recognized Indian tribe and is exercising its inherent sovereign authority by mandating and providing compensation pursuant to this Title.

Section 7-2-3. Posting Notice.

1. All employers shall post a notice of the coverage provided by and compensation available pursuant to this Title in a conspicuous location which substantially conforms to the following:

YOUR EMPLOYER PROVIDES WORKERS COMPENSATION IN ACCORDANCE WITH THE TITLE VII OF THE PONCA TRIBE OF NEBRASKA CODE.

If you have an injury or occupational disease arising out of and in the course of your employment with your employer, you may be entitled to compensation as provided by Title VII of the Ponca Tribe of Nebraska Code.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under Title VII of the Ponca Tribe of Nebraska Code. In no event shall compensation be paid to an employee who fails to notify their employer within thirty (30) calendar days after sustaining such work related injury and, in the case of a traumatic injury, forty-eight (48) hours.

Your exclusive remedy for any work related injury or disease is through Title VII of the Ponca Tribe of Nebraska Code. No state workers compensation program can accept a claim from you as you are employed by or within the territory of a sovereign Indian nation which has exclusive jurisdiction over workers' compensation within the territory of the Ponca Tribe of Nebraska or provided to employees of the Ponca Tribe of Nebraska.

2. Any employer, other than the Tribe, who violates this Section shall be subject to a civil fine not to exceed $5,000.00 and shall not be entitled to any of the protections against liability in this Title.

Section 7-2-4. Liability of Third Parties.

1. If a covered employee who is entitled to compensation under this Title is injured or further aggravates a previous injury by the negligence or wrong of another person not in the same employ, the covered employee or, in event of death, his or her dependents may pursue the covered employee's remedy against the other person.

2. If a covered employee who is entitled to compensation under this Title or his or her dependents do not pursue a remedy pursuant to this Section against the other person by instituting an action within one (1) year after the cause of action accrues or, if after instituting the action, the covered employee or his

or dependents fail to fully prosecute the claim and the action is dismissed, the claim against the other person is deemed assigned to the employer and its insurance carrier and all of the following apply:

a. The employer or insurance carrier may institute an action against the other person;

b. Any dismissal that is entered for lack of prosecution of an action instituted by the covered employee or his or her dependents shall not prejudice the right of the employer or insurance carrier to recover the amount of compensation paid;

c. Any statute of limitations of the claim shall be tolled for the one (1) year in which the covered employee or his or her dependents did not pursue the claim or, if such claim was dismissed for lack of prosecution, during such time from when the cause of action accrued until the date of such dismissal; and

d. The claim may be prosecuted or compromised by the employer or insurance carrier or may be reassigned in its entirety to the covered employee or his or her dependents and the covered employee or his or her dependents shall have the same rights to pursue the claim as if it had been filed within the first year.

3. A covered employee or his or her dependents shall provide the employer or insurance carrier written notice of the intention to bring an action against a third party and shall provide to the employer or insurance carrier timely and periodic notice of all pleadings and rulings concerning the status of the pending action. In any action instituted by the covered employee or his or her dependents, the employer or insurance carrier shall have the right to intervene at any time to protect the employer's or insurance carrier's interests.

4. If a covered employee proceeds against the other person under this Section, compensation shall be paid as provided in this Title and the insurance carrier shall have a lien on the amount actually collectable from the other person to the extent of such compensation paid. Acceptance of compensation under this Title constitutes an assignment of the covered employee's recovery from the other person to the extent of compensation paid or payable. Compromise of any claim by the covered employee or his or her dependents at an amount less than the compensation provided under

this Title shall be made only with written approval of the insurance carrier liable to pay the claim.

5. Upon resolution of an action or completion of a settlement of an action brought by a covered employee or his or her dependents under this Section, the insurance carrier shall have the right of subrogation for any amount of compensation paid under this Title.

Section 7-2-5. Right to Compensation. Except as otherwise provided in this Title, every covered employee who is injured or, in event of death, his or her dependents in the course of his or her employment, wherever the injury occurred, shall be entitled to receive and shall be provided or paid such compensation as provided by this Title.

Section 7-2-6. Exclusions.

1. Notwithstanding anything to the contrary in this Title and even when occurring in the course of employment, no employee shall receive compensation under this Title:

a. For any injury lasting less than three (3) consecutive calendar days;

b. For any injury or aggravation thereof:

i. That does not arise out of and in the course of employment;

ii. Which is purposely self-inflicted;

iii. Which follows repeated documented violations of work rules or results from a documented violation of safety policies;

iv. Caused by or arising out of the gross negligence of the employee;

v. Caused by or arising out of the willful act of a third person, including another employee, intended to injure the employee;

vi. Caused by or contributed to by the employee's intoxication, voluntary poisoning, or abuse of prescription medication;

vii. Caused by or arising out of an altercation in which the employee is the initial physical aggressor;

viii. Caused by or arising out of the commission of an act which would constitute a crime under federal, state, or Tribal law punishable by imprisonment of a year or more or any crime against the Tribe, provided that, in the absence of conviction of such a crime, proof of the commission of such act by a preponderance of the evidence shall be sufficient to deny compensation pursuant to this subsection;

ix. Unless the injury otherwise occurred in the course of employment, which occurred outside the employees' hours of work in which he or she received or is suppose to receive wages, even if the employee was on the employer's premises;

x. Cause by tobacco use or second-hand smoke in the workplace;

xi. Caused by mold in the workplace;

xii. Caused by natural causes, such as a heart attack, stroke, or other natural body function failure which does not arise in the course of employment; or

xiii. Caused by agents to which the general public at the employer's premises are exposed.

c. To the extent the injury is caused by, aggravated, or continued by:

i. Failure or refusal to obey written or verbal instructions of the employer which, if followed, would have reasonably prevented or significantly reduced the likelihood of the injury;

ii. Failure or refusal to use a safety device or appliance furnished by the employer;

iii. Horseplay engaged in by the employee;

iv. An unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment, medical aid, or advice of a qualified health care provider; or

v. The employee's actions which interfere with or prolong the employee's recovery, including, but not limited to, failure to timely seek appropriate medical care, reporting ongoing treatment which is in fact not occurring, or failing or refusing to seek treatment from a health care provider approved by the Administrator.

d. If the injury occurred while the employee was intoxicated, regardless of whether the intoxication was the proximate cause of the injury;

e. For any mental, emotional, psychotic, or neurotic injury, even if manifested in physical symptoms or related to stress;

f. For a preexisting degenerative condition established by objective medical evidence, whether pre-injury or post-injury, which causes, aggravates, or otherwise contributes to the injury;

g. If, after request, the employee failed, prior to performing the work which resulted in the injury, to disclose a physical condition which prevented the employee from safely performing the work or which was a substantial contributing factor to the injury;

h. Where the employee willfully makes a false statement or representation in order to obtain compensation under this Title;

i. For a traumatic injury, where:

i. There is no specific incident which caused the injury; or

ii. The employee is not performing employment related duties;

j. If the injury is not reported to the employer within the time required under this Title; or

k. For any medical expenses where the employee seeks treatment for the injury from a different health care provider, except when:

i. The treatment was provided by a different health care provider due to an emergency; or

ii. The Administrator approved the employee seeking treatment from the different health care provider.

2. Any employee who leaves the employment of an employer and who later seeks employment with the same employer shall declare in writing whether the employee is claiming any injury from the prior employment. If the employee fails to declare such prior injury, any compensation for a subsequent injury shall be determined as though such prior injury did not occur.

Section 7-2-7. Medical Information.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner or provider testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner or provider in any claim or proceeding under this Title.

2. Every employee, employer, and insurance carrier making or defending a claim for compensation under this Title shall release to the other parties or their representatives all information to which the employee, employer, or insurance carrier has access concerning the employee's condition reasonably related to the claim.

3. An employee seeking compensation under this Title shall execute any necessary consents, authorizations, and waivers to permit access to, use of, and disclosure of any health information of the employee necessary to process, determine, and adjudicate any claim for compensation under this Title. An employee who fails or refuses to execute any such consent, authorization, or waiver shall forfeit any claim to compensation under this Title and be automatically denied any compensation.

4. Any health care provider releasing information to a party or his or her representative pursuant to this Section shall be immune from any civil or criminal liability by reason of such action.

Section 7-2-8. Medical Examination.

1. Upon request of the Administrator, an employee seeking compensation under this Title shall submit to such independent medical examinations as designated by the Administrator.

2. A request to submit to an independent medical examination shall state the time and place for such examination, having due regard to the convenience, physical condition, and ability of the employee to attend.

3. An employee submitting to an independent medical examination pursuant to this Section shall be permitted to have, at the sole expense of the employee, a health care provider selected by the employee present at the examination.

CHAPTER 3
BENEFITS

Section 7-3-1. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Average weekly wage" means, exclusive of tips, bonuses, and overtime:

   a. Where the covered employee has worked at least twenty-six (26) weeks for an employer, the covered employee's total wages or salary received in the twenty-six (26) weeks preceding the date of injury divided by twenty-six (26); or

   b. Where the covered employee has not worked at least twenty-six (26) weeks for an employer, the covered employee's total wages or salary received in the number of full weeks the covered employee worked for the employer preceding the date of injury divided by the number of such full weeks.

2. "Funeral benefits" means reasonable incurred expenses for the normal cost of a funeral and burial.

3. "Maximum medical improvement" means the date after which no further material recovery from or lasting improvement to an injury can reasonably be anticipated based upon reasonable medical probability.

4. "Medical benefits" means expenses, costs, and fees for medical treatment reasonably related to an injury.

5. "Modified work" means work that an employee can perform within restrictions imposed by a health care provider, but is different than the employee's regular work or the employee's regular work performed at a reduced level.

6. "Partial disability" means a disability that reflects an injury where the employee is precluded, temporarily or permanently, from performing a certain set or type of job functions but can still perform modified work.

7. "Regular work" means work equal to or substantially similar to the work an employee performed for his or her employer immediately prior to or at the time an injury occurred.

8. "Total disability" means a disability that reflects an injury which has rendered the employee, temporarily or permanently, completely unable to perform work or any job functions, including modified work.

9. "Wage benefit" means compensation paid to a covered employee for lost wages due to the covered employee's inability to work as a result of an injury arising out of and in the course of his or her employment.

Section 7-3-2. Medical Benefits.

1. Every employer or its insurance carrier shall furnish such reasonable and necessary medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be needed at the time of an injury covered by this Title and thereafter to cure and relieve the covered employee from the effects of the injury or for the covered employee to reach maximum medical improvement.

2. In all cases where an injury covered by this Title results in the loss of a member or part of a covered employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer or its insurance carrier shall furnish artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the covered employee's vision or hearing.

3. Except in the case of a medical emergency, the employer or its insurance carrier has the right to select a covered

employee's health care provider for treating an injury covered by this Title. If an employee desires a second opinion on the necessity of any recommended health care, the employer's insurance carrier shall pay the cost of obtaining no more than one (1) such second opinion. Any additional opinions shall be at the employee's expense. An employer or its insurance carrier or the Administrator may also require an employee to obtain such a second opinion and the costs of any such second opinion shall be paid as medical expenses under this Title.

4. An employee shall have only one health care provider at a time treating an injury covered under this Title. Except in the case of an emergency, any change in an employee's health care provider treating an injury covered under this Title shall be approved by the Administrator. An employer, its insurance carrier, or the Administrator may require an employee to complete and obtain a written authorization for treatment for any or all medical appointments.

5. Medical expenses payable under this Section shall not be due and no employer or insurance carrier shall be liable for such expenses until the health care provider furnishes the Administrator with:

a. Copies of medical records or reports substantiating the nature of the charges for services and the relationship of the services to the injury; and

b. An itemized statement of the charges in sufficient detail for the Administrator to properly evaluate the reasonableness of such charges.

6. Medical expenses payable under this Title shall be limited to those usually and customarily charged in the community for similar services. The Administrator may deny charges determined to be excessive or unnecessary.

7. Subject to reductions, deductions, limitations, or exclusions expressly provided in this Title, if an employer or its insurance carrier, after notice of an injury covered by this Title, fails to furnish reasonable and necessary medical treatment to a covered employee as required by this Section, the employer or insurance carrier shall reimburse the covered employee or any insurer or governmental program that pays for related medical treatment for the costs of reasonable and necessary treatment that was provided.

8. Once it has been determined that an injury is covered by this Title or otherwise that an employer or insurance carrier is liable for the payment of a covered employee's medical expenses under this Title, a medical provider shall under no circumstances seek to recover such medical expenses from the covered employee except where such medical expenses are expressly excluded from payment under this Title or conclusively determined to not be payable under this Title, provided that medical expenses determined to be excessive or unnecessary pursuant to this Section shall not be recoverable.

Section 7-3-3. Wage Benefits.

1. Subject to the maximum wage benefit provided under this Section and any reductions or deductions allowed under this Chapter, a covered employee entitled to compensation for lost wages resulting from a disability covered by this Title shall receive wage benefits in the following amounts:

a. If the covered employee has a temporary total disability of more than three (3) regular working days' duration, two-thirds (2/3) of the covered employee's average weekly wage until the first occurrence of any one of the following:

i. The covered employee reaches maximum medical improvement;

ii. The covered employee returns to regular work or modified work;

iii. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to regular work; or

iv. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to modified work, such employment is offered to the covered employee in writing, and the covered employee fails to begin such employment;

b. If the covered employee has a temporary partial disability, two-thirds (2/3) of the difference between the covered employee's average weekly wage at the time of the injury and the covered employee's average weekly wage until the first occurrence of either of the following:

i. The covered employee reaches maximum medical improvement; or

ii. The health care provider treating the covered employee's injury issues a written release for the covered employee to return to modified work, such employment is offered to the covered employee in writing, and the covered employee fails to begin such employment;

c. If the covered employee has a permanent total disability, two-thirds (2/3) of the covered employee's average weekly wage until the death of the covered employee or the covered employee becomes eligible to collect available retirement benefits or payments, whichever occurs first;

d. If the covered employee has a permanent partial disability, the wage benefits calculated in accordance with the schedule of benefits set forth in this Chapter; and

e. If the covered employee dies as a result of an injury covered by this Title within two (2) years of the injury and there are dependents of the covered employee at the time of death, two-thirds (2/3) of the covered employee's average weekly wage payable from the date of death of the covered employee as follows:

i. To a surviving spouse or domestic partner of the covered employee until remarriage or the spouse or domestic partner becomes eligible to collect available retirement benefits or payments, whichever occurs first;

ii. If there is a surviving spouse or domestic partner and dependents who do not reside with the surviving spouse or domestic partner:

(1) Fifty percent (50%) of the wage benefits to the surviving spouse or domestic partner until remarriage or the spouse or domestic partner becomes eligible to collect available retirement benefits or payments, whichever occurs first; and

(2) Fifty percent (50%) of the wage benefits divided equally amongst the other dependents until each dependent is no longer a dependent as defined

in this Title with wage benefits surviving to the remaining dependents; and

iii. If there is no surviving spouse or domestic partner of the deceased or there remains other dependents upon termination of wage benefits to a surviving spouse or domestic partner, to the other dependents divided equally until each dependent is no longer a dependent as defined in this Title with wage benefits surviving to the remaining dependents.

2. If death occurs to a covered employee which is not the result of an injury covered by this Title or is more than two (2) years after the occurrence of the injury covered by this Title while the covered employee is receiving wage benefits under this Section, the payment of all wage benefits shall cease as of the date of death of the covered employee and the employer and its insurance carrier shall have no further liability toward such covered employee or his or her dependents except to the extent of any other compensation which may be due under this Title and remains unpaid for medical benefits incurred prior to the covered employee's death.

3. In the event an employer cannot accommodate modified work for a covered employee with a temporary partial disability, the covered employee shall receive wage benefits as though the covered employee has a temporary total disability unless and until the employer can provide the covered employee with modified work or until the covered employee would no longer otherwise be eligible for wage benefits due to the temporary partial disability, whichever time period is shorter.

4. For purposes of this Chapter, a covered employee shall be deemed to have a permanent total disability if, as a result of the disability, the covered employee is unable to secure employment at a weekly rate greater than or equal to ninety percent (90%) of the covered employee's average weekly wage.

5. The maximum wage benefit payable to a covered employee shall be as follows:

a. In the case of an employer that is not the Tribe, the maximum wage benefit set by the state within whose geographical boundaries the covered employee worked for the employer; and

b. In the case of the Tribe, an amount equal to the total wages paid by the employer to all of its employees during the calendar year preceding the year in which the covered employee's injury occurred divided by the number of employees the employer paid during that calendar year further divided by fifty-two (52).

Section 7-3-4. Schedule of Benefits.

1. In case an injury results in a loss set forth in the following schedule, the covered employee, in addition to compensation to be paid for temporary disability, shall receive two-thirds (2/3) of the covered employee's average weekly wage for the period as specified:

Loss of an arm at the shoulder	208 weeks
Loss of an arm above the hand including the wrist	208 weeks
Loss of a hand below the wrist	104 weeks
Loss of a thumb and the metacarpal bone thereof	50 weeks
Loss of a thumb at the proximal joint	35 weeks
Loss of a thumb at the second or distal joint	18 weeks
Loss of an index finger and the metacarpal bone thereof	26 weeks
Loss of an index finger at the proximal joint	18 weeks
Loss of an index finger at the second joint	13 weeks
Loss of an index finger at the distal joint	9 weeks
Loss of a second finger and the metacarpal bone thereof	18 weeks
Loss of a middle finger at the proximal joint	13 weeks
Loss of a middle finger at the second joint	9 weeks
Loss of a middle finger at the distal joint	5 weeks
Loss of a third or ring finger and the metacarpal bone thereof	11 weeks
Loss of a ring finger at the proximal joint	7 weeks
Loss of a ring finger at the second joint	7 weeks
Loss of a ring finger at the distal joint	4 weeks
Loss of a little finger and the metacarpal bone thereof	13 weeks
Loss of a little finger at the proximal joint	9 weeks
Loss of a little finger at the second joint	9 weeks
Loss of a little finger at the distal joint	4 weeks
Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb	208 weeks
Loss of a leg above the foot including the ankle	208 weeks
Loss of a foot below the ankle	104 weeks
Loss of a great toe with the metatarsal bone thereof	26 weeks
Loss of a great toe at the proximal joint	18 weeks

Loss of a great toe at the second or distal joint	9 weeks
Loss of any other toe with the metatarsal bone thereof	11 weeks
Loss of any other toe at the proximal joint	4 weeks
Loss of any other toe at the second or distal joint	4 weeks
Loss of a tooth	6 weeks
Total blindness of one eye	104 weeks
Total deafness of both ears	139 weeks
Total deafness of one ear	35 weeks
Where employee prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear	139 weeks

2. In case an injury results in a permanent partial disability not set forth in the schedule in this Section, the covered employee, in addition to compensation to be paid for temporary disability, shall receive compensation for a period of weeks equal to four hundred (400) multiplied by the following age factor determined based on the age of the covered employee on the date of the injury:

AGE	FACTOR	AGE	FACTOR
20 or younger	1.80	40	1.40
21	1.78	41	1.38
22	1.76	42	1.36
23	1.74	43	1.34
24	1.72	44	1.32
25	1.70	45	1.30
26	1.68	46	1.28
27	1.66	47	1.26
28	1.64	48	1.24
29	1.62	49	1.22
30	1.60	50	1.20
31	1.58	51	1.18
32	1.56	52	1.16
33	1.54	53	1.14
34	1.52	54	1.12
35	1.50	55	1.10
36	1.48	56	1.08
37	1.46	57	1.06
38	1.44	58	1.04
39	1.42	59	1.02
		60 or older	1.00

3. Wage benefits available to a covered employee not set forth in the schedule in this Section shall be based on a permanent partial disability rating determined as follows:

a. An authorized treating health care provider shall make a determination as to when the covered employee reaches maximum medical improvement;

b. If the authorized treating health care provider determines that the covered employee has reached maximum medical improvement, the health care provider shall assign a permanent partial disability rating as a result of the injury;

c. If the covered employee or Administrator disputes a determination by an authorized treating health care provider on the question of whether the covered employee has reached maximum medical improvement or the permanent partial disability rating, the covered employee and Administrator shall agree on an independent medical examiner to make a determination whether the covered employee has reached maximum medical improvement and, if so, assign a permanent partial disability rating, which shall be the permanent partial disability rating utilized for determining wage benefits; and

d. If the covered employee and Administrator cannot agree on an independent medical examiner under this subsection within thirty (30) calendar days of the raising of the dispute, each party shall select a qualified health care provider to make a determination whether the covered employee has reached maximum medical improvement and, if so, assign a permanent partial disability rating and the permanent partial disability rating utilized for determining wage benefits shall be the average between the two ratings received.

4. Determinations of maximum medical improvement and assignments of permanent partial disability ratings shall be made only in accordance with a method generally recognized and accepted throughout the United States and based upon objective evidence which includes reproducible and consistent clinical findings. Any determination or rating not made in accordance with such generally recognized method and objective evidence shall not be considered in determining maximum medical improvement or a permanent partial disability rating.

5. For a permanent partial disability not set forth in the schedule in this Section, the covered employee shall receive two-thirds (2/3) of the covered employee's average weekly wage multiplied by the permanent partial disability rating determined

pursuant to this Section for the period of weeks determined pursuant to this Section. The Administrator shall pay such wage benefits, or the first payment of such wage benefits if they are to be made in periodic payments, no later than thirty (30) calendar days after the permanent partial disability rating is determined pursuant to this Section.

6. Payment of wage benefits under this Section shall terminate any other wage benefits the covered employee may be receiving pursuant to this Chapter.

Section 7-3-5. Funeral Benefits. In addition to any wage benefits and medical benefits due under this Title and subject to any reductions or deductions allowed under this Chapter, in case death of a covered employee results from an injury covered by this Title within two (2) years of the injury, compensation shall be paid for funeral expenses of the deceased actually incurred up to the normal cost of a funeral and burial in the area where the funeral and burial occurs or the maximum amount allowed under the insurance coverage of the employer for funeral expenses, whichever is less.

Section 7-3-6. Reductions in Compensation.

1. The amount of compensation a covered employee receives under this Title may be reduced for any preexisting injury or disability of the covered employee, whether or not work related. Where compensation is reduced due to the existence of any such preexisting injury or disability, the compensation payable to the covered employee shall be that compensation due only for the portion of the injury or disability attributable to the injury sustained in the course of employment.

2. Wage benefits for a disability resulting from a cumulative injury, including carpal tunnel syndrome, shall be reduced based on the amount of time the covered employee has worked for the employer in accordance with the following:

a. Covered employees employed by the employer for less than four (4) months at the time of the claim for compensation under this Title shall receive no wage benefits;

b. Covered employees employed by the employer for four (4) to eight (8) months at the time of the claim for compensation under this Title shall receive twenty-five percent (25%) of the wage benefits due under this Chapter;

c. Covered employees employed by the employer for eight (8) to twelve (12) months at the time of the claim for compensation under this Title shall receive fifty percent (50%) of the wage benefits due under this Chapter;

d. Covered employees employed by the employer for twelve (12) to eighteen (18) months at the time of the claim for compensation under this Title shall receive seventy-five percent (75%) of the wage benefits due under this Chapter;

e. Covered employees employed by the employer for more than eighteen (18) months at the time of the claim for compensation under this Title shall receive one hundred percent (100%) of the wage benefits due under this Chapter.

3. A covered employee shall not receive wage benefits for any time in which the covered employee receives compensation from:

a. Work time the employer permits the covered employee to make up for work time missed for medical appointments not otherwise covered by paid leave;

b. Vacation, sick, or other paid leave received from the employer;

c. Short term or long term disability benefits or payments provided by the employer or a plan provided by the employer; or

d. A short term or long term disability program provided by a government entity, including Social Security Disability Insurance.

Section 7-3-7. Suspension of Compensation.

1. Payment of compensation under this Title shall be suspended during the period of time that the covered employee:

a. Has been adjudicated delinquent or convicted of a crime and is incarcerated in any tribal, state, federal, or local jail or correctional facility, provided such incarceration shall not begin the running of any limitations period during which the covered employee is eligible for compensation;

b. Does not have authorization from the covered employee's health care provider to be off work;

c. Is terminated for misconduct;

d. Declines or quits work offered by the employer within the covered employee's physical restrictions;

e. Fails or refuses to cooperate with reasonable medical or vocational rehabilitation;

f. Fails or refuses to follow restrictions imposed by a health care provider;

g. Fails or refuses to make a diligent effort to find employment within the covered employee's physical restrictions; or

h. Fails or refuses to report any other employment or wages received.

2. Payment of wage benefits under this Title shall be suspended and no wage benefits shall be payable during or for such period of suspension:

a. If an employee receiving wage benefits under this Title misses two (2) consecutive scheduled medical appointments without good cause, until the employee attends a scheduled medical appointment; and

b. If an employee fails or refuses to submit to an independent medical examination requested under this Title or obstructs such an examination, until the examination has been conducted.

3. If the Administrator determines that an employee has not cooperated with reasonable medical or vocational rehabilitation, prior to suspending compensation under this Section, the Administrator shall provide written notice to the employee that he or she must contact the Administrator within seven (7) business days to resolve the non-cooperation or compensation will be suspended.

4. In the event a covered employee fails or refuses to follow restrictions imposed by a health care provider on two or more occasions, while either at work or outside the work place,

all future wage benefits under this Title shall be forfeited and denied.

5. Nothing in this section shall be construed to require:

a. An employee to undergo unreasonably invasive medical procedures; or

b. An employer or insurance carrier to provide vocational rehabilitation to an employee.

Section 7-3-8. Recouping Compensation.

1. A person shall repay any compensation paid to or on behalf of such person that the person is or was not entitled to receive or have paid under this Title, including compensation paid due to clerical error, mistaken identity, misrepresentation, or any other circumstance of a similar nature. In the event the payment of compensation the person is or was not entitled to receive or have paid is or was the result of fraud, the person shall be subject to, in addition to the compensation paid due to such fraud, a civil fine in the amount of fifty percent (50%) of the compensation paid as a result of such fraud.

2. Recoupment of compensation may be made from any future compensation paid to a covered employee or his or her dependents. If no future compensation is due a person, a payment plan may be arranged with the person which may include deduction from wages received from any employer.

3. An employer or its insurance carrier must make a claim for any repayment or recoupment of compensation within one (1) year of when the compensation was paid or the claim for repayment or recoupment shall be barred.

4. The Administrator may, in its discretion, waive the repayment of any amount under this Section in whole or in part where repayment would be against equity and good conscience.

Section 7-3-9. Additional Compensation.

1. An employer or insurance carrier may provide compensation in addition to the compensation required under this Title.

2. In the event an employer's insurance coverage provides greater or additional compensation than provided in this Title, such greater or additional compensation shall be available and awarded to an employee in accordance with the terms and provisions of such insurance coverage and nothing in this Chapter shall be read or construed to preclude such greater or additional compensation.

Section 7-3-10. Assignment of Benefits. Compensation received by a covered employee or his or her dependents under this Title shall not be subject to execution, garnishment, attachment, or other process, except:

1. To satisfy a child support obligation ordered by a court of competent jurisdiction;

2. To satisfy a claim for subrogation under this Title; or

3. For debts or other obligations, including taxes, owed to the Tribe.

Section 7-3-11. Minors and Incapacitated Persons. In the case of any compensation payable under this Title to any minor, incompetent, or other person legally determined incapable of managing his or her own affairs, the Administrator shall require that any compensation payable to such person be paid either:

1. Into a trust account established for the benefit of such person; or

2. To a person appointed as a guardian or conservator for such dependent by the Tribal Court or other court of competent jurisdiction.

CHAPTER 4
PROCEDURE

Section 7-4-1. Administrator. The Administrator shall have the following powers, duties, and responsibilities:

1. To administer this Title in accordance with its terms and conditions;

2. To receive and process all claims for compensation under this Title;

3. To investigate all claims for compensation under this Title;

4. To determine the reasonableness and necessity of medical care and charges and the amounts payable for medical benefits under this Title;

5. To approve or disapprove of any change of health care provider, any referral to a health care provider, and any surgical procedure;

6. To pay or order an insurance carrier to pay all compensation determined to be due under this Title;

7. To request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for compensation under this Title;

8. To request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain information the Administrator may request under this Title;

9. To retain a consulting health care provider for purposes of assisting the Administrator in carrying out its duties and powers under this Title, subject to the approval of the Tribal Council if the cost of such consulting health care provider would be incurred by the Tribe;

10. Subject to the right to bring an action in Tribal Court under this Chapter, to make all determinations and decisions regarding coverage, employer responsibility, entitlement to compensation, and amount and duration of compensation due a claimant under this Title;

11. To maintain complete and accurate records and files on all activities relating to claims made under this Title for no less than seven (7) years after the date a claim is resolved and closed; and

12. To exercise all other powers, perform all other duties, and have all other responsibilities delegated or assigned to the Administrator by this Title.

Section 7-4-2. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, names, records, and other information concerning a claim under this Title shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The claimant, employer, and insurance carrier involved in the claim and their legal counsel;

b. The Administrator;

c. Persons directly connected with the administration of this Title;

d. To others when the person whose information will be released has authorized the release of the information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Administrator from releasing information:

a. To the Tribe or Tribal Attorney for purposes of assisting the Administrator; or

b. In a proceeding in a court to which the Administrator, employer, or insurance carrier is a party or otherwise participating.

3. Any person who knowingly violates this Section shall be subject to a civil fine not to exceed $500.00.

Section 7-4-3. Report of Injury.

1. Any employee who seeks compensation under this Title shall notify his or her employer of any injury as soon as reasonably practical but, in no event:

a. For a traumatic injury, forty-eight (48) hours from the time the injury occurred or, where the employee is incapable of reporting the injury due to the nature of the injury, forty-eight (48) hours after the employee is reasonably capable of reporting it; and

b. For a cumulative injury, thirty (30) calendar days from the date when the injury causes the employee to be unable

to work or seek medical treatment for the injury, whichever occurs first.

2. An employer may designate an employee or agent of the employer, including an insurance carrier, to whom employees shall report injuries pursuant to this Section and failure of an employee to report an injury to such designated employee or agent shall be deemed a failure to report the injury in accordance with this Section, provided the employer provides notice of the designated employee or agent by conspicuously posting notice of the identity of such designated employee or agent on its premises or stating the identify in the employer's employment policies provided to all employees.

Section 7-4-4. Time Limit for Claims.

1. The following limitations on the filing of a claim for compensation under this Title shall apply:

a. Any claim for compensation resulting from a traumatic injury must be commenced within thirty (30) calendar days from the date of the injury; and

b. Any claim for compensation resulting from a cumulative injury must be commenced within sixty (60) calendar days from the date when the injury causes the employee to be unable to work or seek medical treatment for the injury, whichever occurs first.

2. A claim for compensation under this Title shall be barred and no compensation payable if:

a. The employee fails to seek medical treatment for an injury within thirty (30) calendar days of:

i. In the case of a traumatic injury, the date of the injury;

ii. In the case of a cumulative injury, the date when the injury causes the employee to be unable to work or seek medical treatment for the injury, whichever occurs first'

b. The employee fails to prosecute a claim for compensation under this Title after more than one (1) year has elapsed since the date of last medical treatment or the date the employee reached maximum medical improvement

determined under Chapter 3 of this Title, whichever occurs first.

Section 7-4-5. Burden of Proof.

1. The claimant shall have the burden of proving by a preponderance of the evidence:

a. That the employee is a covered employee;

b. That any disability was the result of an injury covered by this Title;

c. That the injury arose out of and in the course of the employee's employment; and

d. That the claimant is entitled to any compensation provided under this Title.

2. The Administrator, employer, or insurance carrier shall have the burden of proving by a preponderance of the evidence that compensation claimed by the claimant is excluded, limited, subject to reduction, or otherwise subject to denial under this Title.

Section 7-4-6. Initiation of Claim.

1. A claim for compensation under this Title shall be made by filing a written claim with an employee or agent of the employer, including its insurance carrier, designated to receive such claims. Such employee or agent shall forward all claims for compensation under this Title to the Administrator. In the absence of an employer designating an employee or agent to receive claims, a claim for compensation under this Title shall be filed directly with the Administrator.

2. Claims for compensation under this Title may be filed by:

a. An employer or its insurance carrier on behalf of an employee;

b. An employee; or

c. In the event of death of an employee, a dependent of the employee.

3. Claims for compensation under this Title shall be filed on such forms as may be designated by the Administrator.

Section 7-4-7. Determination of Claim.

1. Upon receipt of a claim for compensation filed under this Chapter, the Administrator shall promptly investigate the claim.

2. No later than twenty-one (21) calendar days after the filing of a claim for compensation under this Title, the Administrator shall:

a. If the Administrator determines the claim is valid, begin payment of compensation;

b. If the Administrator determines further investigation is necessary, send the claimant written notice of the need for and reasons for further investigation, including any items or information required from the claimant; or

c. If the Administrator determines that the claimant is not due any compensation under this Title, send the claimant written notice denying the claim and the reasons for denial.

3. If the Administrator determines further investigation is necessary, the Administrator shall complete its investigation within forty-five (45) calendar days of filing of the claim, unless items or information required from the claimant have not been received, and either begin payment of compensation or notify the claimant in writing that the claim is denied.

Section 7-4-8. Reconsideration.

1. Within thirty (30) calendar days of receipt of written notice of any decision or determination of the Administrator, the claimant may file a request for reconsideration with the Administrator.

2. A request for reconsideration shall:

a. Be made in writing to the Administrator;

b. Specifying what decision or determination the claimant disputes;

c. State the grounds for disputing the decision or determination;

d. Declare the result desired;

e. Include a complete statement of the facts relied on; and

f. Either include any additional documentation or evidence supporting the claimant's position or request an extension of time to submit such documentation or evidence.

3. The Administrator shall issue a written decision on any request for reconsideration and serve the written decision on the claimant personally, by certified mail, return receipt requested, or by another means agreed to by the claimant and Administrator.

4. The decision of the Administrator on a request for reconsideration under this Section shall be the final decision of the Administrator, provided that the Administrator shall be considered to have issued a final decision denying the request for reconsideration if the Administrator fails to issue a written decision within sixty (60) calendar days of filing of the request for reconsideration or expiration of any extension of time to submit additional documentation or evidence, whichever is later.

5. If no request for reconsideration is made within the time allowed, the decision or determination of the Administrator is final and is not subject to any challenge or appeal in any court.

Section 7-4-9. Action in Tribal Court.

1. If a claimant is aggrieved by a final decision of the Administrator on reconsideration, the claimant may file a complaint in the Tribal Court seeking review of the Administrator's decision.

2. A hearing on the decision of the Administrator shall proceed in accordance with the following:

a. The complaint shall be filed within fourteen (14) business days of the issuance of the Administrator's decision;

b. The complaint shall be brought only against the Administrator and/or the employer's insurance carrier, provided that if either the Administrator or insurance carrier is not named in the complaint, the Administrator or insurance carrier shall have a right to intervene in the proceeding at any time;

c. The complaint shall be captioned: "(name(s) of claimaint(s)), Plaintiff(s) vs. (name of insurance carrier(s) and/or Workers' Compensation Administrator), Defendant(s)";

d. No new or additional issues may be raised and only issues raised before the Administrator on the request for reconsideration may be heard regardless of the Administrator's authority to hear the issue;

e. Any matter or information relevant and material to the subject matter of the proceeding is admissible and may be received in evidence;

f. Hearsay evidence will not be excluded as long as it is reasonably reliable; and

g. In reviewing legal conclusions reached by the Administrator, the Tribal Court shall give proper weight to the Administrator's interpretation of this Title.

3. The Tribal Court shall dismiss any action brought against the Administrator if the claimant did not file a request for reconsideration with the Administrator.

4. Every party to a proceeding under this Section has the following rights:

a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Court compel the attendance of a witness on his or her behalf as permitted in the laws of the Tribe; and

e. To examine witnesses.

5. The claimant shall have the burden of proving by a preponderance of the evidence that the Administrator's decision or determination disputed was not in accordance with or was in violation of this Title.

6. Notwithstanding anything to the contrary in this Title, in a proceeding brought pursuant to this Title, the Tribal Court:

a. Shall not have jurisdiction over the Tribe or any cause of action brought against the Tribe, except the Administrator; and

b. May grant judgment, award damages, or grant relief only against or in favor of the insurance carrier or the claimant;

c. Shall not have any jurisdiction or authority to issue any award, benefits, compensation, damages, or other monies in excess of the amounts of coverage in the employer's insurance coverage;

d. Shall not have jurisdiction to enter judgment, award damages, or grant other relief against the employer;

e. Shall not have jurisdiction to enter judgment, award damages, or grant other relief not permitted under the applicable policy of the employer's insurance coverage or this Title, whichever provides greater coverage or compensation;

7. Any judgment, award, or other relief granted a claimant in an action brought pursuant to this Section shall be enforceable only against the insurance carrier.

8. The Tribal Court shall issue a decision and judgment in a proceeding under this Title within ninety (90) calendar days of the conclusion of any trial or other proceeding on the merits of the complaint.

9. A judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

10. Except as modified by this Chapter, proceedings brought under this Section shall be governed by the Tribal Rules of Civil Procedure.

11. If no complaint is filed within the time allowed, the decision or determination of the Administrator is final and is not subject to any challenge or appeal in any court.

Section 7-4-10. Defenses of Insurance Carrier.

1. In any action or proceeding under this Chapter, an insurance carrier may assert any defense that would be available to the employer if the employer were a party to the action or proceeding, except that an insurance carrier of the Tribe shall not be permitted to assert:

a. The Tribe's sovereign immunity as a defense to any claim, judgment, damages, or other relief within the terms or limits of the insurance coverage;

b. Any lack of personal jurisdiction of the Administrator or Tribal Court over the Tribe; or

c. Any lack of subject matter jurisdiction of the Administrator or Tribal Court over an action or proceeding involving the Tribe.

2. Notwithstanding anything to the contrary in this Title, an insurance carrier shall have the right and authority to waive any and all defenses available to it under this Title.

Section 7-4-11. Medical Experts.

1. The Administrator or insurance carrier shall have the right to request that a claimant who is an employee be examined by a health care provider designated by the Administrator during an action before the Tribal Court under this Chapter and the claimant shall submit to an examination by such designated health care provider. If a claimant who is an employee fails or refuses to allow such designated health care provider to conduct an examination without good cause, the Tribal Court shall dismiss the complaint with prejudice and the Administrator's decision on reconsideration shall be final and not subject to any further challenge or appeal in any court.

2. A claimant may utilize the services of health care providers or vocational experts for purposes of disputing a decision or determination of the Administrator, including in a proceeding before the Tribal Court, and the opinion of such health care providers or vocational experts shall be duly considered even if such health care providers or vocational experts are not

approved by the Administrator under this Title. The cost of any such health care providers or vocational experts shall be solely borne by the claimant and shall not be subject to payment or reimbursement under any circumstances.

Section 7-4-12. Legal Counsel Fees. The Tribal Court may award reasonable legal counsel fees in an action brought under this Chapter if:

1. The claimant is represented by legal counsel admitted to practice in the jurisdiction of the Tribe;

2. The claimant obtains a final judgment which results in the claimant receiving compensation in an amount greater than the compensation provided in the Administrator's decision or determination after reconsideration; and

3. The amount of legal counsel fees awarded does not exceed:

a. Twenty-five percent (25%) of the first $2,000.00 of compensation obtained in a final judgment that is greater than the amount provided in the Administrator's decision or determination after reconsideration;

b. Twenty percent (20%) of the compensation obtained in a final judgment that is greater than the amount provided in the Administrator's decision or determination after reconsideration in excess of $2,000.00; and

c. A total of $4,500.00.

Section 7-4-13. Settlement Agreements.

1. At any time, including after a claimant disputes a decision or determination of the Administrator, the Administrator may enter into a written settlement agreement with the claimant on any issue or matter disputed, including future medical benefits.

2. If a settlement agreement is entered into after the Tribal Court acquires jurisdiction over a complaint filed pursuant to this Chapter, the settlement agreement shall be made part of a stipulated order or judgment disposing of the case.

3. A settlement agreement is conclusive as to the liability or non-liability for payment of compensation for the matters therein, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

Section 7-4-14. Continuation of Compensation.

1. A claimant shall continue to receive all compensation approved by the Administrator in its original written decision or any decision on reconsideration during the pendency of any reconsideration, hearing before the Tribal Court, and subsequent appeal, but no claimant shall receive any new or additional compensation claimed in a request for reconsideration or complaint filed with the Tribal Court until the decision or judgment is final and awards new or additional compensation.

2. Neither the Administrator, an employer, nor an insurance carrier shall recoup or recover, or attempt to recoup or recover, any payments made to claimant during the pendency of any reconsideration, hearing before the Tribal Court, or subsequent appeal except for compensation expressly permitted to be recouped or recovered under this Title.

Section 7-4-15. Claim Closure. A claim under this Title shall be closed when all compensation available or allowable to a covered employee or his or her dependents has been paid.

Approved 8/23/09
Resolution 09-44

Revised 11/16/20
Resolution 20-81

TITLE VIII
PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL CONDUCT AND ETHICS ORDINANCE

Section 8-1-1 Authority.

Authority for this Ordinance is found in the Constitution of the Ponca Tribe of Nebraska Articles IV, V, and X.

Section 8-1-2 Officers of the Tribal Council, Duties.

A. Chair: The Chair is the chief spokesperson for the Tribe, represents the Tribe, and corresponds with other governments and entities on behalf of the Tribe, performing the following duties:

Preside at all meetings of the Ponca Tribal Council and Executive Committee in accordance with the Constitution and resolutions of the Tribe and this Ordinance;

Vote in Council only to break a tie;

Provide notice of all General Membership meetings, regular and special meetings of the Tribal Council, and Executive Committee meetings to all Tribal Council members and members of the Tribe;

Act on behalf of the Ponca Tribal Council and the Tribe in accordance with the Constitution, resolutions, laws and ordinances of the Tribe; and

Present all actions taken without Council direction to the next regular meeting of the Tribal Council for ratification. The Chair shall immediately rescind any acts not so ratified. [Note: "Council direction" would include motions, resolutions, ordinances calling on the Chair to act.]

B. Vice-Chair: The Vice-Chair acts in the Chair's stead in all matters pertaining to the office of the Chair, performing the following duties:

Preside at all meetings of the Tribal Council in the absence of the Chair; and Act for the Chair when the Chair's seat is vacant, the Chair has authorized an action because of illness or absence, or the Chair is unavailable and failure to act is likely to harm an interest of the Tribe.

C. Secretary: The Secretary is the official historian of the Tribal Council, performing the following duties:

Keep an accurate record of all proceedings of the Ponca Tribal Council;

Attend to the keeping of the official records of the Tribal Council;

Ensure the prompt and efficient handling of all correspondence pertaining to the business of the Tribal Council and the Tribe;

Keep all official records open to inspection by members of the Tribe at all times during regular office hours of the Tribe;

Ensure that protocols are in place for preservation of official records;

Receive and determine the validity of all referendum and recall petitions;

Review all Tribal Council minutes and ensures accuracy prior to presentation for Tribal Council approval; and

Certify the content and accuracy of Resolutions and Ordinances.

D. Treasurer: The Treasurer is the custodian of all funds in possession of the Tribe from any sources, performing the following duties:

Keep an accurate record of all funds and disburse same in accordance with the vote of the Tribal Council and as designated by the Constitution;

Advise the Tribal Council on prudent reserves and when spending decisions could threaten these reserves;

Keep the books containing the financial status of the Tribe open to audit and examination by the Secretary of the Interior or her designee at all times during regular office hours of the Tribe; and
Ensure that all financial records are open to inspection by members of the Tribe.

8-1-3 Removal.

A. Grounds:

1. Grounds for removal of a Tribal Council Member are the following:

Failure to attend three (3) consecutive Tribal Council meetings without just cause; and

Final finding of guilt by the Tribal Court or a state court or a federal court of a felony or a misdemeanor involving dishonesty, moral turpitude, or of accepting a bribe.

2. Grounds for removal of a Tribal Council Officer, with exception of the Tribal Chair, are failure to carry out the duties of the office for a breach of her/his duty to the Tribe, including ethical violations. Removal of the Vice-Chair, Secretary and Treasurer is only removal from her/his particular office and is not removal from the Tribal Council. If the Chair is removed, he/she will be removed from the Tribal Council as well.

3. A Special Election will be held to elect a new Chair in the event of removal. The Vice-Chair shall assume the responsibilities of the Chair until a new Chair is elected.

B. Procedure: Upon adoption of a motion to consider removal of a Member or Officer from the Tribal Council for a ground stated above, the Tribal Council shall provide that Member with cause for removal and two (2) weeks to answer the charges. The Member shall be given personal notice of the motion to consider removal if they are in attendance of the meeting, or notice by certified mail if he/she is not in attendance when the motion for removal is passed. The Member shall have a full and fair opportunity to answer the charges at the next available regular Council meeting following the deadline for answering. The Member shall only be removed upon a two-thirds vote of the full Council other than the Member subject to removal. In the case of removal of an Officer, s/he shall only be removed upon a two-thirds vote of a full quorum being present. If the absences or crime are related to alcohol/drug abuse and the member is in treatment or counseling, the Council shall consider the Member's treatment or counseling in deciding upon removal.

Section 8-1-4 Duties and Comportment of Tribal Council Members.

All Council Members are to:

Always place the interests of the Tribe first in deliberations, decisions and actions. Show courtesy and respect to each other, to other members of the Tribe, and to those coming before the Tribal Council.

Uphold the Constitution of the Ponca Tribe.

Attend all Council and General Membership meetings except when excused from them.

Stay sober and free from illegal or incapacitating drugs while at Tribal meetings and conducting Tribal business.

Provide input on all matters before the Council, state beliefs, and carefully consider proposals and alternatives.

Keep current on any financial obligations to the Tribe and tribal entities.

Carry out assignments on behalf of the Council in a timely manner.

Serve on tribal committees as designated by the Council.

Follow tribal and federal law at all times.

Follow applicable state law when within state jurisdiction so long as it does not conflict with tribal law and duties as a Council Member.

Keep discussions and information revealed in executive session confidential.

Keep confidentiality under all applicable laws.

Avoid directing employees and others except as authorized by the Council.

Avoid personal involvement in employee matters.

Be an example for the next generations and the community.

Section 8-1-5 Conduct of Tribal Council Meetings.

A. Procedures: Robert's Rules of Order shall serve as guidelines for agenda items. Discussion of items not on the agenda must wait until "Other Business". The Chairperson will resolve all questions of procedure.

B. Addressing the Tribal Council:

The Council welcomes the words of tribal members, staff, and guests. All are allowed to speak if they request the floor.

Persons speaking are not to be interrupted except for clarification.

Persons are to speak in a civil manner, refraining from personal or malicious attacks. If such attacks are made against a Council Member or staff, the Chair may recess or adjourn the meeting.

Section 8-1-6 Ethics.

A. Conflict of Interest: A conflict of interest occurs when a Member acts against the interest of the Tribe or involves her or himself in an activity in which s/he has or may develop a personal or financial interest adverse to the Tribe. To prevent such conflicts from harming the Tribe, the Members shall:

Not vote or make any decisions on matters in which they, their immediate family, or business associates are negotiating with the Council or seeking the support or action of the Council to their financial benefit. "Immediate family" shall be defined as the following family members that are related by blood: mother, father, grandparent, child, grandchild, brother, sister, or spouse.

Declare the conflict or potential conflict, and may debate the matter after full disclosure;

Avoid apparent conflicts of interest by declaring conflict when in doubt.

B. Independent Action: To ensure that Members exercise their independent judgment in the best interest of the Tribe, the Members shall not:

Solicit or accept, directly or indirectly, any bribes and kickbacks as defined by criminal statutes;

Accept gifts of more than nominal value from any person or group interested in doing business with the Tribe or in influencing a decision or action of the Member. This does not include ceremonial and traditional gifts, such as those given at giveaways, Christmas and birthdays, by family and friends, or to dignitaries. Tribal Council members who receive gifts while acting in their official capacity, shall report the gift to the Executive Committee.

C. Misuse of Power: To ensure that Members always set the highest example for the people living and of the next generations, the Members shall not:

Knowingly destroy, damage, or hide records and documents of the Tribe;

Falsely represent the Tribe or commit the Tribe's resources;

Threaten, coerce, or intimidate a person or group;

Misappropriate or misuse funds or credit of the Tribe;

Make personal use of tribal property, that is not available to all tribal members, employees, or contractors with the Tribe;

Use title for personal gain or in personal business.

D. Consequences for Breach of Duty, Ethical Violations

The Council may reprimand or suspend a Council Member for breaching her/his duty to the Tribe, including ethical violations. Reprimand or suspension requires a majority vote of the Council with at least two-thirds of the full Council present.

E. Procedure for Imposing Consequences

Upon adoption of a motion to consider consequences to a Member for breach of duty, the Tribal Council shall provide that Member with cause for the proposed consequences in writing and one (1) week to answer the charges in writing. If the Council is satisfied with the answer, they shall rescind the motion. If not, the Member shall have a full and fair opportunity to answer the charges at the next regular Council meeting following the deadline for answering. Failure to appear at the meeting, after proper notice is given, shall result in a default decision against the Member for the alleged breach of duty. If any breach is related to

alcohol/drug abuse and the member is in treatment or counseling, the Council shall consider the Member's treatment or counseling.

Section 8-1-7 Indemnification.

A. The Tribe shall indemnify and defend a Member and/or an Officer who is made a party to a proceeding because of conduct when s/he was a Tribal Council Member against liability for reasonable expenses of litigation, including costs, any judgment, and other costs of defense, incurred if s/he:

1. Conducted her or himself in good faith; and

2. Acted within the scope of their office as a Member or Officer of the Tribal Council

B. The Tribe will not indemnify nor reimburse a Member or Officer in defending against a motion to consider removal from office.

Section 8-1-8 Severability

If any provision of this Ordinance is found to be invalid by a court of competent jurisdiction, that provision shall be severed from this Ordinance and the rest of the Ordinance shall continue in full force and effect.

Section 8-1-9 Sovereign Immunity

A. Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Ponca Tribe of Nebraska, its officials and staff.

A. Only the Tribal Council may waive sovereign immunity or grant the authority to do so. Any such grant must be adopted by resolution at a Tribal Council meeting in open session prior to the waiver or attempted waiver. This Ordinance does not limit the authority of the Tribal Council to discuss possible consequences of a waiver in executive session.

TITLE IX
ELECTIONS

CHAPTER 1
GENERAL PROVISIONS

Section 9-1-1. Authority. This Title is hereby established in accordance with Article VII, Section 1, Article VIII, Section 2, and Article V, Section 1(k) of the Constitution of the Ponca Tribe of Nebraska.

Section 9-1-2. Purpose. The purpose of this Title is to establish procedures for efficient, fair and honest elections and to ensure the secrecy and sanctity of the ballot. The regulations and procedures provided in this Title shall be administered in such a way as to accomplish this purpose and intent.

Section 9-1-3. Applicability & Construction.

1. This Title applies to all elections, including but not limited to, Tribal Council elections; filling Tribal Council vacancies; petitions and elections, referendum, and initiative.

2. In case of dispute as to compliance with these regulations, substantial, rather than complete compliance shall be deemed adequate.

Section 9-1-4. Definitions. In addition to the definitions set forth in Chapter 1 of Title I of the Code, unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Ballot" includes a mail-in ballot, a fax ballot, and an electronic ballot.

2. "Candidate" means a person whose name is on an official ballot to be voted upon for election to office.

3. "Consecutive term" means a term which follows in order without interruption and is successive.

4. "District Board" means a body appointed by the Election Board for a particular district to assist the Election Board in conducting elections in that district.

5. "Election" means any election whatsoever held under the laws of the Tribe.

6. "Election Board" means the body established in this Title to supervise all elections, verify petitions, and perform such other election related duties set forth in the laws of the Tribe.

7. "Eligible voter" means an enrolled member who has reached the age of eighteen (18) or older on or before election day.

8. "Enrollment Specialist" means the Tribal official whose duty it is to verify enrollment in the Tribe.

9. "Enrollment Department" means the Tribal agency whose duty it is to oversee enrollment in the Tribe.

10. "Electronic ballot" means an official ballot of a Ponca Tribal election which may be returned to the Election Board via email as provided in this Title.

11. "Fax ballot" means an official ballot of a Ponca Tribal election which may be returned to the Election Board via facsimile as provided in this Title.

12. "General election" means the election which shall be held on the first Tuesday of November in even-numbered years, as outlined in Article VII of the Constitution.

13. "Immediate family" means mother, father, grandparent, child, grandchild, brother, sister, spouse, domestic partner, or individuals residing in the same household, including half, step and in-law relations.

14. "Inactive voter" means a voter who has been declared inactive in accordance with this Title.

15. "Invalid ballot" means a ballot which is:

a. Forged;

b. Fraudulent;

c. Fraudulently obtained;

d. Cast by an ineligible voter;

e. Not returned in the proper return identification envelope;

f. Not returned with the completed and signed certificate form;

g. Opened or otherwise tampered with;

h. Not received by the last pickup of mail by the Election Board on the day of election;

i. Returned in the proper return identification envelope, but without a proper signature; or

j. Otherwise legally invalid.

16. "Mail-in ballot" means the official ballot of a Ponca Tribal election mailed to registered voters by first class, non-forwardable mail and which may be returned to the Election Board through the United States Postal Service or other delivery service prior to the closing of the polls.

17. "Majority" means one more than one half of the votes cast for a particular office, measure, or election.

18. "Malfeasance" means the commission of some act which is illegal or unlawful or an act which is wholly wrongful.

19. "Misfeasance" means the commission of some act which is lawful, but committed in an illegal or improper manner and includes wrong or improper conduct in public office.

20. "Observers" means individuals who desire to observe the election process pursuant to and in accordance with this Title.

21. "Poll book" means the book created by the Election Board for each election pursuant to this Title.

22. "Registrar" means the official responsible for receiving voter registration forms and preparing voter registration lists under this Title and shall be the Enrollment Specialist unless otherwise specified by the Election Board in accordance with this Title.

23. "Special election" means a duly called and authorized election other than a general election, including but not limited to recall elections and elections on referenda and initiatives.

24. "Registered voter" means one who is registered to vote in accordance with this Title.

25. "Spoiled ballot" means a ballot that:

a. Has not been marked;

b. Has been marked with more than one choice where only one choice is allowable;

c. Is otherwise illegible;

d. Contains a "write-in" candidate; or

e. Where the voter's choice is not clear.

26. "Term" means the length of time during which a position is held or a person serves in a particular office or position.

27. "Voter registration list" means the list approved by the Election Board pursuant to this Title of registered voters eligible to vote in Tribal elections.

Section 9-1-5. Voting Districts. The voting districts of the Tribe shall be as follows:

1. District 1 shall be the area consisting of Antelope, Box Butte, Boyd, Brown, Cedar, Cherry, Dakota, Dawes, Dixon, Holt, Keya Paha, Knox, Rock, Sheridan and Sioux Counties of Nebraska; Allamakee, Bremer, Buena Vista, Butler, Calhoun, Cerro Gordo, Cherokee, Chickasaw, Clay, Clayton, Dickinson, Emmet, Fayette, Floyd, Franklin, Hancock, Howard, Humboldt, Ida, Kossuth, Lyon, Mitchell, Obrien, Osceola, Palo Alto, Plymouth, Pocahontas, Sac, Sioux, Webster, Winnebago, Winneshiek, Woodbury, Worth and Wright Counties of Iowa; and the States of Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Vermont, Virginia, Washington D.C., West Virginia, Wisconsin and all areas outside the United States of America;

2. District 2 shall be the area consisting of Burt, Cass, Douglas, Johnson, Nemaha, Otoe, Pawnee, Richardson, Sarpy and Washington Counties of Nebraska; Adair, Adams, Appanoose, Audubon, Benton, Black Hawk, Boone, Buchanan, Carroll, Cass, Cedar, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fremont, Greene, Grundy, Guthrie, Hamilton, Hardin, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion,

Marshall, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington and Wayne Counties of Iowa; the States of Arkansas, Illinois, Indiana, Kansas, Louisiana, Missouri and Texas;

3. District 3 shall be the area consisting of Adams, Buffalo, Butler, Chase, Clay, Dawson, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Hall, Hamilton, Harlan, Hayes, Hitchcock, Jefferson, Kearney, Keith, Lancaster, Lincoln, Nuckolls, Perkins, Phelps, Polk, Red Willow, Saline, Saunders, Seward, Thayer, Webster and York Counties of Nebraska; and the States of Arizona, California, Colorado, Montana, New Mexico, Oklahoma, Utah and Wyoming; and

4. District 4 shall be the area consisting of Arthur, Banner, Blaine, Boone, Cheyenne, Colfax, Cuming, Custer, Deuel, Dodge, Garden, Garfield, Grant, Greeley, Hooker, Howard, Kimball, Logan, Loup, Madison, McPherson, Merrick, Morrill, Nance, Pierce, Platte, Scottsbluff, Sherman, Stanton, Thomas, Thurston, Valley, Wayne and Wheeler Counties of Nebraska; and the States of Alaska, Hawaii, Idaho, Nevada, Oregon and Washington.

Section 9-1-6. Prohibition on Power of Attorney.

A power of attorney or other form of proxy is not valid for use by any individual in any procedure or transaction concerning elections, including voter registration, petition circulation or signature, voter registration cancellation, early ballot requests or voting another individual’s ballot.

Section 9-1-7. Amendments.

1. Amendments to this Title shall only be made by majority vote of the Tribal Council. Any proposed amendment(s) to this Title shall be approved by the Tribal Council before the end of February of the election year to ensure that the provisions contained in this Title shall be adhered to during the election process.

2. The Election Board may recommend amendments to this Title, but is not vested with the power to amend it.

Section 9-1-8. Severability. All previous resolutions, legislation, laws and acts taken by the Tribal Council which deal with any matter covered under this Title and which are inconsistent with this Title are void and of no further force and effect. If

a court of competent jurisdiction should hold any part of this Title to be invalid, the remainder of the Title shall remain in full force and effect.

Section 9-1-9. Ratification. This Title shall be ratified and become effective upon its adoption by the Tribal Council.

CHAPTER 2
ELECTION BOARD

Section 9-2-1. Establishment. In accordance with Article VII, Section 4 of the Constitution, an Election Board is hereby established.

Section 9-2-2. Powers and Duties of Board.

1. The power, authority and duties of the Election Board shall be as follows:

a. To designate dates of elections where such date is not otherwise specified in the laws of the Tribe;

b. To publish and post notice of all elections and ensure all notice requirements under this Title are met;

c. To prepare and secure official ballots to be used in all elections;

d. To see that the name of each person offering to vote is on the approved voter registration list;

e. To distribute one ballot to each eligible voter in accordance with this Title;

f. To prepare ballot boxes and secure them by lock at all times except when ballots are being counted;

g. To count and validate ballots and record the number of votes cast for each choice after the polls are closed;

h. To certify and post the results of all elections in writing and to notify the public and the Tribal Council;

i. To receive and certify petitions as provided in this Title;

j. To publish and post notice of all petition certifications;

k. To redistrict the voting districts of the Tribe when required pursuant to this Title;

l. To provide notices as required by and in accordance with this Title to all members entitled to receive notice under this Title;

m. To ensure all records of the Election Board are retained in a safe, secure, and pre-designated location within the Tribal government building in Niobrara, Nebraska;

n. To ensure that the requirements and procedures under this Title are carried out and enforced;

o. To report irregularities and nonperformance of duty and violations of this Title to appropriate officials;

p. To work with the Enrollment Department to accomplish the tasks listed; and

q. To otherwise conduct, manage, and supervise elections and perform such other duties as prescribed in this Title.

2. To ensure efficient, fair and honest elections and to ensure the secrecy and sanctity of the ballot, at the request of the Election Board, the Tribal Council may retain the services of an independent outside entity to assist the Election Board with its duties and responsibilities.

Section 9-2-3. Composition.

1. The Election Board may consist of five (5) individuals, with four (4) members from each voting district and one (1) member at large. In the event not every voting district has an individual willing to serve, the Election Board may include two (2) members from the a single voting district.

2. The members of the Election Board shall all be appointed by the Tribal Council and the Election Board shall designate one of the members to be the Chairperson of the Election Board.

3. Enrolled members interested in serving on the Election Board must submit a letter of interest with a release of

information for criminal background checks to the Tribal Council. The Tribal Council shall publish notice in the "Ponca Tribe Newsletter" and/or Tribal Web site, concerning vacancies on the Election Board and how enrolled members can apply to fill said vacancies, including the deadline for application.

Section 9-2-4. Qualifications.

1. To be qualified to be appointed to the Election Board, a person shall:

a. Be an enrolled member of the Tribe;

b. Be a resident of the voting district from which they are appointed;

c. Be eligible to vote in the election for which they will serve as an Election Board member; and

d. If convicted of a felony, have completed his sentence requirements, including any parole, at least two (2) years prior to appointment.

2. No individual shall be permitted to sit as an Election Board member who:

a. Has been convicted of a crime involving the theft of funds or property of the Tribe in any court of any jurisdiction regardless of any pardon or restoration of civil rights for said offense;

b. Currently holds elective office in the Tribe;

c. Is or plans to be a candidate in any election during his or her term; or

d. Has an immediate family member who is currently a member of the Tribal Council, or who is or plans to be a candidate in any election during his or her term.

Section 9-2-5. Election Board Records.

1. The Election Board shall be responsible for the maintenance of the records of all elections, petitions for recall, petitions for initiative and referendum, petitions to amend the Constitution, and any other records related to the Election Board's duties and responsibilities under this Title.

2. The Election Board shall elect a Secretary to ensure that records of all Election Board activities are kept and all notice requirements are met.

3. Records of the Election Board shall be kept in a safe, secure, locked cabinet within the Tribal government building in Niobrara, Nebraska.

4. The following records shall be kept for all notices:

a. Names and addresses of persons to whom notices are mailed;

b. Date of mailing; and

c. A copy of each return registration request.

Section 9-2-6. Quorum. Three (3) members of the Election Board shall constitute a quorum for conducting business.

Section 9-2-7. Term of Office. The term of office for members of the Election Board shall be for four (4) years and expire on February 1, provided that the terms of one-half of the members, or one less than one-half if the number of members is odd, appointed to the first Election Board appointed after enactment of this Title shall be for two (2) years in order to establish staggered terms. Each member of the Election Board shall hold office until his or her successor has been appointed and has qualified.

Section 9-2-8. Redistricting.

1. The Enrollment Department shall notify the Election Board in writing whenever it determines that any one voting district has twenty percent (20%) or more eligible voters than any other voting district.

2. Within 180 days of the Enrollment Department's notification, the Election Board shall:

a. Provide notice to members of the Tribe of its intent to redistrict;

b. Receive comments and input from members of the Tribe on the proposed redistricting;

c. Redistrict the voting districts, with the assistance of the Enrollment Department, in a manner that

equalizes the population amongst voting districts, taking consideration of comments and input of members of the Tribe as appropriate; and

d. Present the new proposed voting districts to the Tribal Council for final approval through amending this Title appropriately.

3. The proposed redistricting by the Election Board shall not be considered a final decision, action or order of the Election Board and shall not be subject to judicial review in any court or tribunal.

4. No redistricting shall be undertaken once an election process has begun.

Section 9-2-9. District Boards.

1. The Election Board may establish District Boards for each voting district to assist the Election Board in conducting elections consisting of at least two (2) members from the voting district and appointed by the Election Board.

2. The Election Board shall not establish any District Board until after candidates for office have been certified by the Election Board.

3. No individual shall be permitted to sit as a District Board member who:

a. Currently holds elective office in that voting district or is the immediate family member of an individual who currently holds elective office in that voting district; or

b. Is a candidate in that voting district for the upcoming election or is the immediate family member of a candidate in that voting district for the upcoming election.

4. The term of office for members of District Boards shall be only for the period of the election for which they are appointed to assist and shall automatically terminate upon the posting of election results.

5. It shall be the duty of the Election Board to conduct an orientation for all District Board members prior to the date of the election.

Section 9-2-10. Compensation. Members of the Election Board and District Boards shall be compensated at a rate set by the Tribal Council.

Section 9-2-11. Resignation and Removal.

1. Any member of the Election Board or any District Board may resign from his position by delivering a written resignation to the Tribal Council or, in the case of District Board members, the Election Board.

2. Any member of the Election Board or any District Board who becomes a candidate in any election shall immediately be deemed to have resigned.

3. The Tribal Council may, by majority vote, remove a member of the Election Board or any District Board only for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty;

c. Malfeasance or misfeasance in the handling of election procedures;

d. Acceptance or solicitation of bribes;

e. Unexcused absence from three (3) or more board meetings;

f. Any crime committed against the Tribe which results in a conviction or admission of guilt;

g. When an immediate family member holds elective office in the Tribe or becomes a candidate for office in the Tribe; or

h. Upon the happening of any event which would have made the member ineligible for appointment if the event had occurred prior to appointment.

Section 9-2-12. Vacancies.

1. In the event of a vacancy on the Election Board, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Election

Board member being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

2. In the event of a vacancy on a District Board, whether by removal, resignation, or otherwise, the Election Board shall appoint a replacement to serve the remaining term of the District Board member being replaced.

Section 9-2-13. Judicial Review of Election Board Actions.

1. The Tribal Court shall have exclusive, original subject matter jurisdiction over judicial review of final decisions, orders and actions of the Election Board in accordance with the provisions of, and where expressly permitted in, this Title.

2. Except where a different standard is set forth in this Title to review of a particular decision, order or action of the Election Board, the Tribal Court may affirm, reverse, modify or vacate and remand the decision, order or action of the Election Board, but shall affirm the decision, order or action unless the Tribal Court concludes that the decision, order or action is contrary to the laws of the Tribe.

3. Except as otherwise provided in this Title, the laws of the Tribe related to service of process and other procedure in actions before the Tribal Court shall apply to actions brought pursuant to this Title.

4. Except as otherwise expressly provided in this Title, in any suit brought pursuant to this Title, the Election Board shall be the named respondent and the petitioner shall not be required or permitted to name the Tribe, the Tribal Council, any other officer or employee of the Tribe, or any individual member of the Election Board.

5. The Election Board shall not be permitted to claim any official or sovereign immunity in any action brought in the Tribal Court pursuant to this Title, provided that nothing in this Title shall be read or construed to alter, affect, diminish, or waive any official or sovereign immunity of the Election Board with respect to:

a. Any claim or action other than judicial review of the Election Board's final decision, order, or action;

b. Any claim for damages, costs, or other monetary relief; or

c. Any claim regardless of its nature that is brought in any other court or tribunal other than the Tribal Court.

CHAPTER 3
VOTERS

Section 9-3-1. Eligibility. An individual shall be eligible to register to vote if the individual:

1. Is an enrolled member of the Tribe;

2. Will have reached the age of eighteen (18) years of age or older on or before the date of the election next following his registration.

Section 9-3-2. Time Limit for Registration.

1. Subject to submitting a registration form in time for a particular election, an eligible individual who desires to vote may register at any time during the regular operating days and hours of the Tribe.

2. In order to vote in an upcoming election, an eligible individual must register to vote:

a. In the case of general elections, no later than the first Friday in September before the election; and

b. In the case of all other elections, no later than sixty (60) days before the election.

3. In the event an eligible individual does not register to vote in time for the upcoming election, the individual shall not be eligible to vote in the upcoming election. However, the registration shall take effect for the next following election without any requirement of re-registration except as otherwise required in this Title.

4. Individuals will not be permitted to register for a runoff election. Only previously registered voters can vote in a runoff election.

Section 9-3-3. Designation of Registrar; Duties.

1. The Enrollment Specialist shall be the official Registrar of the Tribe and shall be located at a Tribal Office in Niobrara, Nebraska to receive voter registration forms.

2. The Election Board may designate an alternate Registrar if:

a. The position of the Enrollment Specialist is vacant; or

b. The individual holding the position of Enrollment Specialist or a member of her immediate family is a candidate for office in the upcoming election.

3. The Registrar shall have the following duties and responsibilities:

a. Receiving all registration forms and verifying their validity;

b. Preparing a voter registration list according to the registration books in accordance with this Chapter; and

c. Attend quarterly meetings of the Election Board during odd numbered years and monthly meetings of the Election Board during even numbered years.

Section 9-3-4. Registration Procedure.

1. No later than 120 days prior to the deadline for registration, the Election Board shall mail registration forms to individuals who are eligible to register to vote under this Chapter and have not previously registered, including all new enrolled members of the Tribe who are now eligible to vote and inactive voters at their last known address. The Enrollment Department shall notify the Election Board of any members who were not previously eligible to register and are now eligible. The Election Board shall notify such individuals of their right to vote in the voter registration mailing.

2. The voter registration mailing shall include:

a. Notification of the forthcoming election;

b. The requirement of registration to vote;

c. A blank registration form;

d. The deadline for submitting registration forms to the Registrar; and

e. A return envelope addressed to the Registrar.

3. Eligible individuals shall return their registration forms by mail or by personal delivery to the Registrar.

4. Upon receipt of a completed registration form, the Registrar shall:

a. Mark the registration form to indicate the date received; and

b. Verify the validity of the registration form with the assistance of the Enrollment Department.

Section 9-3-5. Voter Registration Form. All voter registration forms shall be embossed with the Ponca Tribe of Nebraska Seal and shall be in substantially the following form:

ENROLLMENT NUMBER _____
NAME: _____
PHYSICAL ADDRESS: _____
_____
MAILING ADDRESS: _____
_____
DATE OF BIRTH: _____
VOTING DISTRICT: _____

I, _____, hereby certify that I am an enrolled member of the Ponca Tribe of Nebraska, and that I am at least 18 years of age or will be 18 years of age on the date of the next election.

_____
Signature

_____
Date

Completion of and return of this Registration form is necessary if you desire to become qualified to vote in the forthcoming election. This form must be received by the Election Board Registrar, in the case of a General Election, no later than the first Friday in September prior to the General Election and, in the case of all other elections, no later than sixty (60) days prior to the election. This form, upon completion and return to the Election Board Registrar, shall be the basis for determining whether you qualify to have your name placed

upon the list of registered voters and to receive a ballot.

Completion of this form is voluntary.

Section 9-3-6. Duration of Registration; Re-Registration.

1. Once an individual has been certified as a registered voter, the certification shall remain in effect unless the voter:

a. Changes address;

b. Relinquishes his or her enrollment as a member of the Tribe;

c. Dies;

d. Becomes an inactive voter; or

e. Otherwise becomes ineligible to vote.

2. If a registered voter moves; changes address, voting districts, or name; or re-enrolls as a member of the Tribe, he or she must re-register.

3. A registered voter who moves, changes address, changes voting district, or changes name shall submit a notice to the Registrar of such change. Upon receipt of such a notice from a registered voter, the Registrar shall send a voter registration form to the voter so the voter can re-register.

4. If a voter is an inactive voter, he or she must re-register.

Section 9-3-7. Voter Registration List.

1. After the deadline date for returning and receiving registration forms, the Registrar shall:

a. Compile a voter registration list in alphabetical order by last name and arranged by voting districts;

b. Certify the accuracy and eligibility of the names placed thereon; and

c. Submit the voter registration list to the Election Board for review and approval or disapproval of individual names.

2. The Election Board shall:

a. Review and approve or disapprove all certified voter registration lists in accordance with this Section; and

b. Check the certified voter registration list from the Registrar according to voting districts with the registration books before the election process begins and again before balloting begins to ensure their accuracy.

3. The Election Board shall only disapprove a registered voter on a certified registration list if:

a. There is documented proof that the individual is not eligible to vote in accordance with the Constitution and this Title; or

b. The individual:

i. Is recorded as having an invalid address in accordance with Chapter 5 of this Title;

ii. Has not responded to the address confirmation notice mailed to him or her by the Election Board;

iii. Has not voted in any election of the Tribe conducted since the Election Board mailed the address confirmation notice to the individual; and

iv. Has not re-registered in accordance with this Chapter.

4. Individuals disapproved under paragraph (b) of subsection (3) of this Section shall be declared inactive voters and placed on a written list of inactive voters maintained by the Election Board.

5. If the Election Board disapproves an individual on a certified registration list, the individual(s) shall be stricken from the voter registration list and a new voter registration list shall be established. The Election Board shall provide written notice to any individual stricken from the voter registration list

within seven (7) days of the Election Board striking the individual from the list.

6. By September 30th of each General Election year or thirty (30) days before any other election, the Election Board shall:

a. Determine whether there are any members who were not previously eligible to register because of age or non-enrollment or who have moved or who are otherwise now eligible to vote;

b. Provide a copy of the final approved voter registration list to each District Board;

c. Post a copy of the final approved voter registration list at:

i. The headquarters of the local administrative unit of the Bureau of Indian Affairs;

ii. Each location of Tribal governmental offices; and

iii. At various other public places designated by the Election Board; and

d. Provide a copy of the final approved voter registration list to any candidate or voter who requests one.

Section 9-3-8. Eligibility Disputed.

1. Any individual who believes they are eligible to vote and received notice that they were stricken from the voter registration list or whose name does not appear on the final approved voter registration list may challenge their omission from the approved voter registration list by filing a written challenge with the Election Board which details the reasons the individual believes he or she should be included on the approved voter registration list.

2. Any registered voter may challenge the right of any other registered voter whose name appears on the final approved voter registration list by filing a written challenge with the Election Board which details the reasons the challenger believes the registered voter is not qualified to vote.

3. Any challenge shall be limited to the qualifications enumerated in the Constitution and this Title and any other basis for the challenge shall not be considered. No challenge shall be allowed or accepted unless raised more than ten days prior to an election.

4. Upon receipt of any challenge under this Section, the Election Board shall promptly review the challenge and issue a decision within ten (10) days. The Election Board's decision shall be final and not subject to challenge or review.

Section 9-3-9. General Voter Qualifications.

1. No individual shall be eligible to vote in any election unless the individual:

a. Is an enrolled member of the Tribe;

b. Is eighteen (18) years of age or older on or before the date of the election;

c. Is registered to vote in accordance with this Chapter; and

d. Is not an inactive voter who has failed to re-register in accordance with this Chapter.

2. An individual continues to be an eligible voter until that individual's registration is canceled pursuant to this Chapter or until that individual is not otherwise eligible to register or to vote as provided in this Chapter.

Section 9-3-10. Absentee Voter Qualifications.

1. An individual shall be entitled to vote as an absentee voter in any election if the individual:

a. Is eligible to vote in accordance with Section 9-3-9 of this Chapter; and

b. Is temporarily absent from his or her voting district due to college attendance, military service, physical or mental disability, or incarceration.

2. An absentee voter shall vote within the voting district for which he or she was a resident prior to the temporary absence but only during the period of temporary absence.

CHAPTER 4
PETITIONS

Section 9-4-1. Applicability. The rules set out in this Chapter apply to the circulation, filing, and certification of any petition:

1. For recall of a member or officer of the Tribal Council;

2. For referendum;

3. For initiative;

4. To amend the Constitution;

5. For nomination of a candidate for office; and

6. Any other purpose for which formal petitioning of the government is permitted or authorized under the laws of the Tribe.

Section 9-4-2. Exclusiveness. Except where otherwise expressly provided by the laws of the Tribe, the provisions of this Chapter shall be the exclusive procedures for circulating, filing, and certifying petitions for recall of a member or officer of the Tribal Council, for referendum, for initiative, to amend the Constitution of the Tribe, for nomination of a candidate for Tribal Council or Chairperson, and any other purpose for which formal petitioning of the government is permitted or authorized under the laws of the Tribe. Failure to follow the rules and procedures set forth in this Chapter shall result in the declaring of the petition to be invalid.

Section 9-4-3. Change in Law. Notwithstanding any other law, any change in the law or procedure with respect to circulation or filing of a petition made after the petition is filed pursuant to this Chapter does not apply to the filed petition.

Section 9-4-4. Content of Petition Sheets. Every petition circulated pursuant to this Chapter shall contain the following on every petition sheet, in the order given:

1. A title of the subject of the petition, such as "petition to nominate," "petition for referendum," "petition for initiative," or "petition for recall;"

2. The name, mailing address, and phone number of the sponsor of the petition.

3. A description of no more than 100 words of the principle purpose of the petition, including the name of any individual member or officer of the Tribal Council subject of the petition if it is a petition for nomination or recall;

4. For referenda, initiatives, and amendments to the Constitution, a notice which states:

a. In the case of a referendum:

NOTICE: This is only a description of the action of the Tribal Council sought to be rejected or affirmed by referendum. It may not include every provision contained in the action of the Tribal Council sought to be rejected or affirmed. Before signing, make sure the text of the action of the Tribal Council or other appropriate complete description is attached. You have the right to read or examine the action of the Tribal Council involved before signing.

b. In the case of an initiative or amendment to the Constitution:

NOTICE: This is only a description of the proposed measure (or constitutional amendment) prepared by the sponsor of the measure. It may not include every provision contained in the measure. Before signing, make sure the title and text of the measure are attached. You have the right to read or examine the title and text before signing.

5. A direction to the appropriate officer or body, as follows:

a. In the case of a nomination for office:

To the Election Board:

We, the undersigned qualified voters of the Tribe, respectfully nominate _____ for the office of _____.

b. In the case of all other petitions, to the Tribal Council:

To the Tribal Council:

We, the undersigned qualified voters of the Tribe, respectfully demand _____.

6. The following acknowledgment for signatories:

I have personally signed this petition with my first and last names. I have not signed any other petition for the same action. I am a qualified voter of the Tribe.

7. Lines for signatures, which shall be numbered.

Section 9-4-5. Attachments for Referenda and Initiative. In the case of petitions for referenda, initiative, or to amend the Constitution, a petition sheet or group of petition sheets shall be attached at all times during circulation to a full and correct copy of the title and text of the measure or amendment subject of the petition. The title and text shall be in at least eight point type and, in the case of an amendment, shall include both the original and the amended text. The text shall indicate material deleted, if any, by printing the material with a line drawn through the center of the letters of the material and shall indicate material added or new material by printing the letters of the material in capital letters.

Section 9-4-6. Single Matter.

1. Any petition circulated, filed, or certified pursuant to this Chapter shall only request a referendum on one action of the Tribal Council, nomination of one candidate to office, or a recall of a single member or officer of the Tribal Council. If a qualified voter desires an action on more than one matter, the nomination of more than one candidate, or the recall of more than one member or officer of the Tribal Council, a separate petition must be circulated for each single action and each such nominee or member or officer of the Tribal Council.

2. A petition requesting an amendment to the Constitution or the enactment of a law by initiative may contain multiple matters and subjects to be presented as a single amendment or initiative or request amendment to more than one article, section, or clause of the Constitution.

Section 9-4-7. Sponsor.

1. Every petition circulated, filed, or certified pursuant to this Chapter shall have at least one sponsor, who shall:

a. Be an enrolled member of the Tribe;

b. Be eligible to vote in accordance with Chapter 3 of this Title; and

c. Be responsible for ensuring that the rules provided in this Chapter are followed.

2. In the case of a petition for nomination to office, the sponsor shall be the candidate for office and/or a person who obtains signatures on behalf of the candidate.

3. All correspondence and communication with the Election Board shall take place with the sponsor(s).

4. A sponsor may circulate the petition he or she is sponsoring.

Section 9-4-8. Circulators. No person other than an individual who is eligible to register to vote pursuant to Chapter 3 of this Title may circulate a petition.

Section 9-4-9. Signatures.

1. Every eligible voter of the Tribe who is mentally competent may sign a petition upon any measure or action which he is legally entitled to vote upon.

2. Individuals must sign the entire petition and must be advised that they must be an eligible voter in order to sign. The name of each signer shall be printed first and then signed and dated. In the event of a signer who is physically disabled or illiterate, the signer may make his or her mark in the space provided for a signature and any person, but not a circulator, may assist the disabled or illiterate signer in completing the remaining information required. Each signature shall be in ink.

3. Except for signatures obtained by mail as authorized in this Chapter, every eligible voter signing a petition shall do so personally in the presence of the individual who is circulating the petition and who shall verify the signature. No person shall sign the name of another regardless of any permission given or competency of the person whose signature is sought to be signed by another. Any false signature shall be stricken from the petition.

Section 9-4-10. Signatures Obtained by Mail.

1. A sponsor of a petition may obtain the signature of an eligible voter by mail, provided that the signature is duly acknowledged by a notary and such notary acknowledgment is attached to the petition.

2. A signature obtained by mail shall appear on its own sheet with the notary acknowledgment and shall, by itself, constitute a single petition sheet.

3. The Election Board shall prescribe the proper form for petition signatures obtained by mail.

Section 9-4-11. Form for Filing Petition. All petitions filed shall:

1. Be in the form prescribed by this Chapter;

2. Be attached to a full and correct copy of the title and text of the measure, or amendment referred by the petition, if any; and

3. Be accompanied by the certifications required under this Chapter.

Section 9-4-12. Filing of Petitions.

1. Except as otherwise expressly provided by the laws of the Tribe, all petitions shall be filed by the sponsor(s) with the Election Board by tendering to it all petition sheets of the petition. Only original petition sheets will be accepted. No electronic version, photocopy, faxed version, or other reproduction of a petition sheet will be accepted.

2. Upon filing of a petition, the Election Board shall immediately issue a receipt to the sponsor(s) filing the petition. Such receipt shall include an estimate of the purported number of petition sheets and signatures filed. A petition shall be deemed filed when the petition sheets are tendered to the Election Board and a receipt issued.

3. After the issuance of the receipt, no additional petition sheets may be accepted for filing.

Section 9-4-13. Certification of Signatures.

1. Except for signatures obtained by mail in accordance with the provisions of this Chapter, each petition submitted for filing shall contain a statement of certification by the circulator that:

a. Each of the names was signed and the name printed in the presence of the eligible voter and the circulator on the date indicated;

b. In the belief of the circulator, each signer is an eligible voter of the Tribe;

c. At all times during circulation of the petition sheet, a copy of the title and text was attached to the petition sheet; and

d. To the best of the circulator's knowledge, no signature on the sheet was obtained by coercion, threat, intimidation, or in exchange for anything of value.

2. The certification required by this Section shall be made on a form prescribed by the Election Board and under oath or affirmation under penalty of perjury before a notary public.

3. If a petition submitted for filing contains signatures obtained by more than one circulator, each circulator shall complete the certification required by this Section for each petition sheet circulated by that circulator.

Section 9-4-14. Action Upon Filing. Upon the filing of a petition with it, the Election Board shall:

1. Within fifteen days, remove petition sheets as required or allowed pursuant to this Chapter;

2. Within thirty days, verify all of the signatures on a petition and determine with respect to each signature whether the signature is valid or invalid; and

3. Within thirty days, either certify or deny certification of the petition.

Section 9-4-15. Removal of Petition Sheets.

1. The Election Board shall remove the following petition sheets from a petition:

a. Those petition sheets not attached to a copy of the title and text of the measure, if any;

b. Those petition sheets not in a form substantially complying with the requirements of this Chapter;

c. Those petition sheets which are not accompanied by a signed and completed circulator's certification;

d. Those petition sheets which are not originals of the signed petition sheet, including photocopies or other reproductions;

e. Those petition sheets which are accompanied by an affidavit of the circulator that is not notarized, where the notary's signature is missing, where the notary's commission expired prior to the date of notarizing, or the notary's seal is not affixed; and

f. Those petition sheets on which the signatures of the circulator or the notary are dated earlier than the dates on which the qualified voters signed the face of the petition sheet.

2. No petition sheet shall be removed from the petition except as provided in this Section.

Section 9-4-16. Validity of Signatures.

1. A signature on a petition may be disqualified and found invalid only for the following reasons:

a. The individual was not an eligible voter on the date of signing the petition;

b. The individual was a registered voter but was not at least eighteen years of age on the date of signing the petition;

c. No date of signing is provided;

d. No signature is provided or the signer is unidentifiable;

e. The signature does not match the signature of the qualified voter on the affidavit of registration filed by the voter; or

f. The Election Board receives a notarized affidavit from the signer, prior to certification of the petition, which states under oath or affirmation that the signer's signature was obtained by coercion, threat, intimidation, in exchange for something of value, or otherwise in violation of this Chapter and sets forth facts which demonstrate the coercion, threat, intimidation, exchange or violation.

2. If an individual signed a petition more than once, all but one otherwise valid signature shall be disqualified.

3. If a signature is valid, it shall be counted toward the total number of signatures on the petition. If a signature is not valid, it shall not be counted toward the total number of signatures on the petition.

Section 9-4-17. Certification of Petitions.

1. The Election Board shall certify any petition filed pursuant to this Chapter if it verifies that at least the minimum number of qualified voters required by the laws of the Tribe for the action demanded in the petition are present on the petition. Otherwise, the Election Board shall deny certification.

2. The Election Board shall provide notice of its certification or denial by posting notice thereof at each of the Tribal governmental offices, publishing the same in the Tribal newsletter, electronically mailing the same to the Tribal Council Secretary, and mailing the same to the sponsor(s). Such notice shall include the following:

a. The number of signatures required for the action subject of the petition;

b. The number of petition sheets removed as required in this Chapter;

c. The number of total signatures remaining on the petition after any petition sheets were removed;

d. The number of signatures disqualified as provided in this Chapter;

e. The number of valid signatures on the petition; and

f. Notification that any qualified voter of the Tribe may view the results of counting and verifying the signatures on the petition.

3. If the Election Board does not certify the petition, it shall return the original petition sheets to the sponsor after the time for any judicial review of the Election Board's decision has expired.

4. If the Election Board certifies a petition, it shall act on the petition as provided in the laws of the Tribe.

Section 9-4-18. Judicial Review of Certification.

1. If a person is aggrieved by the Election Board's decision as to certification of a petition, the person may challenge the decision by filing a petition requesting judicial review of the decision in the Tribal Court.

2. Judicial review of the Election Board's certification decision shall proceed in accordance with the following:

a. Unless another time is provided in this Title, the petition for judicial review shall be filed within ten (10) days of the date when the Election Board posts notice of its decision regarding certification;

b. The Tribal Court shall issue a final order on the petition for judicial review within fifteen days of the filing of the petition;

c. An appeal of the Tribal Court's order on the petition for judicial review shall be filed no later than five days after the date of the Tribal Court's order and the Court of Appeals shall decide the appeal with fifteen days of the filing of the notice of appeal;

d. The Tribal Court shall not accept any affidavit or other evidence from any signer claiming that the signer's signature was obtained by coercion, threat, intimidation, in exchange for something of value, or otherwise in violation of this Chapter unless such signer filed an affidavit with the

Election Board asserting the same as provided in this Chapter prior to the Election Board's notice regarding certification;

e. The Tribal Court may not find that any signature is disqualified except for the reasons set forth in this Chapter; and

f. The Tribal Court may affirm, reverse, modify or vacate and remand the certification decision, but shall affirm the certification decision unless the Tribal Court concludes that the certification decision is contrary to the laws of the Tribe.

Section 9-4-19. Suit to Compel Action.

1. If the Election Board fails or refuses to allow a sponsor to file a petition or to take action on the certification of a filed petition within the time provided in this Chapter, the sponsor may bring an action against the Election Board in the Tribal Court to compel the Election Board to accept the petition for filing or act on the certification.

2. The Tribal Court shall dismiss any action brought under this Section that is filed before the time limits provided in this Chapter for the Election Board to act or is not filed by the sponsor of the petition.

3. If the Tribal Court determines that the Election Board has failed or refused to allow the filing of a petition or failed or refused to act on certification of a filed petition within the time provided in this Chapter, the Tribal Court shall, within fifteen days of the filing of the original petition, order the Election Board to:

a. In the case of a failure or refusal to permit a petition to be filed, immediately accept the petition for filing and issue a receipt as provided in this Chapter;

b. In the case of a failure or refusal to take action on the certification of a filed petition, to take action on the certification within fifteen days of the order of the Tribal Court.

4. In the event the Election Board fails or refuses to comply with an order of the Tribal Court issued pursuant to this Section within fifteen days of its issuance, and the matter is not on appeal to the Court of Appeals, the Tribal Court shall have the

authority to review the petitions at issue, verify the signatures on the petition, and issue an order declaring whether the petitions are valid which shall have the same force and effect as though the Election Board had acted on the certification itself.

CHAPTER 5
GENERAL ELECTION PROCEDURES

Section 9-5-1. Election Dates.

1. In accordance with Article VII, Section 1 of the Constitution, general elections shall be held on the first Tuesday in the month of November of even numbered years.

2. The Election Board shall set the date of all other elections and provide notice thereof in accordance with this Title.

Section 9-5-2. Manner of Voting.

1. All elections shall be conducted by secret ballot.

2. Except for absentee voting, all voting in elections shall be by mail-in ballot.

Section 9-5-3. Absentee Voting. A person duly qualified as an absentee voter that is an active overseas deployed military member under Chapter 3 of this Title may vote by fax ballot or electronic ballot.

Section 9-5-4. Poll Book.

1. The Election Board shall create a poll book consisting of a simple ledger with bound and numbered pages for each election and shall be part of the official record for the election and secured in the same manner as counted valid ballots.

2. Information regarding all aspects of a particular election will be noted in the poll book for that election, including dates, times, and any untoward circumstances.

3. The Election Board members, District Board members, and any observers or visitors will sign in and out in the poll book. Anyone may write personal comments in the poll book.

Section 9-5-5. Observers.

1. The Election Board shall encourage observers throughout the election process.

2. The Election Board shall prepare and post a code of conduct for all observers.

3. The Election Board designate and set aside an observation area to allow adequate viewing of the election process, but not compromise the security of the ballots or any sensitive election related materials.

4. Observers may direct questions regarding the election process to the Election Board Chairperson.

5. Videoconferencing may be utilized, but is not required. Observers by videoconference may have a limited view.

Section 9-5-6. Form of Ballots.

1. The Election Board shall prepare and be responsible for all ballots throughout the election process.

2. In addition to any other requirements in this Title for ballots for a specific type of election, ballots shall:

a. Be prepared clearly and simply so it is easy for the voters to indicate a choice between candidates or for or against a recall, initiative, referendum, or other question presented to the voters;

b. Consist of a separate ballot for each vacant position which shall declare the position and the voting district (if applicable) and the names of each individual certified as a candidate for that office;

c. Be printed on different color of paper for each voting district and a different color of paper for Chairperson, with black ink; and

d. Be stamped in ink on its face and in the same place "Official Ballot."

3. If a printed ballot is defaced or ruined prior to the mailing, it shall be marked invalid by crossing through with an X

in ink, its number and the type of ballot recorded and secured in an envelope marked "Invalid Printed Ballots."

4. After printing, the master copies of the ballot forms shall be marked through with an X in ink to render them invalid and secured with other voter sensitive materials.

5. The ballots and other election sensitive materials, including the invalid printed ballots and master ballot forms, shall be secured in a locked box at all times during the election process when the Election Board is not present. The Election Board Chairperson or other Election Board member designated by the Chairperson shall have custody of the key to the box.

Section 9-5-7. Ballot Instructions and Certification. The following shall accompany each ballot or set of ballots for an election:

1. An inner envelope, bearing on the outside the words "Official Ballot" and in which the ballot may be inserted and sealed.

2. Instructions for completion of the ballot.

3. Notice concerning the deadline for returning and receiving ballots.

4. A certificate form containing the following language:

> I, _____(name of voter), hereby certify that I am an enrolled member of the Ponca Tribe of Nebraska; that I have registered to vote in this election as required by Title IX of the Ponca Tribe of Nebraska Code and am entitled to vote in the election to be held _____(date of election); and I further certify that I marked the enclosed ballot in secret.
>
> Signed: _____(voter's signature)

5. A return identification outer envelope in which the ballot in the inner "Official Ballot" envelope and the certificate shall be inserted. The voting district number of the voter will be marked on the outside on this envelope. This envelope will be pre-addressed to the Tribe at a post office box in Niobrara, Nebraska designated for ballots.

Section 9-5-8. Mailing out Ballots.

1. No later than thirty (30) days prior to an election, the Election Board or its designee shall send out by regular mail all ballot packets to all eligible voters on the approved voter registration list.

2. The Election Board shall make a record of all ballots mailed, to whom mailed, the date of mailing, and the address on the envelope.

Section 9-5-9. Undeliverable Ballots. In the event a mailed ballot is returned to the Election Board as undeliverable or as a result of an invalid address by the United States Postal Service or other delivery service used by the Election Board to deliver the ballot, the Election Board shall:

1. Confirm the address used to mail the ballot by comparing it to the voter's registration information;

2. If the Election Board used the incorrect address, re-mailing the ballot in a method which will ensure receipt and return of the ballot by the voter before the polls are closed;

3. If the Election Board used the correct address, mailing an address confirmation notice to the voter which requests the voter to confirm his or her address with the Election Board in time to receive and return a ballot before the polls are closed; and

4. If the address confirmation notice is returned to the Election Board by the United States Postal Service or other delivery service used by the Election Board to deliver the notice or the voter fails to confirm his or her address before the polls are closed, the Election Board shall note the invalid address on the voter registration list or other list of voters maintained by the Election Board, provided that if the voter responds to the address confirmation notice after the polls are closed and prior to the next election of the Tribe, the Election Board shall remove the invalid address note.

Section 9-5-10. Replacement Ballot.

1. If a ballot is destroyed, defaced, lost or not received by the registered voter, the registered voter may obtain a replacement ballot from the Election Board by signing a statement verified on oath or affirmation on a form prescribed by the

Election Board that the ballot was destroyed, defaced, lost or not received.

2. A request for a replacement ballot must be received by the Election Board at least ten (10) business days prior to the election.

3. After the Election Board receives a request for a replacement ballot with a statement meeting the requirements of this Section, the Election Board shall mail a replacement ballot to the registered voter at the address shown on the statement by express mail or other rapid delivery to ensure receipt and return of the replacement ballot before the polls are closed.

4. The Election Board shall keep a record of all requests for replacement ballots and all replacement ballots provided.

Section 9-5-11. Ballot Boxes.

1. All ballot boxes shall be constructed of substantial material and be equipped with two locks interlocked so one lock will not open the ballot box. Each box shall be equipped with an opening in the top through which a ballot may be inserted, but must be constructed in such a manner that the box must be unlocked before the ballots can be removed.

2. At all times, all keys to ballot boxes shall be secured by the Election Board at the Tribal government building in Niobrara, Nebraska.

Section 9-5-12. Receiving Ballots.

1. Except for authorized fax or electronic ballots, all ballots must be returned in the return identification envelope provided with the ballot.

2. The Election Board shall open a post office box at Niobrara, Nebraska for the receipt of voters' ballots by United States Mail. If necessary, the Election Board may retrieve ballot packets from the post office box periodically. In the event ballot packets are retrieved, the Election Board shall make a record of the postmark of each ballot packet and the time and date the ballot packet was retrieved from the post office box.

3. The Election Board shall also accept sealed ballot packets from courier delivery services at the Tribal government building in Niobrara, Nebraska. The Election Board shall make a

record of all such ballot packets received by courier, from whom, and the date received.

4. The Election Board shall also accept absentee voter ballots from only qualified active overseas deployed military absentee voters received prior to the closing of the polls by:

a. Fax ballot received at a dedicated fax machine with a dedicated fax number; and

b. Electronic ballot received at a designated email address.

The Election Board shall make a record of all such fax ballots and electronic ballots noting the method received, from whom, and the date received.

5. Except for spoiled ballots, all ballot packets retrieved from the post office box or received by courier shall be secured in secure, locked ballot boxes until the polls are closed. Fax ballots and electronic ballots shall be secured in a separate secure, locked ballot box for absentee voters only.

6. The Election Board shall refuse to accept or, if refusal is not possible, shall secure in a separate secure, locked ballot box marked "Invalid Ballots," with the key in the custody of the Election Board Chairperson, any ballot packet:

a. Not returned in the return identification envelope;

b. Opened; or

c. Otherwise indicating tampering.

Section 9-5-13. Poll Closing. The election polls shall officially close upon the day of the election at the closing of business hours of the Niobrara, Nebraska Post Office.

Section 9-5-14. Counting Ballots.

1. The process for counting ballots shall include procedures that promote efficiency yet ensure honest and fair counting of the election results.

2. Only members of the Election Board and, if delegated the authority in accordance with this Section, District Boards shall be authorized to open ballot boxes. A majority of the Election

Board or, if delegated the authority, the District Board shall be present when any ballot box is opened or ballots are counted.

3. Upon the closing of the polls, the Election Board shall:

a. Gather mail-in ballot packets not yet retrieved from the post office box into secure, locked ballot boxes and make a record of the postmark of each ballot packet and the time and date the ballot packet was retrieved from the post office box;

b. Transport all ballot boxes, including any "Invalid Ballots" box, to the location where ballots shall be counted;

c. Unlock each ballot box, count the return identification envelopes, fax ballots and electronic ballots received and sort by voting district;

d. Throughout the counting process, keep envelopes, ballots and other election related materials in a secure area accessible to the Election Board or its designee only;

e. By voting district, open each envelope and review each fax ballot and electronic ballot;

f. Verify the name on the certificate of those who returned ballots against the names on the approved voter registration list;

g. If a voter's name and registration is valid, place the sealed ballots in marked separate containers, one for each voting district and one for the Chairperson;

h. Set any ballot and certificate aside in its return identification envelope with ballots from any "Invalid Ballots" box so it is not counted in the official tally if:

i. A voter's name is not on the voter registration list;

ii. The information on the certificate is not readable;

iii. The ballot was not returned in the proper return identification envelope;

iv. The proper return identification envelope is missing either the ballot or the certificate;

v. The ballot packet is already opened;

vi. The ballot packet otherwise indicates tampering; or

vii. Otherwise constituting an invalid ballot;

i. If the ballot envelope contains only one ballot when more ballots are allowable, the number of missing ballots should be noted to justify the counting process of valid ballots and the return identification envelopes; and

j. Count and record the number of valid returned ballots and the number of invalid ballots for each voting district, tally the count for all voting districts together and ensure the number equals the total return identification envelopes received plus the total fax ballots and electronic ballots received.

4. The Election Board shall count the ballots and place the results thereof on previously prepared tally sheets. The Election Board may delegate the authority to count ballots for a particular voting district to the District Board for that voting district, subject to the Election Board verifying and certifying the results. The Election Board shall count the ballots for any at large vote, including the Chairperson, but may delegate the authority to verify and certify the results to the members of all of the District Boards acting together.

5. The Election Board, or the District Boards if delegated to do so as authorized in this Section, shall conduct separate tallies of the valid ballots for each voting district election and for each at large vote in accordance with the following:

a. Set any spoiled ballot aside in a "Spoiled Ballots" box so it is not counted in the official tally.

b. Except for spoiled ballots, the Chairperson or other designee of the Election Board shall read aloud the name of the candidate or the for or against position selected on each ballot. Two (2) members of the Election Board or its designee shall record the votes cast on separate, previously prepared tally sheets for each voting district election and

for the Chairperson. The tally numbers from each recorder must match and if they do not, the ballots shall be recounted.

c. The Election Board will tally and verify total number of votes cast for each voting district election. The number of votes cast, plus the number of spoiled ballots, must equal the number of valid returned ballots for each voting district.

d. The Election Board, unless the authority has been delegated to the District Board, will tally and verify the total number of votes cast for any at large vote. The number of votes cast, plus the number of spoiled ballots, must equal the number of valid returned ballots for the at large vote and if they do not, the ballots will be recounted.

e. Any spoiled ballot shall be counted only for the purpose of determining whether the required number of voters have cast their votes. Any spoiled ballots will be counted only as a spoiled ballot.

6. The Election Board will prepare official information sheets to record all data as required in Sections 9-5-6, 9-5-8 and 9-5-10 to ensure the security of the ballots, and in this Section to ensure that the number of ballots cast is equal to the number of ballots returned minus those invalid ballots in the return identification envelopes and those cast but spoiled.

7. The Election Board may establish additional procedures to those in this Section provided that any such additional procedure shall be supplementary and in addition to the requirements of this Title and not in derogation thereof. In order for such additional procedures to apply to an election, the Election Board shall post such additional procedures at each location of Tribal governmental offices and the Tribe's website no later than thirty (30) days prior to the election to which such procedures shall apply.

Section 9-5-15. Runoff Election to Break Ties.

1. If the Election Board determines that three (3) or more candidates received the same number of votes and no candidate received more votes, resulting in a tie, the tie shall be broken by runoff election held within thirty (30) days following the election. Only the voters registered for the election shall be allowed to vote in the runoff election. The individual winning the runoff election shall succeed to the position. Should another

tie occur, then this tie will be broken by a flip of the coin performed by the Chairperson of the Election Board.

2. If the Election Board determines that two (2) candidates received the same number of votes and no candidate received more votes, resulting in a tie, the tie shall be broken by a flip of the coin performed by the Chairperson of the Election Board.

Section 9-5-16. Certification.

1. The Election Board or its designee shall prepare election results sheets prior to the counting of the ballots. A separate sheet shall be prepared for each position subject to election and the names of each candidate for that position shall appear thereon. A separate sheet shall also be prepared for each ballot question subject to vote by recall, referendum, initiative or otherwise and the designations of "yes" and "no" or "for" and "against," as presented on the ballot.

2. The number of votes for each candidate or for or against each question shall be placed on the appropriate election results sheet and the winner of that position or question shall be noted on the top of that sheet. There shall also be a line for spoiled ballots which shall indicate the number of spoiled ballots for that candidate or question.

3. The members of the Election Board shall certify the results by their signatures and date at the bottom of each election results sheet.

Section 9-5-17. Posting Results. The results of all elections shall be released and posted in the most timely manner in all Tribal government offices by hand delivery, fax, electronic mail, or Internet and also posted on the Tribe's website. Notices of the election results shall also be mailed to all registered voters within ten (10) business days of the closing of the polls.

Section 9-5-18. Records. The Election Board shall ensure that the records of the results of each election and all ballots returned are properly secured and safeguarded in accordance with this Title. Records of elections shall be maintained for a period of at least eight (8) years from the date of the election.

Section 9-5-19. Challenges to Election Results.

1. Any eligible voter may challenge the results of an election of any person declared elected to an office of the Tribe

or the results of a recall, referendum, initiative, or other question or proposal submitted to vote, upon any of the following grounds:

a. For misconduct on the part of the Election Board, a District Board, or any members thereof or on the part of any individual making or participating in the counting of votes;

b. That the person whose right to the office is contested was not at the time of the election eligible to the office;

c. That the person whose right is contested, or any person acting for him, has given to a voter, Election Board or District Board member, or other officer of election, a bribe or reward, or has offered such bribe or reward for the purpose of procuring his election, or has committed any other violation of this Title;

d. On account of illegal votes;

e. That by reason of erroneous count of votes the person declared elected or the recall, referendum or initiative declared, or other question or proposal submitted, which has been declared carried, did not in fact receive the highest number of votes for the office or a sufficient number of votes to carry the recall, referendum, initiative or proposal;

2. An eligible voter may challenge the results of an election by filing a challenge with the Election Board within three (3) business days of posting the election results at Tribal government offices. The challenge shall be in writing, verified under oath or affirmation, and set forth:

a. The name and residence of the party contesting the election, and that he is an eligible voter;

b. The name and office of the person whose right to the office or whose recall is contested, or the title of the referendum, initiative or other question as it appeared upon the official ballot;

c. The particular grounds of the challenge as described in this Section, together with substantiating evidence.

3. The Election Board may summarily deny a challenge without a hearing if the filing does not indicate sufficient evidence to support the challenge or lacks grounds described in this Section. Otherwise, the Election Board shall hold a hearing within five (5) business days of the filing of the challenge to give the challenger an opportunity to present the grounds for their challenge and any substantiating evidence, provided that the Election Board may extend the time for determining whether to summarily deny a challenge or hold a hearing for up to ten (10) additional calendar days in order to validate the evidence.

4. If, in the opinion of the Election Board, the challenge is valid and the evidence and basis for the challenge warrants a recount or new election, the Election Board shall order a recount or new election.

5. In the case of a new election, the Election Board shall notify the affected candidate(s) that a new election shall be held within forty-five (45) business days after the Election Board issues the order for a new election. With the exception of the time in which the new election shall be held, all other election procedures prescribed in this Title shall apply to the new election, including challenges pursuant to this Section.

6. In the case of a recount, the Election Board shall notify the affected candidate(s) that a recount shall be held in five (5) working days. The results of the recount shall be the final order of the Election Board.

Section 9-5-20. Judicial Review of Challenge.

1. If a challenger or person whose right to office was contested in a challenge before the Election Board is aggrieved by a final order of the Election Board on recount or denying a recount or new election, the person may challenge the decision by filing a petition requesting judicial review of the final order in the Tribal Court.

2. Judicial review of the Election Board's final order shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within three (3) business days of the issuance of the Election Board's final order;

b. The Tribal Court shall issue a final order on the petition for judicial review within five (5) days of the filing of the petition;

c. An appeal of the Tribal Court's order on the petition for judicial review shall be filed no later than five (5) days after the date of the Tribal Court's order and the Court of Appeals shall decide the appeal with ten (10) days of the filing of the notice of appeal; and

d. The Tribal Court may affirm, reverse, modify or vacate and remand the Election Board's final order, but shall affirm the final order unless the Tribal Court concludes that the final order is not justified based on the grounds for challenge to elections permitted in this Chapter.

CHAPTER 6
TRIBAL COUNCIL ELECTIONS

Section 9-6-1. General Election Date. In accordance with Article VII, Section 1 of the Constitution, general elections shall be held on the first Tuesday in the month of November of even numbered years.

Section 9-6-2. Qualification for Office. In accordance with the Constitution, to be eligible to be a candidate for a position on the Tribal Council or Chairperson, a person must:

1. Be an enrolled member of the Tribe;

2. Be at least twenty-five (25) years of age;

3. Submit to a criminal background check and drug screening in accordance with this Chapter that returns a negative result;

4. Not have been convicted of any felony in any court of any jurisdiction unless pardoned and fully restored of his or her civil rights by the proper authorities prior to the election; and

5. Not have been convicted in any court of any jurisdiction of a crime involving the theft of Tribal funds or property regardless of any pardon or restoration of civil rights for said offense.

Section 9-6-3. Nominating Procedures.

1. To appear on an election ballot as a candidate for a position on the Tribal Council or Chairperson, an individual must:

a. Notify the Election Board in writing of his or her intent to run for office, identifying the position and voting district from which he or she intends to run and requesting a nominating petition;

b. Sign an appropriate release authorizing the Human Resources Department to conduct a criminal background check and a drug screening and for the Election Board to receive the results of such criminal background check and drug screening;

c. Pay a non-refundable filing fee, in an amount set the Election Board, at the time of picking up the nominating petition packet. The fee is for the criminal background check and the drug screening. Payment will need to be in the form of a cashier's check or money order made payable to the Ponca Tribe of Nebraska; and

d. Submit the nominating petition packet to the Election Board with the requisite amount of valid signatures prior to the deadline set for filing nominating petitions.

2. Candidates for a position on the Tribal Council must file a petition signed by a least twenty-five (25) individuals from the voting district the candidate intends to represent who are eligible to vote or register to vote as provided in this Title. Candidates for Chairperson must file a petition signed by at least fifty (50) individuals who are eligible to vote or register to vote as provided in this Title.

3. If an individual signs one nominating petition, it shall not prohibit that individual from signing another nominating petition for a different individual who is seeking to be nominated as a candidate for a position on the Tribal Council from the same voting district.

4. No individual shall be permitted to be a candidate for a position on the Tribal Council or Chairperson unless nominated by petition in accordance with this Title.

5. No individual shall be permitted to be a candidate for more than one position on the Tribal Council.

Section 9-6-4. Submission of Nominating Petition Packets.

1. Nominating petition packets shall be filed with the Election Board in accordance with Chapter 4 of this Title and this Section.

2. Nominating petition packets may be picked up beginning May 1st and no later than the last business day in May of each general election year.

3. Nominating petitions must be filed with the Election Board no later than the close of business on the last business day in June of the general election year in which the candidate desires to appear on the ballot. If a nominating petition is not filed by this deadline, the proposed candidate shall not be eligible to be placed on the ballot.

4. The Election Board shall provide notice to all enrolled members of the deadline for submitting nominating petitions no later than March 1 of each general election year.

Section 9-6-5. Certification Procedure for Review and Determination of Candidacy Qualification.

1. Upon the filing of a nominating petition, the Election Board shall:

a. Certify or deny certification of the petition in accordance with Chapter 4 of this Section;

b. If the Election Board certifies the petition:

i. Direct the Human Resources Department of the Tribe to perform a criminal background check and drug screening of the nominee and submit the results of each to the Election Board in accordance with this Title, which the Human Resources Department shall do;

ii. Direct the Human Resource Department to notify the nominee of where the nominee should go and what time the nominee should appear to have the drug screening conducted; and

iii. After receipt of the results of the criminal background check and drug screening, review the background and eligibility of nominee to ensure he or

she meets the qualifications for office set out in this Chapter; and

c. If the Election Board determines that the nominee meets the qualifications for office, certify the nominee as a candidate for office.

2. The results of the criminal background check and drug screening shall be submitted to the Election Board no later than the close of business on the last business day in June of the general election year in which the nominee desires to appear on the ballot. If the results of the criminal background check and drug screening are not submitted by this deadline, the nominee shall not be eligible to be placed on the ballot unless the nominee can affirmatively demonstrate the results were late due to no fault of the nominee.

3. The Election Board shall notify the nominee in writing of its decision to certify or not certify the nominee as a candidate. If the Election Board denies certification of the nominee as a candidate, the written notice shall include the reasons for denial and the right to appeal as provided in this Chapter and be sent by certified mail.

4. The information obtained from the criminal background check and drug screening required in this Section shall be kept strictly confidential. Only the Election Board shall be permitted to view or access such information. The Election Board and Human Resources Department shall maintain the results and information from such criminal background check and drug screening with its other records for two (2) years.

Section 9-6-6. Appeal of Denial of Certification.

1. A nominee who has been denied certification as a candidate may appeal the denial as provided in this Section.

2. If the basis of denial of certification as a candidate is the denial of certification of the nominating petition, the appeal shall be handled in accordance with appeals of petition certifications in Chapter 4 of this Title, except that such appeal must be filed within three (3) business days of receipt of the notice of denial.

3. Any other basis for denial of certification as a candidate may be appealed by filing a written appeal with the Election Board within three (3) business days of receipt of the

notice of denial. Such written appeal shall include substantiating evidence supporting the nominee's grounds for appeal. The Election Board shall immediately review the appeal and issue a decision based on the evidence provided and its own records. The decision of the Election Board shall be their final order subject to judicial review as provided in Chapter 2 of this Title.

Section 9-6-7. Posting of Candidates. Upon review and certification of candidates for office, the Election Board shall notify eligible voters by posting the candidates certified for office, including the office and/or voting district for which the candidate is running, at each Tribal government office and publication in the Tribal newsletter and the Tribe's website.

Section 9-6-8. Tribal Council Elections.

1. For members of the Tribal Council, only the registered voters in a voting district shall be entitled to vote for candidates of that voting district.

2. For the Chairperson, all registered voters shall be entitled to vote for the position.

Section 9-6-9. Residency Requirements.

1. In accordance with Article IV, Section 8 of the Constitution, any person elected to the Tribal Council must meet the residency requirements of this Section.

2. All Tribal Council members elected to the Tribal Council shall reside within 100 miles of the borders of one of the service areas of the Tribe established by an act of the United States Congress which is in the voting district from which they were elected.

3. The elected Chairperson shall reside within 100 miles of the headquarters of the Tribe or within any service area of the Tribe established by an act of the United States Congress.

4. Any person elected to the Tribal Council or as Chairperson who resides outside the applicable area for their office shall have ninety (90) days from the date of election to establish residency as required in this Section. Failure of an elected official to meet the residency requirements set forth in this Section shall constitute forfeiture of office and the candidate in the election for that office who had the next highest vote total shall succeed to the office after compliance with the

requirement of residency, provided that if there is no such candidate or such candidate declines to accept the office, the Tribal Council may treat the office as vacant and fill the vacancy in accordance with Chapter 7 of this Title.

5. Each person elected to the Tribal Council or as Chairperson shall submit proof to the Election Board that he or she has met the residency requirements set forth in this Section no later than thirty (30) days after the applicable time period to comply with the residency requirements set forth in this Section. Except as otherwise provided in this Section, proof of residency shall be at least one document from each of the following:

a. An original or copy of:

i. A current residential lease agreement;

ii. A mortgage statement issued within the last sixty (60) days;

iii. Real estate deed for residential property;

iv. A real estate tax statement or bill for the most current year in which real estate tax statements or bills were issued for the applicable county; or

v. An affidavit signed under oath, affirmation, or penalty of perjury from a landlord, roommate, spouse, or similar person with whom the person resides stating the person resides in property owned or leased by the affiant coupled with a lease agreement, mortgage statement, deed, or real estate tax statement or bill in the name of the affiant; and

b. An original or copy of a residential electric, gas, cable, water, sewer, internet, land-line phone, or other utility bill in the name of the person or landlord, spouse, family member, roommate, or similar person with whom the person resides providing an affidavit under this subsection issued within the last sixty (60) days.

Each document provided to demonstrate proof of residency must include the name of the elected member of the Tribal Council and the physical address of residence within the required area. Post office boxes are not sufficient to establish residency.

6. If a person elected to Tribal Council cannot provide proof of residency using the documents required in this Section, the person may provide an affidavit signed under oath, affirmation, or penalty of perjury stating:

a. The name of the person, which shall be the person elected to Tribal Council;

b. The physical address of the person's residency;

c. The date on which the person first began residing at the physical address indicated; and

d. A statement that the person will continue to meet the residency requirements of this Section during the person's term on the Tribal Council.

7. For purposes of this Section, "reside" means physically living in an area with an intent to remain and make that area a fixed home during the person's term on the Tribal Council.

Section 9-6-10. Installation of Candidates. Successful candidates for a position on the Tribal Council and Chairperson shall be sworn in and installed in office on the third Saturday in January at the Niobrara Headquarters. The Chairperson of the Election Board shall administer the oath of office.

Section 9-6-11. Term Limits.

1. No one shall serve on the Tribal Council, whether as a member or Chairperson, for more than two (2) consecutive terms. A person may serve two (2) consecutive terms, not run for office for a third term and run again in the next general election thereafter.

2. If a person remains in office on Tribal Council, whether as a member or Chairperson, for more than two (2) years from the date the individual is sworn in and installed in office, it shall constitute serving a full term for purposes of term limits.

CHAPTER 7
FILLING VACANCIES ON THE TRIBAL COUNCIL

Section 9-7-1. Applicability. This Chapter applies to filling all vacancies on the Tribal Council regardless of the basis or cause for the vacancy.

Section 9-7-2. Declaration of Vacancy.

1. The Tribal Council may declare a position on the Tribal Council vacant if any member or officer of the Tribal Council shall:

a. Die;

b. Resign;

c. Be removed by the Tribal Council;

d. Be recalled by the members of the Tribe;

e. Fail to attend three (3) consecutive Tribal Council meetings without just cause;

f. Be convicted of a felony or misdemeanor in any court of competent jurisdiction involving dishonesty, moral turpitude or accepting bribes;

g. Forfeit their office by failing to meet the residency requirements of Chapter 6 of this Title when there is no candidate from the most recent election to succeed to the office; or

h. Otherwise have or cause their position to be vacant.

2. A minimum vote of two-thirds (2/3) of the full Tribal Council, excluding the Tribal Council member or position being considered as vacant, shall be required to declare a position vacant.

Section 9-7-3. Procedures for Filling Unexpired Terms.

1. When the Tribal Council has declared a position on the Tribal Council vacant, it shall provide notice to the members of the Tribe in the Tribal newsletter, on the Tribal website and through any other reasonable means the Tribal Council deems appropriate.

2. Any enrolled member interested in serving as the replacement member or officer of the Tribal Council shall notify the Tribal Council Secretary and include information necessary to demonstrate or determine the enrolled member's qualifications for office under this Chapter and Chapter 6 of this Title and the Constitution.

3. The Tribal Council Secretary shall provide the Election Board with all notices from interested enrolled members. The Election Board shall review the background of every interested enrolled member and determine whether the enrolled member meets the qualifications to be a candidate for office set forth in this Chapter and Chapter 6 of this Title. The Election board shall certify or deny certification pursuant to Chapter 6 of this Title, including provisions governing notice and appeal.

4. The Election Board shall provide to the Tribal Council Secretary a final list of all interested enrolled members it certifies as candidates for appointment to fill the declared vacancy.

5. The Tribal Council shall appoint one of the certified candidates to the vacant position by a majority vote of the full Tribal Council, excluding the enrolled member or position being considered as vacant. If a tie between two (2) candidates shall occur, the tie shall be broken by a flip of a coin.

Section 9-7-4. Candidacy and Residency Requirements. In addition to any other qualifications of candidacy required by the laws of the Tribe, an enrolled member seeking appointment or appointed to fill a vacancy shall also, for a period of at least ninety (90) days prior to appointment:

1. In the case of a member of the Tribal Council, have resided within 100 miles of the borders of one of the service areas of the Tribe established by an act of the United States Congress which is in the voting district for which he or she will be or is appointed to represent and provide evidence of the same as set forth in Chapter 6 of this Title; and

2. In the case of the office of Chairperson, have resided within 100 miles of the headquarters of the Tribe or within any service area of the Tribe established by an act of the United States Congress and provide evidence of the same as set forth in Chapter 6 of this Title.

Section 9-7-5. Term of Office for Appointee.

1. Any enrolled member appointed to fill a vacant seat on the Tribal Council shall serve only for the balance of the unexpired term being filled.

2. If the length of the unexpired term an appointed enrolled member serves is more than two (2) years from the date the enrolled

member is sworn in and installed in office, it shall constitute serving a full term for purposes of term limits applicable to members and the Chairperson of the Tribal Council.

CHAPTER 8
RECALL ELECTIONS

Section 9-8-1. Recall from Office.

1. In accordance with Article VIII, Section 1 of the Constitution, any person elected or appointed to the Tribal Council shall be subject to recall from office as provided in this Chapter.

2. More than one person may be recalled simultaneously in a single recall election, but a separate recall petition must be filed for each person whose recall is sought.

Section 9-8-2. Petition for Recall. Recall shall be initiated by petition in accordance with Chapter 4 of this Title, subject to the following:

1. In the case of an elected person, only eligible voters entitled to vote for the person subject of the petition at the time he or she was elected shall be allowed to sign the petition;

2. In the case of an appointed person, only eligible voters entitled to vote for the person originally elected to the position shall be allowed to sign the petition;

3. The petition must be signed by at least thirty percent (30%) of the eligible voters allowed to sign the petition;

4. The Election Board shall conduct its review and certification in accordance with and subject to the time limits of Chapter 4 of this Title and, instead of posting notice of the certification, submit to the Tribal Council Secretary the following:

a. A certified copy of the entire petition as filed with the Election Board;

b. A statement under oath or affirmation signed by the Chairperson of the Election Board which includes:

i. The date and time the petition was filed with the Election Board; and

ii. That the copy of the petition provided to the Tribal Council Secretary is a true and accurate copy of the petition as filed with the Election Board; and

c. A certified copy of the Election Board's certification or denial;

5. The Tribal Council Secretary shall issue the certification decision of the Election Board as the determination of the Tribal Council Secretary on the validity of the petition and provide notice of the same in accordance with the requirements of Chapter 4 of this Title within forty-five (45) days of the submission of the petition to the Election Board;

6. In the event the Tribal Council Secretary fails to issue a determination of validity within forty-five (45) days of the filing of the petition, the petition shall be deemed automatically to be valid; and

7. In any appeal of the certification decision on a recall petition, the Tribal Council Secretary may be named with the Election Board.

Section 9-8-3. Calling of Election. Within five (5) days of certification of a recall petition, the Election Board shall set a date for a recall election to be held no later than sixty (60) days from the date of certification, unless another election is already scheduled ninety (90) days or less from the date of certification and there is sufficient time to provide all notices and ballots within the time limits provided by the laws of the Tribe.

Section 9-8-4. Notice of Election. Prior to mailing ballots to eligible voters, the Election Board shall mail notice of the recall election to all eligible voters. The notice shall contain:

1. The date of the recall election;

2. The name and position of the official subject to the recall election;

3. Any statement against or in favor of the recall submitted by the sponsor of the recall petition or the official subject to the recall election and not found to be inappropriate by the Election Board;

4. Any statement against or in favor of the recall submitted by an eligible voter and approved as appropriate and informative by the Election Board, provided that the Election Board shall have the authority to limit the total number of such statements not from the sponsor of the recall petition or the official subject to the recall election to one in favor and one against; and

5. Notification that ballots will be mailed and must be returned by the date of the recall election.

Section 9-8-5. Election Procedures. Except as otherwise provided in this Chapter, the procedures applicable to all elections shall apply to recall elections and all eligible voters entitled to vote for the position subject to recall shall be entitled to vote in the recall election.

Section 9-8-6. Number of Votes Required for Recall. If a person subject to a recall election does not receive a majority of votes in favor of retaining the person in office, the person shall be deemed recalled and the Tribal Council shall declare the position vacant and fill the position in accordance with Chapter 7 of this Title.

CHAPTER 9
INITIATIVE AND REFERENDUM

Section 9-9-1. Referendum and Initiative.

1. In accordance with Article IX, Section 1 of the Constitution, an action, other than a refusal or decision not to act, of the Tribal Council taken pursuant to its enumerated powers may be referred to a vote of the eligible voters as provided in this Chapter.

2. In accordance with Article IX, Section 2 of the Constitution, a matter of concern to the Tribe not previously considered or acted on by the Tribal Council may be presented for vote of the eligible voters as provided in this Chapter.

Section 9-9-2. Petition for Referendum or Initiative. Referendum and initiative shall be initiated by petition in accordance with Chapter 4 of this Title, subject to the following:

1. The petition must be signed by at least forty-five percent (45%) of the total number of eligible voters in the last general election;

2. The petition shall be filed with the Chairperson of the Tribal Council who shall issue a receipt to the sponsor in accordance with the requirements of Chapter 4 of this Title;

3. The Chairperson shall forward the petition and information as to the date of filing to the Election Board within three (3) business days of filing;

4. If the Chairperson refuses to accept a petition for filing or fails or refuses to forward the petition to the Election Board, the sponsor may file the petition directly with the Election Board;

5. The Election Board shall conduct its review and certification in accordance with and subject to the time limits of Chapter 4 of this Title and, instead of posting notice of the certification, submit to the Tribal Council Secretary the following:

a. A certified copy of the entire petition as received by the Election Board from the Chairperson;

b. A statement under oath or affirmation signed by the Chairperson of the Election Board which includes:

i. The date and time the Chairperson stated the petition was filed with the Chairperson; and

ii. That the copy of the petition provided to the Tribal Council Secretary is a true and accurate copy of the petition as received by the Election Board from the Chairperson; and

c. A certified copy of the Election Board's certification or denial;

6. The Tribal Council Secretary shall issue the certification decision of the Election Board as the determination of the Tribal Council Secretary on the validity of the petition and provide notice of the same in accordance with the requirements of Chapter 4 of this Title within fifteen (15) days of the receipt of the petition from the Election Board;

7. In the event the Tribal Council Secretary fails to issue a determination of validity within fifteen (15) days of receiving the petition, the Election Board's certification decision shall be deemed the determination of validity; and

8. In any appeal of the certification decision on a referendum or initiative petition, the Tribal Council Secretary may be named with the Election Board.

Section 9-9-3. Calling of Election. Within five (5) days of certification of a petition for referendum or initiative, the Election Board shall set a date for a special election to be held no later than sixty (60) days from the date of certification, unless another election is already scheduled ninety (90) days or less from the date of certification and there is sufficient time to provide all notices and ballots within the time limits provided by the laws of the Tribe.

Section 9-9-4. Notice of Election. Prior to mailing ballots to eligible voters, the Election Board shall mail notice of the special election to all eligible voters. The notice shall contain:

1. The date of the special election;

2. A short description or title of the referendum or initiative issue subject of the special election as it will appear on the ballot;

3. The full text of the referendum or initiative subject of the special election;

4. Any analysis or argument against or in favor of the referendum or initiative submitted by the sponsor of the petition or any eligible voter and approved as appropriate and informative by the Election Board, provided that the Election Board shall have the authority to limit the total number of such analyses or arguments to one in favor and one against;

5. Any analysis or argument against or in favor of the referendum or initiative submitted by the Tribal Council to the Election Board; and

6. Notification that ballots will be mailed and must be returned by the date of the special election.

Section 9-9-5. Election Procedures. Except as otherwise provided in this Chapter, the procedures applicable to all elections shall apply to referendum and initiative elections and all eligible voters shall be entitled to vote in the special election.

Section 9-9-6. Number of Votes Required for Referendum or Initiative.

1. A referendum or initiative shall pass only if:

a. At least thirty percent (30%) of the eligible voters cast a vote in the election for the referendum or initiative; and

b. A majority of the votes cast are in favor of the referendum or initiative.

2. All determinations of the sufficiency of the number of ballots cast shall be based upon the number of registered voters on the final approved voter registration list of the Election Board.

Approved 2/21/16 –Resolution 16-12
Revised 2/17/18 – Resolution 18-09
Revised 2/18/22 – Resolution 22-03
Revised 2/13/24 – Resolution 22-08

TITLE X
ENROLLMENT AND MEMBERSHIP

CHAPTER 1
GENERAL PROVISIONS

Section 10-1-1. Authority.

1. This Title is enacted by the Tribal Council in accordance with Article II, Section 2 of the Constitution.

2. The Tribe shall have exclusive jurisdiction to determine membership in the Tribe as provided in this Title.

Section 10-1-2. Purpose. Tribal membership is central to the health, welfare, economic security, and political integrity of the Tribe and elemental to the Tribe's very existence as a sovereign and independent political community. The purpose of this Title is to implement Article II, Section 2 of the Constitution and provide rules, regulations, and procedures governing the enrollment and honorary membership of eligible individuals in the Tribe as an exercise of the inherent authority of the Tribe.

Section 10-1-3. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Base rolls" means the tribal rolls of April 1, 1934, January 1, 1935, or June 18, 1965, as compiled by the Bureau of Indian Affairs.

2. "Birth certificate" means an original or certified copy of a birth certificate which is not in any way altered or otherwise illegible.

3. "Certified copy" means an official copy or reproduction of an original document signed and certified by the authority issuing it.

4. "Committee" means the Ponca Tribe of Nebraska Enrollment Committee.

5. "Death certificate" means an original or certified copy of a death certificate which is not in any way altered or otherwise illegible.

6. "Department" means the Ponca Tribe of Nebraska Enrollment Department.

7. "Enrollment" means official action taken under the terms of this Title making an individual an enrolled member of the Tribe.

8. "Incapacitated person" means an incapacitated person as defined in Title III of this Code.

9. "Membership roll" means the current roll of all enrolled members of the Tribe maintained by the Committee in accordance with this Title.

Section 10-1-4. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 10-1-5. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

CHAPTER 2
ENROLLMENT COMMITTEE

Section 10-2-1. Establishment. There is hereby established an Enrollment Committee whose powers and duties shall be as set forth in this Chapter.

Section 10-2-2. Composition.

1. The Committee may consist of up to six (6) members who shall be appointed by the Tribal Council.

2. Members of the Committee shall be subject to the same rules, regulations, and policies applicable to committees of the Tribal Council.

Section 10-2-3. Qualifications. To be qualified to be appointed to the Committee, a person shall:

1. Be an enrolled member of the Tribe;

2. Be at least the age of majority;

3. Have no conflicts of interest, as defined in this Chapter;

4. Be willing and able to comply with the ethical duties of Committee members, as defined in this Chapter;

5. Be willing and able to perform the Committee's duties in compliance with the laws of the Tribe;

6. Have or acquire knowledge of this Title, unless the Tribal Council waives such qualification for the appointee;

7. Have or acquire knowledge, experience, or familiarity with enrollment and membership, unless the Tribal Council waives such qualification for the appointee;

8. Have the time available to actively fulfill the duties of a member of the Committee; and

9. Be willing to receive orientation and training regarding the duties of the Committee.

Section 10-2-4. Term of Office. The term of office for members of the Committee shall be set by the Tribal Council at the time of appointment. If the Tribal Council does not set a term for a member at the time of appointment, the member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

Section 10-2-5. Compensation. Members of the Committee shall be compensated at a rate set by the Tribal Council. In addition, Committee members shall be paid for mileage for every Committee meeting attended at the standard rate established for Tribal officers and employees.

Section 10-2-6. Resignation and Removal.

1. Any member of the Committee may resign from his or her position by delivering a written resignation to the Tribal Council.

2. The Tribal Council may, by majority vote, remove a member of the Committee for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty;

c. Malfeasance or misfeasance in the handling of enrollment matters;

d. Acceptance or solicitation of bribes;

e. Violation of the ethical duties or conflict of interest provisions of this Chapter;

f. Unexcused absence from three (3) or more committee meetings;

g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the member ineligible for appointment if the event had occurred prior to appointment.

3. The Tribal Council's decision to remove a member of the Committee shall be final and not subject to challenge, review or appeal.

Section 10-2-7. Vacancies. In the event of a vacancy on the Committee, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Committee member being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 10-2-8. Officers.

1. The Committee shall elect from its members a Chairperson and a Secretary at its first meeting in each calendar year or at the next meeting of the Committee if a vacancy occurs in the office of Chairperson or Secretary.

2. The Chairperson shall call and preside over Committee meetings. The Chairperson shall report to the Tribal Council as required.

3. The Secretary shall be responsible for assuring the timely and proper production, distribution, and storage of all written records of the Committee, including administrative and financial documents. The Secretary shall keep minutes of all

meetings of the Committee and shall keep informed about the Committee's expenditures and budget.

Section 10-2-9. Ethics and Conflicts.

1. No person may be appointed to the Committee who:

a. Is employed in the Department;

b. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Committee; or

c. Has a similar interest that would necessarily conflict with the impartial performance of a Committee member's duties.

2. The Tribal Council's determination whether an applicant for the Committee is barred from appointment by a conflict of interest shall be final and not subject to challenge, review or appeal.

3. Committee members shall:

a. Avoid the appearance of impropriety;

b. Not act in an official capacity when a matter before the Committee directly and specifically affects a member's own interests or the interests of his or her immediate family;

c. Not attempt to exceed the authority granted to Committee members by this Title;

d. Recognize that the authority delegated by this Title is to the Committee as a whole, not to individual members and, accordingly, the powers of the Committee may only be exercised by the Committee acting through the procedures established by this Title;

e. Not take action on behalf of the Committee unless authorized to do so by the Committee;

f. Not involve the Committee in any controversy outside the Committee's duties; and

g. Hold all confidential information revealed during the course of Committee business in strict confidence and discuss or disclose such information only to persons who are

entitled to the information and only for the purpose of conducting official Committee business.

Section 10-2-10. Powers and Duties of Committee. The power, authority and duties of the Committee shall be as follows:

1. To review applications submitted by the Department at a duly called meeting of the Committee for determination of eligibility in accordance with this Title and the Constitution;

2. To recommend enrollment or denial of enrollment of individuals in accordance with this Title;

3. To dis-enroll individuals in accordance with and as provided in this Title;

4. To approve all forms created by the Department;

5. To make recommendations to the Tribal Council concerning amendments to this Title;

6. To approve all amendments to the policies and procedures of the Department;

7. To keep a current roll of members of the Tribe as provided in this Chapter;

8. To conduct a census of the members of the Tribe as provided in this Chapter;

9. To ensure that the requirements of this Title and the Constitution are carried out and enforced; and

10. To otherwise conduct, manage, and supervise enrollment and perform such other duties as prescribed in this Title.

Section 10-2-11. Membership Roll.

1. The Committee shall maintain a current roll of all enrolled members of the Tribe.

2. The roll shall contain, for each person listed, a roll number, name, address, sex, date of birth, degree of Ponca blood, degree of total Indian blood, date of enrollment, and a remarks column which shall contain the name and degree of relationship of the ancestor or ancestors through whom eligibility was established.

3. Notwithstanding anything to the contrary in this Title, the base rolls of the Tribe shall be the authoritative rolls to be used in establishing eligibility for membership and enrollment.

Section 10-2-12. Annual Census.

1. Once each year, the Committee shall conduct a census of the enrolled members of the Tribe and amend the roll of all enrolled members according to the findings of the census.

2. Information to be gathered during the census shall include, but not be limited to, persons enrolled, dis-enrolled or relinquished, and deceased during the preceding year.

3. The census shall be conducted by the Committee during the month of April and shall be completed no later than April 30th of each year.

Section 10-2-13. Quorum. A majority of members of the Committee shall constitute a quorum for conducting business.

Section 10-2-14. Meetings.

1. The Committee may hold meetings as it deems necessary.

2. The Chairperson of the Committee shall have the authority to call a meeting of the Committee as he or she sees fit in coordination with the Enrollment Specialist. In the event of vacancy in the office of Chairperson of the Committee, the Enrollment Specialist shall have the authority to call a meeting of the Committee. If it appears that the Committee has no official business to act on, a meeting which has been called or scheduled may be canceled by the Chairperson of the Committee.

3. All minutes of Committee meetings shall be kept in the Department and a copy shall be submitted to the Secretary of the Tribal Council.

CHAPTER 3
ENROLLMENT DEPARTMENT

Section 10-3-1. Establishment.

1. There is hereby established an Enrollment Department as an agency of the Tribe, under the authority of the Tribe, and

delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of an Enrollment Specialist as director and such other personnel and employees as may be required.

3. The Enrollment Specialist shall be suitably skilled and capable of working with the Tribal Council, the Committee, the Election Board, members of the Tribe, and potential members.

Section 10-3-2. General Authority. The Department shall have the following powers, duties, and responsibilities:

1. To respond to and keep a record of all application requests;

2. To receive all applications;

3. To review all applications for contents and completeness;

4. To notify individuals of missing information needed to complete review of a request for enrollment or relinquishment;

5. To research records to obtain adequate documentation for enrollment actions;

6. To investigate and review an applicant's eligibility for membership and enrollment;

7. To request any agency of the Tribe with authority to conduct genetic testing of applicants for the purpose of establishing lineal descendancy;

8. To ensure that all applications and documentation are complete before submitting to the Committee;

9. To meet with the Committee at a duly called Committee meeting;

10. To record all actions taken on specific enrollment matters;

11. To maintain accurate and current enrollment files on each member and applicant for enrollment;

12. To protect the privacy of all applicants and members of the Tribe;

13. To act as the custodian of the membership roll of the Tribe;

14. To develop application forms, notices, and other forms and documents, subject to the approval of the Committee, as required by this Title and the duties of the Department;

15. To establish policies and procedures, subject to approval of the Committee, for its internal operations; and

16. To perform all other duties delegated or assigned to the Department by this Title or other laws of the Tribe, the Tribal Council, or the Committee, and otherwise implement this Title.

CHAPTER 4
ENROLLMENT RECORDS

Section 10-4-1. Enrollment Records.

1. For purposes of maintaining a record of actions on applications, relinquishments, acknowledgments of paternity, deaths, and similar matters, the Committee and Department shall use and maintain an enrollment record.

2. Each enrollment record shall, at a minimum and subject to availability, contain:

a. Application;

b. Family tree, as completed;

c. Birth certificate;

d. Any correspondence;

e. All other documentation on the person pertinent to membership in the Tribe; and

f. Death certificate.

3. Notwithstanding the existence of individual enrollment records, the membership roll established and maintained by the Committee in accordance with this Title shall be the only official

record of enrollment in the Tribe and shall be utilized for all purposes related to determining the enrollment status of an individual.

Section 10-4-2. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, individual enrollment records shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person to whom the record or information in such record pertains or, in the case of a minor or incapacitated person, the minor's or incapacitated person's parent, guardian, or custodian;

b. The Committee and personnel of the Department as necessary to fulfill their duties and perform their functions under this Title;

c. Other Tribal departments and agencies and the Tribal Attorney in the normal course of business of the Tribe, provided that such access to or provision of information from individual membership records is limited to the minimal information necessary; and

d. To others when the person to whom the record pertains, or the parent, guardian, or custodian of a minor or incapacitated person to whom the record pertains, has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Department or Committee from releasing information, including names, addresses, dates of birth, dates of enrollment, social security numbers, enrollment numbers, and degrees of Ponca and total Indian blood:

a. To the Tribal Attorney for purposes of assisting or representing the Tribe, Committee, or Department;

b. In a proceeding in a court to which the Department, Committee, or Tribe is a party;

c. In response to a valid subpoena or court order;

d. Confirming the enrollment status of an individual;

e. For the purpose of assisting other Tribal departments, instrumentalities, and economic enterprises with determining enrollment, membership, or eligibility for enrollment or membership of individuals in the normal course of business of such Tribal departments, instrumentalities, and economic enterprises, provided that such information is limited to the minimal information necessary;

f. For the purpose of verifying enrollment, membership, or eligibility for enrollment or membership of individuals to courts and agencies of other governments when there is a legitimate need for such information, including when such information is necessary to prove or support an individual's eligibility for a program of such other government, provided that such release of information is limited to the minimal information necessary; or

g. When a person to whom the information pertains, or the parent, guardian or custodian of a minor or incapacitated person to whom the membership file pertains, authorizes the release of information or otherwise waives confidentiality expressly in writing; or

h. Where the laws of the Tribe otherwise expressly permit or require the release of the information.

3. Any person receiving information under this Section, other than the individual applicant or member whose information is involved or his or her parent or guardian, shall maintain the confidentiality of such information and shall not use, disclose, re-disclose, or permit any unauthorized access to such information to any person except for the purpose for which such information was provided or in accordance with the written authorized release or waiver of confidentiality of the individual to whom such information pertains.

4. Records related to individual enrollment or membership shall not be removed from the offices of the Department.

5. The Department shall have the authority to charge any individual or agency outside of the Tribe for the costs of copying any records or information authorized to be released under this Section and secure the written agreement of such individual or agency to maintain the confidentiality of information received under this Section.

6. In addition to any other consequences or other remedies for a violation of this Section provided under the laws of the Tribe, any person, including a member of the Tribal Council and any department, agency, commission, committee, instrumentality, economic enterprise, official, or employee of the Tribe, who knowingly or willfully uses, discloses, re-discloses, or permits unauthorized access to confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 10-4-3. Access to Roll.

1. Notwithstanding anything to the contrary in this Title and subject to the removal of private information as provided in this Section, the membership roll, including the count of names on such roll, shall be available and open to inspection to any of the following:

a. The Tribal Council, members of the Tribal Council, and any department, agency, commission, committee, instrumentality, economic enterprise, official, or employee of the Tribe for any legitimate Tribal purpose; and

b. Agencies of the United States government for the purpose of establishing the approved membership roll or for purposes of funding, services, or other benefits provided to the Tribe and its members from the United States government.

2. The Department shall make available to the Tribal Council, members of the Tribal Council, and any department, agency, commission, committee, instrumentality, economic enterprise, official, or employee of the Tribe counts of enrolled members and enrollment lists, and subsets thereof, that may contain the names, addresses, and contact information of individual enrolled members for any legitimate Tribal purpose. Any request for such lists or subsets of lists shall be submitted in writing, including electronic mail, to the Department and set forth the purpose of such request and the uses to which the list will be put to demonstrate a legitimate Tribal purpose.

3. For purposes of this Section, a "legitimate Tribal purpose" includes, but is not limited to:

a. The Tribal Council, members of the Tribal Council, departments, agencies, commissions, committees, instrumentalities, and economic enterprises of the Tribe

communicating with enrolled members regarding the business, benefits, events, and other matters of the Tribe;

b. The Tribal Council, members of the Tribal Council, departments, agencies, commissions, committees, instrumentalities, and economic enterprises of the Tribe calculating enrollment statistics for purposes of obtaining funding, services, or other benefits from other governmental agencies and private parties;

c. Members of the Tribal Council obtaining lists of the names and addresses of enrolled members for purposes related to the business of the Tribal Council or Council member, including communicating with constituents and knowledge of members residing in their districts;

d. Any purpose which has previously been determined to constitute a legitimate Tribal purpose for the same, equivalent, or similarly situated department, agency, commission, instrumentality, economic enterprise, official, or employee requesting such information; and

e. Any other purpose permitted under the laws of the Tribe or otherwise reasonable and acceptable.

4. In the event the Department cannot or does not determine that an identified purpose constitutes a legitimate Tribal purpose, the Tribal Council shall have the authority to make such determination, which shall be binding on the Department and Committee and not subject to challenge or appeal in any court or tribunal.

5. The Department shall remove enrollment numbers, dates of birth, degrees of Ponca blood and total Indian blood, dates of enrollment, remarks, phone numbers, social security numbers, other private information from any list provided to or allowed to be inspected under this Section.

6. Any person receiving lists of members under this Section shall not disclose, re-disclose, or permit any unauthorized access to such lists or information on such lists to any person except for the purpose for which such information was provided and shall protect any personal information on such lists, including addresses, from any disclosure to or access by third parties.

7. The Department shall have the authority to charge any individual or agency outside of the Tribe for the costs of copying

any records or information authorized to be released under this Section and secure the written agreement of such individual or agency to maintain the confidentiality of information received under this Section.

8. In addition to any other consequences or other remedies for a violation of this Section provided under the laws of the Tribe, any person, including a member of the Tribal Council and any department, agency, commission, committee, instrumentality, economic enterprise, official, or employee of the Tribe, who knowingly or willfully violates any provision of this Section or uses, discloses, re-discloses, or permits any unauthorized access to lists, information on such lists, or any other confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars ($800).

Section 10-4-4. Corrections to Records.

1. Upon receipt of appropriate documentation, the Department shall make any corrections and updates to the membership roll and enrollment records as necessary, including but are not limited to the following:

a. Date of birth;

b. Name change;

c. Family relationships;

d. Revisions to degrees of Ponca or total Indian blood;

e. Removal from membership roll due to death; and

f. Relinquishment of enrollment in the Tribe.

2. Any correction or update to the membership roll or an enrollment record shall have documentation to support the changes being made. Without limiting the documentation which may be used to make an update or correction to the membership roll or an enrollment record, the following documentation shall be deemed adequate to make the update or correction described:

a. For a name change, a marriage license, divorce decree, adoption decree, or court order changing an individual's name;

b. For an address change, an address form, written request, or notification signed by an adult member on his or her own behalf or as parent, guardian, or custodian of a minor or incapacitated person; and

c. For death, a death certificate or a notarized statement made under oath from an individual who attended the funeral.

CHAPTER 5
ENROLLMENT PROCEDURES

Section 10-5-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Applicant" means the individual named on a submitted application for enrollment who is being considered for enrollment in the Tribe.

2. "Application" means an application for enrollment made on the form approved by the Committee and includes and any all information and documentation submitted with or on the application or otherwise supporting or related to the application, including information or documentation obtained by the Department from its own investigations.

3. "Biological genealogical information" means documentation which tends to support or negate an assertion that the person to whom the documentation relates is or was a lineal descendant of an enrolled member of the Tribe or an individual on one of the base rolls.

4. "Biological lineal descendant" means a person related by blood in any degree to an individual.

Section 10-5-2. Eligibility for Enrollment.

1. The following individuals shall be eligible for enrollment in the Tribe:

a. All individuals and their biological lineal descendants listed on one of the base rolls; and

b. All individuals entitled to be listed on the membership roll of June 18, 1965 who were not listed on the roll, notwithstanding the application or appeal deadline dates of Public Law 87-629, 76 Stat. 429.

2. Notwithstanding subsection 1 of this Section, the following individuals shall not be eligible for enrollment in the Tribe:

a. Individuals of Indian blood of another Indian tribe who do not possess any Ponca blood;

b. Non-biological lineal descendants of members, including by adoption and assisted reproduction, who do not possess any Ponca blood;

c. Other individuals who do not possess any Ponca blood;

d. Individuals who have relinquished their enrollment in the Tribe within the previous three (3) years, except as otherwise provided in this Title;

e. Individuals who are enrolled in another federally recognized Indian tribe and have not either:

i. Relinquished their enrollment in the other tribe; or

ii. Made their relinquishment of enrollment in the other tribe conditional upon the individual's enrollment in the Tribe; and

f. Individuals who otherwise do not meet the requirements set forth in subsection 1 of this Section.

2. Notwithstanding anything to the contrary in this Title, a minor who is enrolled in another federally recognized Indian tribe but is otherwise eligible for enrollment in the Tribe shall be considered eligible for membership and eligible for enrollment in the Tribe for purposes of any child custody proceeding involving the minor in any court, including any proceeding subject to the Indian Child Welfare Act.

Section 10-5-3. Dual Enrollment.

1. Any individual who is enrolled in another federally recognized Indian tribe shall relinquish all rights to enrollment he or she may have in the other tribe as a condition of his or her enrollment in the Tribe and not be eligible for enrollment in the Tribe unless and until he or she has relinquished all enrollment rights in the other tribe.

2. Any individual who has received a per-capita payment from another Indian tribe shall not be entitled to receive a per-capita payment from the Tribe for a period of three (3) years from the individual's official date of enrollment in the Tribe. For purposes of this subsection, "per-capita payment" means a distribution of money to all members of a tribe or identified groups of members paid from treaty obligations, acts of the United States Congress, and/or net revenues of a tribe or its economic enterprises, but does not include payments which have been set aside by a tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

3. Any enrolled member of the Tribe who becomes enrolled in another federally recognized Indian tribe shall be deemed to have abandoned his or her enrollment in the Tribe and be dis-enrolled pursuant to this Title.

4. Notwithstanding anything to the contrary in this Title, a minor who is enrolled in the Tribe and in another federally recognized Indian tribe shall be and remain enrolled in the Tribe while under the age of majority. However, upon the minor reaching the age of majority, the Department shall notify the minor in writing that he or she must choose whether to remain a member of the Tribe and relinquish membership in the other tribe. The notice shall provide a reasonable time within which to accomplish the relinquishment and to provide documentation to the Department. If the minor fails to relinquish membership in the other tribe within the time allowed, the Department shall begin proceedings to review the minor's enrollment and dis-enroll the minor as provided in this Title.

Section 10-5-4. Burden of Proof. The burden of proving that an individual is eligible for enrollment in the Tribe shall be solely on:

1. The individual seeking enrollment; or

2. If enrollment is sought on behalf of an individual as permitted in this Chapter, the person who filed the application for enrollment.

Section 10-5-5. Application.

1. Any individual who wishes to be considered for enrollment in the Tribe shall file an application with the Department on the form prescribed by the Department in accordance with this Title.

2. Applications may be filed by any individual on his or her own behalf or may be filed by a parent, guardian, custodian, next of kin, or official of the Tribe on behalf of:

a. A minor;

b. A deceased person;

c. An incapacitated person or other person in need of assistance; or

d. A member of the armed forces stationed outside the continental United States.

3. Applicants shall submit, at a minimum, the following information:

a. Name, address, and social security number of the applicant;

b. Indian, maiden, or other name by which the applicant is known;

c. Date and place of birth of the applicant;

d. Birth certificate;

e. If making the application on behalf of another, the name, address, and relationship of the person making the application;

f. The name and enrollment number of the applicant's parents, grandparents, or other lineal ancestors who are or were enrolled in the Tribe;

g. The name of any federally recognized Indian tribes, other than the Tribe, in which each parent is enrolled, if any, and enrollment number;

h. If Indian blood from other tribes is to be considered or recorded, an original certified family tree or certificate of degree of Indian blood from the other tribes;

i. The name, address, and degree of Indian blood, if any, both Tribal and total, as verified by the Department in accordance with official records, of each parent and grandparent of the applicant;

j. Whether the applicant is enrolled with another tribe and, if so, whether the applicant has either:

i. Relinquished his or her enrollment in the other tribe; or

ii. Made his or her relinquishment of enrollment in the other tribe conditional upon the individual's enrollment in the Tribe;

k. Whether the applicant has previously relinquished his or her enrollment in the Tribe and, if so, the date such relinquishment became effective; and

l. Certification that the information given is true and an acknowledgment that, if found fraudulent in any way, may be grounds for removal of the applicant’s name from the membership roll.

4. Each application shall be accompanied by adequate documentation demonstrating eligibility for enrollment, including, but not be limited to:

a. Proof of biological parentage, such as:

i. A birth certificate which lists the parent with Ponca ancestry as a parent;

ii. A parentage order issued by a court of competent jurisdiction which demonstrates parentage based on genetic testing at least as stringent as that required by this Chapter; or

iii. The results of a genetic test conducted in accordance with this Chapter;

b. Biological genealogical information, such as current and historic tribal membership rolls; census records; records of birth, death, marriage, and divorce; records relating to the ownership, possession, transfer, and status of real property; school, church, and court records; records relating to military service; newspaper and other publications; diaries; correspondence; scrapbooks; and photographs and notations thereon;

c. If the applicant's name has been changed:

i. The marriage license or certificate or divorce decree showing the applicant's original name, if the change is due to marriage or divorce;

ii. The adoption decree showing the applicant's original and changed names, if the name change is due to adoption; or

iii. The court order showing the applicant's original and changed names as well as the names of the applicant's biological parents, if necessary;

d. If the applicant has been adopted, the adoption decree showing the names of the applicant's biological parents;

e. If the applicant is enrolled in another federally recognized Indian tribe, a signed and notarized written request to relinquish from that tribe, which may be contingent on enrollment in the Tribe, and a written response from that tribe; and

f. Any other evidence which the applicant believes may assist the Department and Committee in determining whether the applicant meets the requirements for enrollment in the Tribe set forth in Article II, Section 1 of the Constitution and this Title.

Section 10-5-6. Receipt of Application.

1. Upon receipt of an application, the Department shall stamp the application with the date it was received.

2. Within ten (10) days of receipt of an application, the Department shall review the application to determine if it is complete and provide a notice to the applicant in writing. The notice shall:

a. Inform the applicant that the Department has received the application;

b. Inform the applicant whether the application is complete and accompanied by all needed documentation;

c. If the application is complete, inform the applicant that the Department will review the application to make an initial determination of the applicant's eligibility for enrollment; and

d. If the application is not complete or not accompanied by all needed documentation, include the information required for a notice of deficiency as provided in this Chapter.

3. If the Department determines that an application is complete, the Department shall make an initial determination of eligibility of the applicant for enrollment based on the application and any investigation the Department may conduct on its own.

4. If the Department makes an initial determination that an applicant is eligible for enrollment, the Department shall submit the application to the Committee for review at its next scheduled meeting. If the Committee has not set a scheduled meeting, the Enrollment Specialist shall ensure a meeting is called in accordance with this Title.

5. Upon completing its initial determination of eligibility for enrollment, the Department shall provide notice to the applicant in writing. The notice shall:

a. Inform the applicant that the Department has reviewed the application and made an initial determination of eligibility for enrollment;

b. If the Department makes an initial determination that an applicant is eligible for enrollment, inform the applicant:

i. That the Department has made an initial determination that the applicant is eligible;

ii. That the application will be forwarded to the Committee;

iii. That the Committee will review the application at its next scheduled meeting; and

iv. State the date and time of the Committee's next scheduled meeting, if known; and

c. If the Department determines that an applicant is not eligible for enrollment, inform the applicant:

i. The basis for the Department's determination that the applicant is not eligible for enrollment;

ii. If the Department's determination is based on a lack of information or documentation, that the applicant may re-apply documentation as provided in this Chapter for enrollment with the needed information or documentation; and

iii. That the applicant has a right to appeal the Department's determination in accordance with this Title.

Section 10-5-7. Committee Review.

1. Upon receipt of an application with an initial determination of eligibility from the Department, the Committee shall review the application at a duly called meeting of the Committee.

2. If the Committee determines that the application is not complete or not accompanied by sufficient documentation upon which a determination of eligibility for enrollment can be made, it may table the application. In all other cases, the Committee shall make a determination of the applicant's eligibility for enrollment based on the application.

3. The Committee may give such weight that it believes is appropriate to the information and documents provided by the applicant or obtained by the Department.

4. When the Committee makes a determination of an applicant's eligibility for enrollment, it shall make a report on the application, which shall be signed by at least two (2) members of the Committee, and include:

a. The Committee's findings regarding the applicant's eligibility;

b. The Committee's determination of the applicant's eligibility for enrollment;

c. If the Committee determines that the applicant is eligible for enrollment, a recommendation that the applicant be enrolled; and

d. If the Committee determines that the applicant is not eligible for enrollment, a recommendation that the applicant be denied enrollment.

5. Upon completing its review of an application, the Department shall provide notice to the applicant in writing. The notice shall:

a. Inform the applicant that the Committee has received the application;

b. Inform the applicant that the Committee has reviewed the application;

c. If the Committee tables the application:

i. Inform the applicant that the application is not complete and/or not accompanied by all needed documentation;

ii. Inform the applicant that the Committee has tabled action on the application; and

iii. Include the information required for a notice of deficiency as provided in this Chapter;

d. If the Committee makes a determination of eligibility for enrollment, inform the applicant that the Committee made a determination of eligibility for enrollment;

e. If the Committee determines that the applicant is eligible for enrollment, inform the applicant:

i. That the Committee has made a determination that the applicant is eligible;

ii. That the Committee will forward a report to the Tribal Council with a recommendation for enrollment; and

iii. State the date and time of the Tribal Council meeting where the applicant's enrollment will be considered, if known; and

f. If the Committee determines that an applicant is not eligible for enrollment, inform the applicant:

i. That the Committee has made a determination that the applicant is not eligible for enrollment;

ii. The basis for the Committee's determination that the applicant is not eligible for enrollment; and

iii. That the Committee will forward a report to the Tribal Council with a recommendation that the applicant not be enrolled in the Tribe.

6. Upon completion of its report on the application, the Committee shall submit it to the Department, who shall:

a. Based on the Committee's recommendation, prepare a draft resolution for Tribal Council either enrolling the applicant in the Tribe or denying enrollment in the Tribe;

b. Have the application placed on the agenda for the next available Tribal Council meeting; and

c. Submit the draft resolution and the Committee's report on the application to the Tribal Council for the Tribal Council meeting where the application will be heard.

Section 10-5-8. Tribal Council Approval.

1. Official enrollment in the Tribe shall be by resolution adopted by the Tribal Council in accordance with the laws of the Tribe.

2. Upon an application being placed on the agenda of a Tribal Council meeting and receipt of a draft resolution to enroll

or deny enrollment to an applicant along with the Committee's report on the application, the Tribal Council shall review the resolution and report.

3. After review, the Tribal Council may:

a. Accept the recommendation of the Committee and adopt the resolution as submitted by the Department, with or without modification;

b. Reject the recommendation of the Committee and adopt such resolution reflecting the Tribal Council's decision on the applicant's enrollment as the Tribal Council may decide; or

c. Return the application to the Committee with instructions to reconsider the application, including permitting the applicant to provide any additional information or documentation the Tribal Council may require.

Section 10-5-9. Notice of Enrollment Action. Upon the Tribal Council completing its review of the Committee's report on the application and consideration of the resolution, the Department shall provide notice to the applicant in writing by certified mail. The notice shall:

1. Inform the applicant that the Tribal Council has reviewed the applicant's request for enrollment;

2. If the Tribal Council returns the application to the Committee:

a. Inform the applicant that the Tribal Council has returned the application to the Committee for reconsideration;

b. If the Tribal Council decided that the applicant needs to provide further information or documentation, include the information required for a notice of deficiency as provided in this Chapter;

3. If the Tribal Council adopts a resolution to enroll the applicant in the Tribe, include a certificate of enrollment prepared in accordance with this Chapter and inform the applicant:

a. That the Tribal Council has enrolled the applicant in the Tribe;

b. That the individual has been added to the membership roll; and

c. Of the member's enrollment number assigned by the Department; and

4. If the Tribal Council adopts a resolution denying the applicant enrollment in the Tribe, inform the applicant:

a. That the Tribal Council has denied the applicant's enrollment in the Tribe;

b. The reasons the Tribal Council denied the applicant's enrollment; and

c. That the applicant has a right to appeal the Tribal Council's denial in accordance with this Title.

Section 10-5-10. Enrollment of Member.

1. Upon adoption of a resolution enrolling an applicant in the Tribe, the Department shall:

a. Immediately add the individual to the membership roll;

b. Assign the member an enrollment number;

c. Complete a certificate of enrollment in accordance with this Section; and

d. Provide notice to the member in accordance with this Chapter.

2. Each individual who is enrolled in the Tribe shall be issued a certificate of enrollment. The certificate of enrollment shall include the following information:

a. The full name of the member;

b. The member's enrollment number;

c. The member's date of birth;

d. The member's social security number, unless the member requests otherwise;

e. The member's degree of Ponca blood, if the applicant requests it;

f. The number and date of the resolution adopted by the Tribal Council enrolling the member; and

g. The date of issuance and signature of the Enrollment Specialist.

Section 10-5-11. Genetic Testing.

1. Genetic testing to demonstrate parentage or other biological lineal ancestry must be performed in a testing laboratory accredited by:

a. The American Association of Blood Banks, or a successor to its functions;

b. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

c. An accrediting body designated by the federal Secretary of Health and Human Services.

2. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of parentage or biological lineal ancestry.

3. The results of genetic testing shall be set forth in a report and sent directly to the Department from the laboratory.

4. A report of genetic testing must be in writing and signed under penalty of perjury by a designee of the testing laboratory.

5. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be relied upon by the Department:

a. The names and photographs of the individuals whose specimens have been taken;

b. The names of the individuals who collected the specimens;

c. The places and dates the specimens were collected;

d. The names of the individuals who received the specimens in the testing laboratory; and

e. The dates the specimens were received.

6. In the absence of documentation sufficient to establish chain of custody as provided in this Section, the applicant shall demonstrate a reliable chain of custody for the results of genetic testing which shall include documentation of individuals who have had physical possession of the specimens and genetic tests and the process used to maintain and document the chronological history of the specimens and genetic tests, such as name or initials of the individual collecting the specimens, each person or entity subsequently having physical possession of them, dates the specimens were collected or transferred, from where the specimens were collected, and agency and case number.

7. For purposes of this Chapter, a person is identified as the parent or biological lineal ancestor of an applicant if the genetic testing complies with this Section and the results disclose that:

a. The person has at least a ninety-two percent (92%) probability of parentage or biological lineal ancestry, using a prior probability of 0.50, as calculated by using the combined parentage or appropriate ancestry index obtained in the testing; and

b. A combined parentage or ancestry index of at least 100 to 1.

8. The costs of a genetic test is the sole responsibility of the applicant or, if enrollment is sought on behalf of another, the person who filed the application.

Section 10-5-12. Application Deficiency.

1. In the event the Department or the Committee finds that an applicant misrepresented or omitted facts which may change the determination of the applicant's eligibility for enrollment, the review of the application shall be halted and the Department shall send a written notice of deficiency to the applicant by certified mail. The notice shall:

a. Inform the applicant that review of the application has been halted;

b. Inform the applicant of the reasons for halting review of the application;

c. Specifically identify the information and/or documentation needed and/or the misrepresentations that need clarification; and

d. Inform the applicant that he or she will have thirty (30) days from receipt of the notice to submit the requested information and/or documentation.

2. If the applicant does not submit the requested information and/or documentation by the expiration of thirty (30) days from the applicant's receipt of the notice of deficiency, the Department shall send a written notice to the applicant, which shall be sent no later than fifteen (15) days before the next meeting of the Committee if the application is before the Committee. The notice shall state:

a. If the application is before the Department, that the application will be denied fifteen (15) days from receipt of the current notice; and

b. If the application is before the Committee:

i. That the application for enrollment will be denied at the next meeting of the Committee;

ii. That the applicant may attend the meeting of the Committee to present evidence that he or she feels will prove his or her eligibility for enrollment in the Tribe; and

iii. The applicant may submit the requested information and/or documentation prior to the meeting of the Committee.

3. If the applicant is denied enrollment as a result of failure to provide requested information and/or documentation pursuant to this Section, the Department shall provide written notice to the applicant by certified mail. The notice shall:

a. Inform the application that his or her application for enrollment has been denied;

b. That the application for enrollment has been denied for failure to provide information and/or documentation requested by the Committee or the Department, as the case may be;

c. That the applicant may re-apply for enrollment documentation as provided in this Chapter with the needed information or; and

d. That the applicant has a right to appeal the denial in accordance with this Title.

Section 10-5-13. Appeal. Any individual who is denied enrollment has the right to appeal such action in accordance with this Title. Nothing in this Chapter shall be construed as creating a right to appeal or otherwise allowing an appeal of the Committee's recommendation to approve enrollment or the Tribal Council's decision to enroll a member.

Section 10-5-14. Re-application. If an applicant is denied enrollment, the applicant may re-apply for enrollment if:

1. The applicant's appeals have been exhausted or the time for appeal has expired;

2. At least six (6) months have passed since the applicant's enrollment was denied; and

3. The applicant can produce evidence and/or documentation which was unavailable at the time of the original application that demonstrates the applicant is eligible for enrollment.

Section 10-5-15. Notices.

1. Every applicant or other individual subject to action under this Chapter shall be entitled to written notice of actions taken at each stage of the application process or other action involved, whether such notice is expressly required in this Chapter or not, including, but not limited to:

a. Receipt of the application;

b. Need for further information or documentation;

c. Action taken by the Department, the Committee or the Tribal Council;

d. Upcoming dates where the application or an appeal will be reviewed or considered by the Committee or the Tribal Council; and

e. Action taken concerning an appeal, if filed.

2. All notices required by this Chapter shall be in writing and sent to the last known address on file with the Department and any notice so sent shall be deemed adequate and in compliance with this Chapter.

CHAPTER 6
REMOVAL FROM ENROLLMENT

Section 10-6-1. Generally. An enrolled member of the Tribe may be removed from the membership roll and no longer be an enrolled member of the Tribe by either relinquishing his or her enrollment or being dis-enrolled in accordance with this Chapter.

Section 10-6-2. Relinquishment.

1. Except as otherwise provided in this Chapter, any member of the Tribe may voluntarily relinquish his or her enrollment in the Tribe in accordance with this Chapter.

2. Relinquishment of enrollment may be either absolute or made conditional upon the relinquishing member's enrollment in another tribe.

3. The enrollment of a minor may only be relinquished if:

a. The minor is eligible for enrollment in another federally recognized Indian tribe;

b. An application for enrollment of the minor in the other tribe has been made;

c. The relinquishment of enrollment is conditional upon the minor's enrollment in the other tribe and not absolute; and

d. The minor is not the subject of:

i. A proceeding or dispute involving the custody, visitation, or parenting time of the minor;

ii. A proceeding involving child support for the minor;

iii. A proceeding involving parentage of the minor;

iv. A child in need of assistance proceeding under Title III of this Code or similar proceeding under the laws of another jurisdiction;

v. A child offender proceeding under Title III of this Code;

vi. A proceeding involving the foster care placement, adoptive placement, or termination of parental rights to the child; or

vii. Any other proceeding where relinquishment of the minor's enrollment may deprive the Tribal Court of jurisdiction over the minor or the proceeding involving the minor or impair the Tribe's interest in a proceeding involving the minor; and

e. If the minor is fifteen (15) years of age or older and not an incapacitated person, the minor consents to the relinquishment.

4. If a relinquishment of enrollment is conditional upon the relinquishing member's enrollment in another tribe:

a. The relinquishing member shall be responsible for informing the Department of the status and progress of the relinquishing member's pending enrollment in the other tribe, including, but not limited to, all actions taken regarding the relinquishing member's pending enrollment in the other tribe;

b. No action will be taken on the relinquishment unless and until the relinquishing member provides the Department with documentation that the relinquishing member's enrollment in the other tribe has been granted; and

c. In the event the relinquishing member's enrollment in the other tribe is rejected or denied, the relinquishment shall be null and void and the relinquishing member shall remain a member of the Tribe and shall not be removed from the membership roll.

Section 10-6-3. Request for Relinquishment.

1. Any individual who wishes to relinquish his or her enrollment in the Tribe shall file a notice of relinquishment with the Department, signed, acknowledged and verified before a notary public in accordance with this Section.

2. Notices of relinquishment may be filed by any individual on his or her own behalf or may be filed by a parent or legal guardian on behalf of:

a. A minor; or

b. An incapacitated person.

3. A notice of relinquishment shall include, at a minimum, the following information:

a. Name, address, and enrollment number of the relinquishing member;

b. A statement that the relinquishing member, or the individual acting on the relinquishing member's behalf, desires to relinquish his or her enrollment;

c. A statement whether the relinquishment is absolute or conditional on enrollment in another tribe;

d. If the relinquishment is conditional upon enrollment in another tribe, the specific name of the other tribe in which the relinquishing member is seeking enrollment;

e. If the notice is filed or executed on behalf of a relinquishing member, his or her relationship to the relinquishing member; and

f. The signature of the relinquishing member or the individual filing the notice on behalf of the relinquishing member.

4. If a notice of relinquishment is filed on behalf of a relinquishing member, the notice shall be accompanied by adequate documentation to demonstrate the individual filing the notice has the authority to relinquish the member's enrollment in the Tribe, including, but not be limited to:

a. Proof that the individual filing the relinquishment has legal custody or guardianship of the relinquishing member, such as:

i. A birth certificate which lists the individual as the parent;

ii. A final custody order issued by a court of competent jurisdiction which grants the individual legal custody of the relinquishing member; or

iii. A final order issued by a court of competent jurisdiction appointing the individual as the permanent legal guardian of the relinquishing member;

b. Proof that the individual filing the relinquishment has decision-making authority for the relinquishing member with respect to relinquishment, such as a final order issued by a court of competent jurisdiction setting out the decision-making or other authority of the individual, including any limitations on such authority;

c. If the relinquishing member is a minor:

i. Proof that the minor is eligible for enrollment in another federally recognized Indian tribe and that the individual filing the notice has applied to enroll the minor in such other tribe;

ii. If parental rights have been terminated, proof that parental rights have been terminated, such as a court order terminating parental rights or acknowledging or approving a relinquishment of parental rights;

iii. If parental rights have not been terminated, written consent of each parent whose parental rights have not been terminated to the relinquishment, acknowledged and verified before a notary public in accordance with this Section, unless the decision-making authority related to relinquishment and enrollment has been removed from a parent and such removal is supported by appropriate documentation;

iv. A statement that there is no pending or anticipated proceeding involving the minor, whether a voluntary or involuntary proceeding and including foster

care placement, adoptive placement, termination of parental rights, child custody, child support, parentage, separation, and dissolution, acknowledged and verified before a notary public in accordance with this Section; and

v. If the minor is fifteen (15) years of age or older and is not an incapacitated person, the signature of the minor, acknowledged and verified in accordance with this Section; and

d. If the relinquishing member is an incapacitated person:

i. A final order from a court of competent jurisdiction or a written statement, based upon examination, from a physician or qualified mental health professional declaring the relinquishing member to be an incapacitated person; and

ii. If the relinquishment is not conditioned on enrollment in another tribe, an order of the Tribal Court expressly finding that absolute relinquishment of enrollment in the Tribe is in the incapacitated person's best interests and the individual filing the notice of relinquishment has the authority to absolutely relinquish the incapacitated person's enrollment.

5. The acknowledgment of a notary public on a notice of relinquishment shall be of the kind, under the law of the jurisdiction where notarized, which means:

a. That the member who is relinquishing enrollment is named as the relinquishing member on the notice;

b. That the person executing the notice personally appeared before the notary public on the date and in the jurisdiction identified in the notice; and

c. That the person executing the notice actually signed the notice before the notary public.

6. The verification of a notary public on a notice of relinquishment shall be of the kind, under the law of the jurisdiction where notarized, which means the person executing the notice swears or affirms:

a. The notice is signed without coercion;

b. He or she is aware of the content of the notice of relinquishment; and

c. The facts and statements made in the notice of relinquishment are true and correct to the best of the person's knowledge.

7. The Department may develop forms for use in relinquishing enrollment in accordance with this Title and the Committee may require the use of such forms for all relinquishments.

Section 10-6-4. Receipt of Relinquishment Notice.

1. Upon receipt of a notice of relinquishment, the Department shall stamp the notice with the date it was received.

2. Within ten (10) days of receipt of a notice of relinquishment, the Department shall review the notice to determine if it is complete and provide a notice to the relinquishing member in writing. The notice shall:

a. Inform the relinquishing member that the Department has received the notice;

b. Inform the relinquishing member whether the notice is complete and accompanied by all required documentation;

c. If the notice is complete and the relinquishment is absolute, inform the member that he or she is dis-enrolled and the effective date of the relinquishment;

d. If the notice is complete and the relinquishment is conditioned on enrollment in another tribe, inform the relinquishing member that he or she is solely responsible for informing the Department of:

i. The status and progress of his or her enrollment in the other tribe; and

ii. All actions taken regarding his or her pending enrollment in the other tribe; and

e. If the notice is not complete or not accompanied by all required documentation, specifically identify the

information and/or documentation required to complete the relinquishment.

3. If the Department determines that a notice of relinquishment is complete, the Department shall remove the member from the membership roll as provided in this Chapter unless the Department determines that the relinquishment does not comply with the requirements of this Chapter.

4. Once a relinquishment is effective, the Department shall provide written notice to the relinquishing member of the effective date of the relinquishment.

Section 10-6-5. Dis-enrollment. A member of the Tribe may be involuntarily dis-enrolled if the Department or the Committee finds that:

1. The member is an adult and enrolled in another federally recognized Indian tribe;

2. The member misrepresented or omitted facts and/or documentation which demonstrate that the member is not eligible for enrollment; or

3. The member was enrolled as a result of false information, a forged document, or administrative error.

Section 10-6-6. Notice of Dis-enrollment Action.

1. If the Department or the Committee finds that a member may be subject to dis-enrollment, the Department shall provide written notice to the member by certified mail. The notice shall:

a. Inform the member that the Committee will review the member's enrollment;

b. Inform the member of the reasons for reviewing his or her enrollment;

c. Specifically identify any information and/or documentation needed or any misrepresentations, falsehoods or omissions that need clarification; and

d. Inform the applicant that he or she will have thirty (30) days from receipt of the notice to submit the requested information and/or documentation.

2. If the first notice sent pursuant to this Section is returned to the Department undelivered, the Department shall send the notice a second time. If the notice is returned a second time, the Committee may proceed with reviewing the member's enrollment without further notification to the member except for notice of the Committee's decision.

3. If the member does not submit the requested information and/or documentation by the expiration of the thirty (30) days from the member's receipt of the notice, the Department shall send another written notice to the member at least fifteen (15) days prior to the next meeting of the Committee. If the Committee has not set a scheduled meeting, the Enrollment Specialist shall ensure a meeting is called in accordance with this Title. The notice shall state:

a. That the member's enrollment will be reviewed at the next meeting of the Committee;

b. That the Committee may decide that the member will be dis-enrolled;

c. That the applicant may attend the meeting of the Committee to present evidence that he or she feels will prove his or her eligibility for enrollment in the Tribe; and

d. The applicant may submit the requested information and/or documentation prior to the meeting of the Committee.

Section 10-6-7. Dis-enrollment Hearing.

1. After all required notices have been provided to a member who may be subject to dis-enrollment, the Committee shall review the member's enrollment at a duly called meeting of the Committee.

2. The burden of proving that a member must be dis-enrolled shall be on the Department or other party which initiated the dis-enrollment proceeding.

3. The Committee may dis-enroll a member only if:

a. There is documentation that proves the member is not eligible to be enrolled in the Tribe; or

b. There is a lack of information and/or documentation to prove that the member is eligible for enrollment in the

Tribe and a determination of eligibility can only be made with such information and/or documentation.

4. After the Committee reviews a member's eligibility for enrollment pursuant to this Section and makes a decision, the Department shall provide written notice to the member by certified mail. The notice shall inform the member:

a. That the Committee has reviewed the member's eligibility for enrollment;

b. Whether the Committee decided the member will be dis-enrolled or remain enrolled;

c. If the Committee decided to dis-enroll the member, the specific reasons the Committee dis-enrolled the member, including specifically identifying any information and/or documentation requested by the Committee or the Department, as the case may be, which was not provided; and

d. That the applicant has a right to appeal the denial in accordance with this Title.

Section 10-6-8. Effective Date of Removal from Enrollment.

1. A relinquishment of enrollment shall be effective immediately upon:

a. In the case of an absolute relinquishment, the date the Department receives a complete notice of relinquishment; and

b. In the case of a relinquishment conditional upon enrollment in another tribe, the date the relinquishing member is enrolled in the other tribe identified in the notice of relinquishment.

2. No express action shall be required by the Department, the Committee, or other agency, department or body of the Tribe to make a relinquishment effective.

3. A dis-enrollment shall be effective after the expiration of the time to appeal or, if an appeal is filed, after the dis-enrolled individual's appeals have been exhausted.

4. The fact that the name of an individual who has validly relinquished enrollment or who has validly been dis-enrolled

remains on the membership roll of the Tribe shall not alter the effectiveness or validity of a relinquishment or dis-enrollment that is otherwise valid under this Chapter.

Section 10-6-9. Removal from Enrollment.

1. Upon the effective date of a relinquishment or dis-enrollment:

a. The name of the relinquishing or dis-enrolled individual shall be removed from the current membership roll; and

b. The individual shall not be entitled to any rights, benefits, or privileges, whether individual or Tribal in nature, accruing to enrolled members of the Tribe as a result of their status as enrolled members of the Tribe.

2. Relinquishment of enrollment shall not deprive an individual of any rights or benefits which vested in the individual prior to the effective date of relinquishment.

3. If an individual is dis-enrolled as a result of having obtained enrollment by fraudulent action for which he or she is culpable or by intentional or knowing misrepresentation or omission of facts, the Tribe shall have the right to recover all benefits associated with enrollment paid or otherwise provided to the dis-enrolled individual during the term of his or her enrollment in the Tribe.

Section 10-6-10. Appeal.

1. If the Department fails or refuses to dis-enroll a member after the Department receives a complete notice of relinquishment, the member may appeal such failure or refusal in accordance with this Title.

2. Any individual who is dis-enrolled has the right to appeal such action in accordance with this Title.

3. Nothing in this Chapter shall be construed as:

a. Creating a right to appeal or otherwise allowing an appeal of the Department’s acceptance of relinquishment or the Committee’s decision to not dis-enroll a member;

b. As requiring approval of any relinquishment by the Committee or the Tribal Council; or

c. As requiring approval of any dis-enrollment by the Tribal Council.

Section 10-6-11. Re-enrollment.

1. Any person who has relinquished his or her enrollment in the Tribe shall not be eligible to be re-enrolled in the Tribe for a period of three (3) years from the effective date of the relinquishment and no application for re-enrollment shall be considered prior to that time unless:

a. The individual's enrollment was relinquished on his or her behalf when he or she was a minor and the individual files an application to be re-enrolled after reaching the age of majority; or

b. The individual's enrollment was relinquished on his or her behalf when he or she was declared incapacitated and the individual files an application to be re-enrolled after being determined to no longer be incapacitated.

2. If an individual is dis-enrolled, he or she may reapply for enrollment upon proving that the reason for dis-enrollment no longer exists.

3. In addition to any other requirements of this Section, an individual may only be considered for re-enrollment if the individual files a new application for enrollment with the Department under the same requirements and subject to the same procedures and conditions applicable to new members, including providing documentation of relinquishment of enrollment in another federally recognized Indian tribe, if applicable.

CHAPTER 7
APPEAL PROCEDURE

Section 10-7-1. Notice of Appeal. An appeal of an enrollment action permitted in this Title may be taken only by filing a notice of appeal with the Secretary of the Tribal Council no later than thirty (30) days after the aggrieved individual received notice of the action to be appealed.

Section 10-7-2. Receipt of Appeal.

1. Upon receipt of a notice of appeal pursuant to this Chapter, the Secretary of the Tribal Council, or his or her designee, shall schedule a hearing before the Tribal Council to occur within thirty (30) days of the Secretary's receipt of the notice of appeal. The Secretary may schedule the hearing by having it added to the agenda of a Tribal Council meeting.

2. After scheduling the hearing, the Secretary, or his or her designee, shall provide written notice to the appellant via certified mail no less than fifteen (15) days before the date of the hearing. The notice shall inform the appellant:

a. That the reason for the hearing is to consider the appeal of the appellant;

b. Of the date, time, and location of the hearing;

c. That he or she is entitled to present evidence and/or witnesses in support of the appeal;

d. That the Department and/or the Committee may present evidence and/or witnesses in support of the action being appealed; and

e. That he or she may be represented by legal counsel admitted to practice law in the Tribal Court at his or her own expense.

Section 10-7-3. Hearing.

1. The Tribal Council shall conduct a hearing of an appeal. The Tribal Council may conduct a hearing pursuant to this Chapter at a scheduled Tribal Council meeting or at a special Tribal Council meeting called specifically to hear the appeal.

2. Hearings under this Chapter shall be conducted in open session unless the appellant requests the hearing to be conducted in executive session or the Tribal Council determines that an executive session is necessary to protect confidentiality.

3. The Chair of the Tribal Council shall preside over the hearing and make any decisions on procedure.

4. An appellant denied enrollment or relinquishment shall bear the burden of proving that he or she is eligible for enrollment in the Tribe or can relinquish his or her enrollment

under the provisions of the Constitution and this Title by clear and convincing evidence. The Department and Committee shall bear the burden of proving that an appellant who is dis-enrolled is required to be dis-enrolled under the provisions of this Title by clear and convincing evidence.

5. The appellant, the Committee, and the Department shall each be given the opportunity to present evidence and/or witnesses at the hearing to support their respective positions.

6. The evidence presented at the hearing together with any documentation submitted to the Department by the appellant or to the Committee by the Department shall constitute the record.

Section 10-7-4. Deliberation and Decision.

1. After the hearing, the Tribal Council shall review the evidence and consider a decision. The Tribal Council's review shall be conducted in executive session even if the hearing was conducted in open session.

2. The Tribal Council shall decide the appeal in open session by vote of the members of the Tribal Council present. The decision of the Tribal Council shall be based on the evidence heard and shall be in accordance with the Constitution and this Title. The appellant shall be enrolled or allowed to relinquish his or her membership only if at least two-thirds (2/3) of the entire Tribal Council, excluding any vacant seats and Tribal Council members who are required to abstain in accordance with the laws of the Tribe, vote in favor of enrolling the appellant or allowing the appellant to relinquish enrollment. In the case of dis-enrollment, the appellant's enrollment shall be restored unless at least two-thirds (2/3) of the entire Tribal Council, excluding any vacant seats and Tribal Council members who are required to abstain in accordance with the laws of the Tribe, vote to dis-enroll the appellant.

3. The decision of the Tribal Council on an appeal filed under this Title shall be final and not subject to appeal, review, challenge, or other action in any court or tribunal, including the Tribal Court, and no court or tribunal, including the Tribal Court, shall have any subject matter jurisdiction over any action involving the determination of a member's enrollment in the Tribe or a decision of the Tribal Council regarding the same.

4. After the Tribal Council makes a decision on an appeal, the Department shall provide notice to the appellant of the Tribal

Council's decision and take any necessary action to implement the decision of the Tribal Council.

CHAPTER 8
HONORARY MEMBERSHIP

Section 10-8-1. Generally.

1. In accordance with Article II, Section 3 of the Constitution, the Tribal Council shall establish an honorary roster for persons adopted by the Tribe who do not meet the requirements for enrollment in the Tribe.

2. Notwithstanding anything to the contrary in this Chapter, honorary membership shall not permit the honorary member to:

a. Be eligible, have the right or be entitled to vote in elections of the Tribe;

b. Hold office in the Tribe where membership in the Tribe is a requirement of such office;

c. Otherwise exercise the rights or receive the benefits of an enrolled member of the Tribe; or

d. Otherwise be considered an enrolled member of the Tribe for any purpose.

Section 10-8-2. Purpose. The purpose of honorary membership is to recognize certain individuals who have voluntarily committed themselves to the overall development and advancement of the Tribe and its members and who have maintained strong social ties with the Tribe. Honorary members are recognized for their unselfish giving of friendship and assistance to the Tribe and its members.

Section 10-8-3. Eligibility.

1. To be eligible for honorary membership, an individual must have contributed to the social, cultural, educational, and/or economic well-being of the Tribe in at least two (2) of the following ways:

a. Contributions towards the restoration of the Tribe's relationship with the United States and its status as a federally recognized Indian tribe;

b. Contributions towards the cultural preservation of the Tribe;

c. Financial and economic contributions to the Tribe;

d. Contributions which have increased the social, economic, educational, or cultural well-being of the youth of the Tribe;

e. Contributions towards the federal, state or legal rights or advocacies of the Tribe;

f. Being the spouse or close relative of a member of the Tribe; or

g. Any other act or acts that have contributed to the development and cultural preservation of the Tribe and its members.

2. Notwithstanding the provisions of this Section, an individual may be granted honorary membership based on only one of the manners of contribution provided in this Section, other than being the spouse or relative of a member, if the individual's contribution in that area has been extensive.

3. For purposes of honorary membership, contributions include, but are not limited to, financial contributions.

4. No person has a right or entitlement to honorary membership in the Tribe pursuant to this Chapter, regardless of whether the person meets the requirements and considerations set forth in this Chapter. Membership pursuant to this Chapter is at the absolute and exclusive discretion of the Tribal Council.

Section 10-8-4. Application.

1. Any member of the Tribe may nominate an individual for honorary membership by filing an application with the Secretary of the Tribal Council on the form prescribed by the Department in accordance with this Title.

2. The member shall submit, at a minimum, the following information:

a. Name and address of the nominated individual;

b. Date and place of birth of the nominated individual;

c. Name, address, and relationship of the member making the application;

d. Whether the nominated individual is eligible for enrollment in the Tribe;

e. Whether the nominated individual possesses any Ponca blood; and

f. The contributions which make the nominated individual eligible for honorary membership under this Chapter.

3. Each application shall be accompanied by adequate documentation demonstrating eligibility for honorary membership, including, but not be limited to:

a. Narrative statements or other documentation of the nominated individual's contribution to the Tribe as set forth in this Section;

b. If eligibility is based on marriage or relationship to a member, documents of such marriage or relationship, such as current and historic tribal membership rolls; census records; records of birth, death, marriage, and divorce; records relating to the ownership, possession, transfer and status of real property; school, church, and court records; records relating to military service; newspaper and other publications; diaries; correspondence; scrapbooks; and photographs and notations thereon; and

c. Any other evidence which the member believes may support the nominated individual's eligibility for honorary membership set forth in this Chapter.

Section 10-8-5. Adoption of Honorary Member.

1. Adoption for honorary membership in the Tribe shall be by resolution adopted by the Tribal Council in accordance with the laws of the Tribe.

2. Upon receipt of an application for honorary membership, the Secretary of the Tribal Council, or his or her designee, shall

have the application placed on the agenda of the next available meeting of the Tribal Council.

3. Upon an application being placed on the agenda of a Tribal Council meeting, the Tribal Council shall review the application and all documentation submitted.

4. After review, the Tribal Council may:

a. Adopt a resolution adopting the individual subject of the application as an honorary member;

b. Reject the application for honorary membership; or

c. Return the application to the member who submitted it with instructions for the member to provide any additional information or documentation the Tribal Council may require.

Section 10-8-6. Notice of Adoption. Upon the Tribal Council completing its review and consideration of the application, the Secretary of the Tribal Council, or his or her designee, shall provide notice to the member who submitted the application in writing. The notice shall:

1. Inform the member that the Tribal Council has reviewed the member's nomination of an individual for honorary membership;

2. If the Tribal Council returns the application to the member for further information or documentation, inform the member of the information or documentation the Tribal Council desires to consider the application;

3. If the Tribal Council adopts a resolution to adopt the individual as an honorary member in the Tribe, include a copy of the resolution adopting the honorary member and inform the applicant and the individual adopted:

a. That the Tribal Council has adopted the individual as an honorary member in the Tribe;

b. That the individual has been added to the honorary roster; and

c. Of the honorary member's roster number from the honorary roster; and

4. If the Tribal Council denies the application for honorary membership, inform the applicant that the Tribal Council has denied the application for honorary membership in the Tribe.

Section 10-8-7. Honorary Roster.

1. The Secretary of the Tribal Council, or his or her designee, shall be responsible for maintaining the honorary roster of persons adopted by the Tribe in accordance with this Chapter.

2. The honorary roster shall contain, for each person listed, a roster number, name, address, sex, date of birth, and date of adoption.

3. Upon adoption a resolution adopting an individual as an honorary member, the Secretary of the Tribal Council, or his or her designee, shall immediately add the individual to the honorary roster.

Approved 8/23/09
Resolution 09-44

Revised 9/14/20
Resolution 20-67

TITLE XI
LANDLORD AND TENANT

CHAPTER 1
GENERAL PROVISIONS

Section 11-1-1. Purpose. This Title shall be interpreted and construed to fulfill the following purposes:

1. To simplify and clarify the law governing the occupation of premises and protect the rights of landlords and tenants within the territory of the Tribe;

2. To preserve the peace, harmony, safety, health, and general welfare of the members of the Tribe and others within the territory of the Tribe;

3. To provide eviction procedures and to require landlords to follow such procedures when evicting tenants within the territory of the Tribe;

4. To encourage landlords and tenants to maintain and improve premises in order to improve the quality of housing as a Tribal resource; and

5. To provide the law governing the rights, obligations, and remedies of the owners, lessors, and tenants of premises in the territory of the Tribe.

Section 11-1-2. Applicability.

1. This Title shall apply to any and all arrangements, formal or informal, written, oral, or by the practice of the parties, in renting, leasing, occupying, or using any and all forms of real property, but shall not apply to:

   a. Any assignment of land made by the Tribe to an agency, department, enterprise, or member of the Tribe;

   b. Residence at a public or private facility, if incidental to detention or the provision of medical, mental health, geriatric, counseling, educational, religious, disability, personal safety, or similar service;

   c. Occupancy under a contract of sale of, or an option to purchase, a premises if the occupant is the purchaser or optionee;

d. Occupancy by a member of a fraternal or social organization in a part of a structure operated for the benefit of the organization;

e. Occupancy in a room or suite of rooms where:

i. The cost of occupancy is charged on a daily basis;

ii. The operator of the room or suite provides housekeeping and linen service as part of the regularly charged cost of occupancy; and

iii. The occupancy does not exceed thirty (30) consecutive days;

f. Occupancy by an employee of a landlord when the employee's right to occupancy is conditioned on employment in or about the premises; or

g. Occupancy where:

i. The tenant rents the premises for vacation purposes only;

ii. The tenant has a principal residence other than the premises;

iii. The premises are furnished with personal property necessary to make the premises ready for immediate occupancy by the tenant; and

iv. The occupancy does not exceed thirty (30) consecutive days; or

h. Occupancy in any property where the landlord is the Northern Ponca Housing Authority or other tribally-designated housing entity of the Tribe.

2. Where a law or regulation of the United States applies to the renting, leasing, occupying, or using a specific parcel of real property, such law or regulation shall govern the renting, leasing, occupying, or using of such specific parcel of real property in addition to this Title and no provision of this Title shall be deemed inapplicable to the renting, leasing, occupying, or using of such specific parcel unless such provision is

specifically superseded by or directly contrary to such law or regulation of the United States.

Section 11-1-3. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Actual damages" means compensation for direct, consequential, or incidental injuries or losses and includes:

a. Amounts payable to a landlord or tenant under the lease for a violation of the lease; and

b. Diminution in the value of the premises.

2. "Building, housing, fire, or health code" includes any applicable law concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of the premises.

3. "Criminal act" or "criminal activity" means:

a. The manufacture, sale, distribution, use, or possession of a controlled substance on or in the vicinity of the premises which is criminal under law other than this Title; or

b. An act or activity that is criminal under law other than this Title and threatens the health or safety of an individual on the premises or the landlord or landlord's agent on or off the premises.

4. "Dwelling unit" means property leased to a tenant for use as a home, residence, or sleeping place by an individual or two or more individuals who maintain a common household, regardless of their relationship to each other, and includes:

a. A single family residence, together with fixtures and appurtenances, the land on which it is located, and any other structure on the land; and

b. A structure or part of a structure in which the tenant resides, together with fixtures and appurtenances, and any other area of the land on which the structure is located to which the tenant is given an exclusive right of possession during the term of the lease, including a designated parking space or storage area.

5. "Essential service" means heat, hot and cold running water, sewage or septic disposal, electricity and, if not supplying it to the tenant would create a serious threat to the health, safety, or property of the tenant or his or her guests, air conditioning, provided that, in the case of a non-residential lease, an essential service shall be only those services necessary to the use of the premises and purpose of the lease.

6. "Fees" means amounts payable by a tenant to a landlord which the landlord has no obligation to account for or return to the tenant except as otherwise provided in this Title, such as application fees, cleaning fees, late payment fees, surety bond fees, dishonored check fees, credit card or other payment processing fees, abandonment fees, special amenities fees, pet fees, or fees assessed for violating rules governing the tenancy, but does not include rent or a security deposit.

7. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

8. "Guest" means an individual, other than the landlord or landlord's agent, invited on the premises by a tenant, including the employees of a tenant in a non-residential lease.

9. "Habitable" means that a premises is safe, tenantable, and can be used for the purpose for which it is leased and, in the case of a dwelling unit, can be occupied in reasonable comfort.

10. "Landlord" means:

a. The owner of premises rented to a tenant;

b. A successor in interest to the landlord;

c. A sublessor; and

d. A person that manages premises or enters a lease on behalf of the owner of the premises and fails to notify the tenant in writing of the identity of the landlord, except with respect to events occurring after the earlier of:

i. The tenant being given written notice of the identity of the landlord; or

ii. The date of termination of the person's authority to act on behalf of the owner if that authority is terminated.

11. "Lease" means all tenancies and agreements, written, oral, or implied by law, between a landlord and tenant in which the landlord rents premises to the tenant for a tenancy for a fixed term or a periodic tenancy and includes an amendment to the lease, and rules adopted by the landlord which were disclosed to the tenant as provided in this Title.

12. "Non-residential lease" means a lease of premises other than a dwelling unit or a lease whose primary purpose is other than for a dwelling unit, even if a dwelling unit is included in the lease or located on the premises.

13. "Normal wear and tear" means deterioration that results from the intended use of the premises, including breakage or malfunction due to age or deteriorated condition, but does not include deterioration that results from negligence, carelessness, accident, or abuse of the premises, fixtures, equipment, or other tangible personal property by the tenant or the tenant's guests.

14. "Owner" means, with respect to a premises subject to this Title, a person vested with all or part of:

a. Legal title to the premises; or

b. Beneficial ownership and a right to present use and enjoyment of the premises.

15. "Periodic rent" means the amount:

a. Payable each month under a tenancy for a fixed term or a periodic tenancy for month to month;

b. Payable each week under a periodic tenancy for week to week or other term less than a month;

c. If rent is payable annually, the amount of the annual rent divided by twelve (12); or

d. If rent is payable at some other frequency greater than one month, the amount of each rent payment divided by the number of months in the frequency.

16. “Periodic tenancy” means a tenancy created under a lease or arising by operation of law for month to month, week to week, or other successive periods.

17. “Prepaid rent” means rent paid to a landlord before the first day of the rental period to which it is to be applied.

18. “Premises” means a dwelling unit, land, other real property, and/or any structures or parts thereof, existing facilities and appurtenances, including, but not limited to, furniture and utilities where applicable, grounds, areas, existing facilities, and, to the extent owned by the landlord, any structure of which the premises is a part, including any area and structure associated with the structure in which the premises is located and held out by the landlord for the use of tenants generally.

19. “Rent” means a payment for the right to possession of premises, but does not include a security deposit or fees.

20. “Security deposit” means funds or other property provided to a landlord to secure payment or performance of a tenant’s obligations under a lease or this Title and the identifiable proceeds of the funds or property, however denominated, but does not include rent or fees.

21. “Tenancy for a fixed term” means a tenancy under a lease for a fixed or computable period, regardless of the length of the period.

22. “Tenant” means:

a. A person that is a party to a lease of premises and is entitled to possession of the premises;

b. An assignee or sublessee of a tenant which has possession of the premises with the landlord’s consent;

c. An individual authorized to occupy the premises by a tenant that is not an individual; and

d. In the case of a dwelling unit, the immediate and extended family of a tenant authorized to occupy the premises, except with respect to the liability of the tenant to the landlord under the lease or this Title.

23. “Tenant representative” means:

a. A personal representative of a deceased tenant's estate;

b. Before the appointment of a personal representative, a contact person, or in the absence of a contact person, a person the landlord reasonably believes to be an heir of the tenant under the applicable intestate succession law; or

c. A person who exercises authority as a tenant representative under this Title or otherwise asserts or engages in conduct indicating the person is a tenant representative, provided that the authority of such person to act as a tenant representative shall terminate when the person or landlord knows that a personal representative has been appointed for the deceased tenant's estate.

24. "Unearned rent" means rent, including prepaid rent, that a tenant paid to a landlord for the right to possession of the premises for any period after the date the lease terminates in accordance with its terms or this Title, but does not include any amount, including rent, the tenant owes to the landlord for a period during which the tenant is in physical possession of the premises regardless of whether that possession is before or after the lease terminates.

Section 11-1-4. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 11-1-5. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2
LEASES GENERALLY

Section 11-2-1. Obligation of Good Faith. Every lease or duty under this Title imposes an obligation of good faith in its performance and enforcement.

Section 11-2-2. Required Landlord Disclosures.

1. Before accepting funds to be applied to a security deposit, prepaid rent, or other fees or before entering into a lease, a prospective landlord shall disclose to the prospective tenant the following in writing:

a. Any condition of the premises which the landlord knows or on a reasonable inspection of the premises should have known would constitute a nonhabitable condition as defined in this Title and would materially interfere with the health or safety of the tenant or the tenant's guests or would materially interfere with the use and enjoyment of the premises by the tenant;

b. Whether, to the knowledge of the landlord, a foreclosure proceeding has been commenced against the premises;

c. If rent is prepaid, the month or other period of the lease to which the rent is to be applied; and

d. The rules affecting the tenant's use and enjoyment of the premises, whether adopted by the landlord or another person.

2. At or before commencement of the term of a lease, the landlord shall give the tenant written notice specifying:

a. The name of:

i. The landlord;

ii. Any person authorized to manage the premises;

iii. The owner of the premises;

iv. Any person authorized to act for the owner; and

v. Any person authorized to receive a notice or demand on behalf of the owner;

b. The mailing address and any address to be used for the receipt of electronic communications by the landlord or any person designated by the landlord to which a notice or demand must be sent; and

c. The address to or the method by which the tenant must deliver rent.

3. A landlord shall keep current the information required by subsection 2 of this Section.

Section 11-2-3. Required Tenant Disclosures.

1. At or before commencement of the term of a lease, the tenant shall give the landlord written notice specifying the tenant's mailing address and any address to be used for the receipt of electronic communications by the tenant.

2. At the request of a landlord, the tenant shall designate a contact person to act for the tenant on the tenant's death, by giving the landlord a document specifying the name, mailing address, any address to be used for the receipt of electronic communications, and telephone number of such contact person. In the absence of a request by the landlord, the tenant may designate a contact person in the same manner.

3. A tenant shall keep current the information required by this Section. On termination of the lease, the tenant shall provide the landlord a forwarding address to which the landlord must send the tenant's security deposit, unearned rent, and other communications.

Section 11-2-4. Terms of Lease.

1. A lease may include terms and conditions not prohibited by this Title or other law of the Tribe.

2. Unless a lease or other applicable law otherwise provides:

a. The tenant shall pay rent for the premises for the term of the lease in an amount comparable to the rent paid for other premises of similar size and condition in the same or a comparable location, determined at the commencement of the term;

b. Rent is payable without demand or notice:

i. At the address or place the landlord designates under Section 11-2-2 or, if no designation is made, at the landlord's place of business at the time the lease was made; and

ii. On the first day of each month, at the beginning of the term if the term is less than one month, or on the first day of such other period of the term of the lease or otherwise provided for in the lease; and

c. Rent is uniformly apportioned from day to day; and

d. A rental period is on a monthly basis beginning with the first day of the month for a tenancy for a fixed term of more than one month or a periodic tenancy of month to month and, for all other tenancies, the rental period begins on the first day rent is paid.

3. Unless a lease creates a tenancy for a fixed term, a tenancy is a periodic tenancy for week to week if the tenant pays rent weekly and otherwise is a periodic tenancy for month to month.

Section 11-2-5. Delivery of Lease.

1. A landlord shall provide the tenant a copy of any lease that is signed by them or, if the lease is unsigned and enforceable as provided in this Chapter, signed by either of them.

2. If a landlord other than the Tribe willfully fails to comply with this Section, the tenant may recover actual damages or one month's periodic rent, whichever is greater.

Section 11-2-6. Unsigned Lease.

1. If a lease signed by the tenant is delivered to the landlord and the landlord fails to sign the lease and return it to the tenant, acceptance of rent by the landlord without a reservation of rights gives the lease the same effect as if the lease had been signed by the landlord and returned to the tenant.

2. If a lease signed by the landlord is delivered to the tenant and the tenant fails to sign the lease and return it to the landlord, acceptance of possession or payment of rent without a reservation of rights gives the lease the same effect as if the lease had been signed by the tenant and returned to the landlord.

3. If a lease given effect under subsection 1 provides for a tenancy for a fixed term longer than one (1) year, the lease is effective for one (1) year.

Section 11-2-7. Prohibited Provisions.

1. A lease may not require the tenant to:

a. Unless permitted by this Title, waive or forego a right or remedy under this Title;

b. Authorize a person to confess judgment on a claim arising out of the lease or this Title;

c. Unless permitted by this Title, perform a duty imposed on the landlord by this Title;

d. Agree to pay legal counsel's fees and costs of the landlord other than those provided by this Title or other law of the Tribe; or

e. Except in the case of a non-residential lease where the Tribe is the landlord, agree to exculpate or limit a liability of the landlord arising under this Title or other law of the Tribe or indemnify the landlord for the liability and the costs connected with the liability.

2. A provision in a lease prohibited by this Section or other law of the Tribe is unenforceable. Except where the landlord is the Tribe, if the landlord seeks to enforce the provision or accepts the tenant's voluntary compliance with the provision, the Tribal Court may award the tenant an amount not to exceed three (3) times the periodic rent.

Section 11-2-8. Delivery of Possession.

1. The landlord shall deliver physical possession of the premises to the tenant at the commencement of the term of the lease.

2. If a landlord does not deliver physical possession of the premises to the tenant, the tenant is not required to pay rent until possession is delivered and may:

a. Terminate the lease by giving written notice to the landlord at any time before the landlord delivers possession of the premises to the tenant; or

b. Demand performance of the lease by the landlord, recover actual damages, and obtain possession of the premises

from the landlord or any person wrongfully in possession by any lawful means.

3. If a landlord unlawfully removes or excludes the tenant from the premises or willfully interrupts or causes the interruption of an essential service the landlord has the duty to provide to the tenant, the tenant may recover three (3) times the periodic rent or three (3) times the actual damages, whichever is greater, or, where the Tribe is the landlord, the actual damages, and:

a. Recover possession; or

b. Terminate the lease by giving the landlord written notice of the tenant's intent to terminate the lease immediately or on a later specified date.

4. If a tenant terminates the lease pursuant to this Section, the landlord shall return any amounts received from the tenant before the commencement of the term of the lease or, if the term of the lease has commenced, any security deposit and unearned rent.

Section 11-2-9. Separation of Rent from Duties. A lease, assignment, sublease, conveyance, trust deed, or security instrument may not authorize a person to receive rent without assuming the duties imposed on the landlord by the lease and this Title.

Section 11-2-10. Assignment and Sublease.

1. When a tenant transfers his or her entire interest in a lease for the remaining term of the lease, the transfer is an assignment. If a tenant assigns his or her lease:

a. The tenant's right to possession of the premises terminates when the assignee takes possession;

b. The assignee obtains all of the tenant's right to possession under the lease;

c. The tenant shall not be a landlord in relation to the assignee for purposes of this Title;

d. Unless the lease or another agreement between the landlord and tenant provides otherwise, the tenant shall remain liable for the tenant's obligations under the lease;

e. The assignee is liable for the tenant's obligations under the lease to the same extent as the tenant; and

f. The landlord may enforce the lease and this Title against the assignee the same as the tenant regardless of whether the landlord was a party to or approved the assignment.

2. When a tenant transfers less than his or her entire interest in a lease or less than the remaining term of the lease, the transfer is a sublease and the tenant retains a reversionary interest under the lease. For purposes of this Title, providing accommodations for boarders, lodgers, or others who are not parties to the lease shall be deemed a sublease. If a tenant subleases his or her lease:

a. The tenant's and sublessee's rights to possession of the premises shall be determined based on the provisions of the sublease;

b. The tenant shall be a landlord in relation to the sublessee for purposes of this Title;

c. Unless the lease or another agreement between the landlord and tenant provides otherwise, the tenant shall remain liable for the tenant's obligations under the lease;

d. Unless a provision of the sublease or another agreement between the landlord and sublesee provides otherwise, the sublessee shall not be liable for the tenant's obligations under the lease; and

e. Unless a provision of the sublease or another agreement between the landlord and sublesee provides otherwise, the landlord may not enforce the lease against the sublesee, but the landlord may enforce this Title against the sublesee.

3. Except where applicable law other than this Title provides otherwise, unless a provision of the lease provides otherwise:

a. A tenant may not assign or sublease the lease without the written consent of the landlord;

b. The landlord may unconditionally withhold consent without cause to any assignment or sublease;

c. Except where the Tribe is the landlord, if the landlord unreasonably withholds consent to an assignment or sublease, the tenant may terminate the lease by giving written notice to the landlord of the tenant's intent to terminate the lease on a specified date at least thirty (30) days after the notice and such termination shall be the sole remedy of the tenant;

d. If the landlord reasonably withholds consent to an assignment or sublease or, where the Tribe is the landlord and withholds consent for any reason without regard to whether it is reasonable, there shall be no assignment or sublease and the tenant shall not be released from the lease;

e. The landlord may request that the tenant provide additional information to enable the landlord to make a decision on a request for consent to an assignment or sublease within ten (10) days after receipt of the tenant's request, provided such request for additional information shall not be unduly burdensome;

f. If the landlord fails to notify the tenant of the landlord's consent or denial of consent within thirty (30) days after receipt of the tenant's request or additional information requested by the landlord, whichever is later:

i. Where the Tribe is the landlord, the Tribe shall be deemed to have denied consent to the assignment or sublease; and

ii. In all other cases, the landlord shall be deemed to consent to the assignment or sublease.

4. Any assignment or sublease which does not comply with the provisions of this Section shall constitute a material breach of the lease and, where the Tribe is the landlord, shall be void and of no effect against the Tribe or the premises covered thereby.

5. Nothing in this Section shall prohibit the lease or another agreement between the landlord and tenant from providing additional transfers of interests in a lease or additional events which shall be deemed to constitute an assignment or sublease and such additional transfers of interests or additional events shall be subject to this Section.

Section 11-2-11. Encumbrance of Lease.

1. Unless a provision of the lease expressly permits a tenant to mortgage or encumber the lease, a tenant may not mortgage or encumber the lease, tenancy, or any interest of the tenant in the premises without the written consent of the landlord, which consent may be unconditionally withheld without cause.

2. Any mortgage or encumbrance of a lease or interest of the tenant in the premises which does not comply with the provisions of this Section shall constitute a material breach of the lease and the mortgage or encumbrance shall be void and of no effect against the landlord or the premises covered thereby.

Section 11-2-12. Legal Counsel Fees. Unless the other party is the Tribe, in an action to enforce a right or remedy arising under a lease or this Title, the Tribal Court may award the prevailing party reasonable legal counsel's fees if the Tribal Court determines that the other party:

1. Did not act in good faith;

2. Willfully performed an act prohibited by the lease or this Title; or

3. Willfully refrained from performing an act required by the lease or this Title.

Section 11-2-13. Security Deposits.

1. Except when the Tribe is the landlord, a landlord may not demand or receive security, however denominated, in an amount or value in excess of two (2) months periodic rent, provided such limit shall not include the first month's rent or fees.

2. Except as otherwise provided by applicable law other than this Title, if a tenant keeps a pet on the premises or is permitted by the lease to make alterations to the premises, the landlord may require the tenant to pay an additional security deposit in an amount commensurate with the additional risk of damage to the premises. Nothing in this subsection shall require a landlord to permit a tenant to keep a pet on the premises except where applicable law other than this Title provides otherwise.

3. Any security, if nonrefundable, must be so stated in writing by the landlord.

4. The following rules apply to interests in a security deposit:

a. The landlord's interest is limited to a security interest and shall not be subject to execution, garnishment, attachment, or other process;

b. Notwithstanding any other law to the contrary, the landlord's security interest is effective against and has priority over each creditor of and transferee from the tenant;

c. A creditor of and transferee from the landlord can acquire no greater interest in a security deposit than the interest of the landlord;

d. Notwithstanding any other law to the contrary, the tenant's interest has priority over any right of setoff the bank in which the security deposit is held may have for obligations owed to the bank; and

e. The tenant's interest is not adversely affected if the deposit is commingled with the deposits of other tenants or other funds.

5. With respect to funds constituting a security deposit, a landlord:

a. Shall maintain the ability to identify the funds:

i. By holding the funds in a bank account that is used exclusively for security deposits, that is maintained with a federally insured bank, and the title of which indicates that it contains security deposits; and

ii. By maintaining records that indicate at all times the amount of the funds attributable to each tenant whose funds are being held in the account; and

b. May commingle the funds received from other tenants as security deposits in the same bank account but may not commingle other funds, including the landlord's personal or business funds, in the account.

6. Subsection 5 of this Section shall not apply to security deposits held by the Tribe as a landlord provided that the Tribe shall maintain records that indicate at all times funds in its

possession attributable to each tenant whose funds are being held by the Tribe as a security deposit.

7. If a landlord other than the Tribe fails to comply with subsection 5 of this Section, the tenant may recover actual damages or one (1) times the periodic rent, whichever is greater.

8. A bank in which a landlord deposits funds constituting a security deposit has no duty to ensure that the landlord properly applies the funds.

9. Unless a lease provides otherwise, the landlord is not required to deposit a security deposit into an interest-bearing account or to pay the tenant interest on the deposit.

10. Upon termination of the tenancy:

a. The tenant is entitled to the amount by which the security deposit and any unearned rent exceeds the amount the landlord is owed under the lease or this Title;

b. Not later than thirty (30) days after a tenancy terminates and the tenant vacates the premises, the landlord shall determine the amount the landlord believes the tenant is entitled to under this subsection and:

i. Tender that amount to the tenant;

ii. Send that amount by first-class mail, postage prepaid, to an address provided by the tenant or, in the absence of that address, to the relevant address specified in Section 11-2-3; or

iii. Cause a funds transfer in that amount to be made, with the cost of transfer paid by the landlord, to a bank account designated by the tenant;

c. If the amount paid to the tenant under this subsection is less than the sum of the tenant's security deposit and any unearned rent, the landlord shall provide the tenant on or before returning such amount to the tenant a written itemization specifying each item of property damage or other unfulfilled obligation of the tenant to which the security deposit or unearned rent was applied and the amount applied to each item;

d. If the amount to which the tenant is entitled under this subsection is greater than the amount paid to the tenant, the tenant may recover the difference;

e. If a security deposit and unearned rent held by a landlord are insufficient to satisfy the tenant's obligations under the lease and this Title, the landlord may recover from the tenant the amount necessary to satisfy those obligations; and

f. If the landlord fails to comply with this subsection or fails to pay any amounts to which the tenant is entitled under this subsection, the tenant may recover the property and money due the tenant together with, in the case of a landlord other than the Tribe, damages in an amount equal to twice the amount wrongfully withheld.

11. When a landlord's interest in the premises terminates, the landlord shall:

a. If the lease continues, not later than thirty (30) days after the termination of the landlord's interest:

i. Transfer to the person succeeding the landlord's interest in the premises any security deposit being held by the landlord;

ii. Notify the tenant in writing of the successor's name and address, the amount transferred, and any claim previously made against the security deposit; or

b. If the lease terminates as a result of the termination of the landlord's interest, comply with subsection 10 of this Section.

12. A successor to a landlord's interest in the premises has all rights and obligations of the landlord under this Title with respect to any security deposit held by the predecessor landlord which has not been returned to the tenant, whether or not the security deposit was transferred or distributed to the successor. If a predecessor landlord fails to transfer or distribute the security deposit to the successor as provided in this Section, the tenant shall have no action against the successor, but the tenant or, if he or she pays the tenant amounts due under this Section, the successor may recover from the predecessor landlord an amount equal to twice the amount due the tenant under this Section or,

where the predecessor landlord is the Tribe, the actual amount due the tenant.

13. This Section shall not preclude the landlord or tenant from recovering other damages to which either may be entitled under this Title.

Section 11-2-14. Rules of Landlord.

1. Except as otherwise provided in the laws of the Tribe, a landlord may enforce a rule of the landlord in existence at the time the lease commenced only if the rule was disclosed to the tenant under Section 11-2-2.

2. Except as otherwise provided in this Section, after commencement of the term of a lease, the landlord may adopt or modify a rule concerning the tenant's use and enjoyment of the premises, but the rule or modification may not take effect earlier than thirty (30) days after the landlord gives the tenant written notice of the rule or modification.

3. In a periodic tenancy, a rule or modification adopted after commencement of the term of the lease may not take effect before the expiration of the period during which the tenant or landlord could have exercised the right to terminate the tenancy.

Section 11-2-15. Title to Premises.

1. When a person enters into possession of real property under a lease, he or she may not, while in possession, deny the title of the landlord in an action brought upon the lease by the landlord.

2. Notwithstanding any other law to the contrary:

a. No possession by any person, no matter how long continued, of any land, water, water right, easement, or other property whatsoever in the territory of the Tribe dedicated to, held in trust for, or owned by the Tribe or any of its councils, commissions, boards, agencies, departments, divisions, instrumentalities, or economic enterprises shall ever ripen into any title, interest, or right against the Tribe or such council, commission, board, agency, department, division, instrumentality, or economic enterprise;

b. No prescription or statute of limitations shall run, or continue to run, against the title of the Tribe or

any of its councils, commissions, boards, agencies, departments, divisions, instrumentalities, or economic enterprises to lands in the territory of the Tribe;

c. No title to any lands of the Tribe or any of its councils, commissions, boards, agencies, departments, divisions, instrumentalities, or economic enterprises in the territory of the Tribe, or any right therein, shall be acquired by adverse possession or prescription or otherwise than by conveyance from the Tribe or such council, commission, board, agency, department, division, instrumentality, or economic enterprise.

CHAPTER 3
TERMINATION OF TENANCIES

Section 11-3-1. Termination of Tenancies.

1. A periodic tenancy continues until the landlord or tenant gives the other the notice required in this Section.

2. Except as otherwise provided in this Title, in the absence of a provision in the lease or other written agreement signed by the landlord and tenant providing otherwise, a landlord or tenant may terminate a periodic tenancy:

a. For week to week, by giving the other at least seven (7) days' written notice of the party's intent to terminate the tenancy at the end of the weekly period;

b. For month to month, by giving the other at least thirty (30) days' written notice of the party's intent to terminate the tenancy at the end of the monthly period; and

c. For other successive periods, by giving the other at least ninety (90) days' written notice of the party's intent to terminate the tenancy at the end of the period.

3. A tenancy for a fixed term continues until the end of the term, provided that a landlord or tenant may terminate a tenancy for a fixed term prior to the end of the term:

a. By mutual agreement;

b. Unless prohibited by this Title, as provided in the lease; or

c. As otherwise permitted in this Title.

Section 11-3-2. Holdover Tenant.

1. Except as otherwise provided in this Title, if a tenant remains in possession without the landlord's consent after expiration of a tenancy for a fixed term or termination of a periodic tenancy, the landlord may bring an action for eviction pursuant to this Title. If the tenant's holdover is willful, the landlord may recover three (3) times the periodic rent or three (3) times the actual damages, whichever is greater.

2. Unless a landlord and tenant otherwise agree in writing, if the tenant remains in possession with the landlord's consent after expiration of a tenancy for a fixed term, a periodic tenancy for month to month arises under the same terms as the expired lease.

3. In addition to the ability to bring an action for eviction pursuant to this Section, if a tenant remains in possession of land owned by or held in trust for the Tribe without the Tribe's consent after expiration of a tenancy for a fixed term or termination of a periodic tenancy, such possession shall also be deemed a trespass subject to any applicable civil or criminal law governing the same, including criminal prosecution and a civil fine not to exceed eight hundred dollars ($800) per day of such trespass.

Section 11-3-3. Death of Tenant.

1. If a sole tenant under a lease of a dwelling unit dies before the end of a tenancy for a fixed term or a periodic tenancy:

a. The tenant's surviving spouse who resides in the dwelling unit may assume the lease and become the tenant under the lease by giving the landlord written notice stating the intent of the spouse to assume the lease no later than twenty (20) days after the tenant's death; or

b. Except as otherwise provided in applicable law other than this Title, no sooner than twenty (20) days after the tenant's death, a landlord or tenant representative may terminate the lease by giving to the other and to a surviving spouse of the tenant who resides in the dwelling unit written notice which states:

i. The lease will terminate on a specified date after receipt of the notice which must be, in the case of a periodic tenancy, consistent with the provisions of this Chapter, and, in the case of a tenancy for a fixed term, at least thirty (30) days; and

ii. In the case of notice to a surviving spouse, that the surviving spouse has twenty (20) days after receipt of the notice to assume the lease and, if the spouse assumes the lease, the spouse will become the tenant under the lease.

2. Unless the lease provides otherwise, if a sole individual tenant or principal owner of a tenant that is not an individual under a non-residential lease dies before the end of a tenancy for a fixed term or a periodic tenancy:

a. In the case of a tenancy for a fixed term, the lease will remain in force and the personal representative for the deceased tenant's estate shall become the tenant for the duration of the lease term;

b. In the case of a periodic tenancy, the tenancy will automatically terminate at the end of the current periodic term unless the personal representative for the deceased tenant's estate assumes the tenancy and becomes the tenant under the lease by giving the landlord written notice stating the intent of the personal representative to assume the tenancy no later than twenty (20) days after the tenant's death; and

c. Notwithstanding any provision of the lease to the contrary, if the personal representative for the deceased tenant's estate becomes the tenant under the lease or periodic tenancy, such personal representative shall have the authority to assign the lease in accordance with the provisions of this Title without approval of the landlord, other than a landlord that is the Tribe, to the heir or successor of the tenant who shall become the tenant under the lease.

3. If a landlord is unable to contact a deceased tenant's surviving spouse who resides in a dwelling unit or tenant representative the purpose of terminating a lease under this Section, the landlord may terminate the lease without notice if rent that was due was not paid for at least twenty-five (25) days.

Section 11-3-4. Destruction of Premises.

1. If leased premises or part of the leased premises is substantially damaged or destroyed by a fire, other casualty, or natural disaster and:

a. If the premises or part of the premises is uninhabitable or inaccessible or continued occupancy of the premises is unlawful or dangerous, the tenant may vacate the premises immediately and, not later than fourteen (14) days after vacating the premises, give the landlord written notice of the tenant's intent to terminate the lease, in which case the lease terminates as of the date the tenant vacates the premises;

b. If the premises are habitable and continued occupancy of the premises is lawful and not dangerous, subject to the landlord's right to terminate the lease under this subsection, the tenant may continue the lease, subject to the remedies available to the tenant under Chapter 4 of this Title; or

c. If continued occupancy of the premises is unlawful or dangerous or requires repairs that can be made only if the tenant vacates the premises, the landlord may terminate the lease by giving the tenant written notice that the lease will terminate on a specified date, which must be at least five (5) days after the notice is given.

2. If a lease is terminated under this Section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under this Title.

3. This Section does not preclude:

a. A landlord from seeking actual damages from the tenant for damage to the premises caused by an act or omission of the tenant or the tenant's guest; or

b. A tenant from seeking actual damages from the landlord if the fire or other casualty was caused by an act or omission of the landlord or landlord's agent.

4. A non-residential lease may contain provisions governing the damage or destruction of the leased premises which are different from or additional to the provisions of this Section.

Section 11-3-5. Abandonment.

1. A tenant abandons a leased premises if:

a. The tenant delivers possession of the premises to the landlord before the end of the term by returning the keys or other means of access or otherwise notifies the landlord the premises has been vacated;

b. Rent that is due was not paid for at least five (5) days and the tenant has:

i. Vacated the premises by removing substantially all of the tenant's personal property from the premises; and

ii. Caused the termination of an essential service or otherwise indicated by words or conduct that the tenant has no intention to return to the premises; or

c. The tenant engages or fails to engage in other conduct defined as an abandonment under the lease.

2. If a tenant abandons the premises before the end of the term of the lease, the landlord may recover possession of the premises without a court order and may:

a. Accept the tenant's abandonment of the premises by written notice given to the tenant, in which case:

i. The lease terminates on the date of abandonment;

ii. The landlord and tenant are liable to each other under the lease only for a noncompliance with the lease or this Title which occurred before the lease terminates; and

iii. The landlord shall return any security deposit and unearned rent to which the tenant is entitled under this Title; or

b. Treat the abandonment as wrongful.

3. If a landlord treats abandonment of a leased premises as wrongful, the tenant remains liable under the lease and the

landlord has a duty to mitigate by making a reasonable effort to rent the premises, subject to the following rules:

a. The landlord's duty to mitigate does not take priority over the landlord's right to lease first any other premises the landlord has available to lease;

b. If the landlord leases the abandoned premises to another person for a term beginning before the expiration of the term of the lease of the abandoning tenant, the lease terminates as of the date of the new tenancy and the landlord may recover actual damages from the abandoning tenant;

c. If the landlord makes a reasonable effort to lease the abandoning tenant's premises but is unable to lease it or is able to lease it only for an amount less than the rent payable by the abandoning tenant, the landlord may recover actual damages from the abandoning tenant;

d. If the landlord fails to make a reasonable effort to lease the abandoning tenant's premises, the lease terminates as of the date of abandonment, and the landlord and tenant are liable to each other under the lease or this Title only for a noncompliance with the lease or this Title which occurred before the date of abandonment; and

e. After deducting the landlord's actual damages, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under this Title.

4. In this Section, "reasonable efforts" means steps a landlord would take to rent premises if the premises were vacated at the end of a term, including showing the premises to a prospective tenant or advertising the availability of the premises.

Section 11-3-6. Disposition of Property on Termination or Abandonment.

1. If personal property remains on the premises after the tenant vacates the premises at the termination of the tenancy, including pursuant to an eviction under this Title or court order, or the tenant abandons the premises under this Chapter and the landlord and tenant do not agree otherwise at the time of relinquishment, the landlord shall:

a. Give the tenant written notice in accordance with this Section of the tenant's right to retrieve the property; and

b. Leave the property on the premises or inventory the property and store it on the premises or in another place of safekeeping and exercise reasonable care in moving or storing the property.

2. The notice required by this Section must be posted at the premises and:

a. Be sent to any forwarding address the tenant provided to the landlord, an address provided under Section 11-2-3, another address of the tenant known to the landlord, or, if no address is provided or known, to the address of the premises;

b. Inform the tenant of the right to contact the landlord to claim the property within a stated period of time which is no less than thirty (30) days after receipt of the notice, subject to payment of the landlord's inventorying, moving, and storage costs; and

c. Provide a telephone number, e-mail address, or mailing address at which the landlord may be contacted.

3. If a tenant contacts the landlord to claim personal property not later than the time provided by the landlord in the notice to the tenant under this Section, the landlord shall permit the tenant to retrieve personal property not later than five (5) days after the date of contact or within a longer period to which the parties agree.

4. A landlord may require the tenant to pay reasonable inventorying, moving, and storage costs before retrieving personal property under this Section. The landlord shall not condition the retrieving or return of a tenant's personal property on the payment of any other costs, fees, or amounts. If the landlord attempts to condition the retrieving or return of personal property on payment of any other costs, fees, or amounts, the landlord shall forfeit the landlord's right to recovery or payment of all inventorying, moving, and storage costs.

5. This Section does not prohibit a landlord from immediately disposing of perishable food, hazardous material, garbage, and trash or transferring an animal to an animal-control

officer, humane society, or other person willing to care for the animal.

6. If a deceased tenant's personal property is not retrieved within the time specified in this Section, the landlord may dispose of the property in compliance with Section 11-3-8.

7. A landlord that complies with this Section is not liable to the tenant or another person for a claim arising from removal of personal property from the premises.

Section 11-3-7. Disposition of Property on Death.

1. If a landlord knows that a tenant who was the sole occupant of the premises has died, the landlord:

a. Shall give written notice in accordance with this Section; and

b. Leave the property on the premises or inventory the property and store it on the premises or in another place of safekeeping and exercise reasonable care in moving or storing the property.

2. The notice required by this Section must be posted at the premises and:

a. Be sent to any tenant representative known to the landlord or, in the absence of a tenant representative, to the tenant at the tenant's last-known address or other address of the tenant known to the landlord and to any person the tenant has told the landlord to contact in the case of an emergency;

b. State the name of the tenant and address of the premises;

c. State the approximate date of the tenant's death;

d. Inform the person receiving the notice that, if the personal property on the premises is not claimed within sixty (60) days after the notice was sent, the property is subject to disposal by the landlord; and

e. Provide the landlord's name, telephone number, and mail or e-mail address at which the landlord may be contacted.

3. If the tenant representative or other person contacts the landlord to claim personal property of the tenant not later than the time provided by the landlord in the notice under this Section, the landlord shall give the tenant representative or other person access at a reasonable time to retrieve any personal property of the tenant. The landlord may require a person retrieving the property to prepare and sign an inventory of the property being retrieved and pay the reasonable inventorying, moving, and storage costs before retrieving the property.

4. This Section does not prohibit a landlord from immediately disposing of perishable food, hazardous material, garbage, and trash or transferring an animal to an animal-control officer, humane society, or other person willing to care for the animal.

5. The landlord shall pay the tenant representative the deceased tenant's security deposit and unearned rent to which the tenant otherwise would have been entitled under this Title.

6. If a deceased tenant's personal property is not retrieved within the time specified in this Section, the landlord may dispose of the property in compliance with Section 11-3-8.

7. A landlord that complies with this Section is not liable to the tenant's estate or another person for unearned rent, a security deposit, or a claim arising from removal of personal property from the premises.

8. A landlord that willfully violates this Section is liable to the estate of the deceased tenant for actual damages.

Section 11-3-8. Disposal of Abandoned Property.

1. Except as otherwise provided in this Section, unless a landlord and tenant otherwise agree, if the tenant or tenant representative fails to contact the landlord or retrieve personal property as provided in this Chapter, the property is deemed abandoned and:

a. If a sale is economically feasible, the landlord shall sell the property and, after deducting the reasonable cost of inventorying, moving, storing, and disposing of the property, shall treat the proceeds as part of the tenant's security deposit; or

b. If a sale is not economically feasible, the landlord may dispose of the property in any manner the landlord considers appropriate.

2. If personal property that is deemed abandoned under this Section is of cultural, religious, or ceremonial significance, the landlord shall return such personal property to the tenant, the tenant's immediate or extended family, and/or the Culture Department of the Tribe.

Section 11-3-9. Domestic or Family Violence.

1. If a victim, and not a perpetrator, of an act of domestic or family violence is a tenant of a dwelling unit and has a reasonable fear of suffering psychological harm or a further act of domestic or family violence if the victim continues to reside in the dwelling unit, the tenant, without the necessity of the landlord's consent, is released from the lease if the tenant gives the landlord a notice that complies with this Section and:

a. A copy of a court order that restrains a perpetrator from contact with the tenant;

b. Evidence of the conviction or adjudication of a perpetrator for an act of domestic or family violence against the tenant; or

c. A verification that complies with this Section.

2. To be released from a lease under this Section, the tenant must give the landlord written notice which:

a. States the tenant's intent to be released from the lease on a date which must be at least thirty (30) days from the date of the notice or, if the perpetrator is a cotenant of the dwelling unit, an earlier date;

b. States facts giving rise to the fear of psychological harm or suffering a further act of domestic or family violence if the victim continues to reside in the dwelling unit; and

c. Is given to the landlord:

i. Not later than ninety (90) days after an act of domestic or family violence against the tenant;

ii. When a court order exists that restrains a perpetrator from contact with the tenant because of an act of domestic or family violence; or

iii. If the perpetrator was incarcerated, not later than ninety (90) days after the tenant acquired knowledge that the perpetrator is no longer incarcerated.

3. A verification given by a tenant under this Section must be under oath and include the following:

a. From the tenant:

i. The tenant's name and the address of the dwelling unit;

ii. The approximate dates on which an act of domestic or family violence occurred;

iii. The approximate date of the most recent act of domestic or family violence;

iv. A statement that because of an act of domestic or family violence, the tenant has a reasonable fear that the tenant or immediate or extended family member residing in the dwelling unit will suffer psychological harm or a further act of domestic or family violence if the tenant or family member continues to reside in the dwelling unit; and

v. A statement that the representations in the verification are true and accurate to the best of the tenant's knowledge and the tenant understands that the verification could be used as evidence in court; and

b. From an attesting third party:

i. The name, address, and telephone number of the party;

ii. The capacity in which the party received the information regarding the act of domestic or family violence;

iii. A statement that the party has read the tenant's verification and been advised by the tenant

that the tenant is the victim of an act of domestic or family violence and has a reasonable fear that the tenant or immediate or extended family member residing in the dwelling unit will suffer psychological harm or a further act of domestic or family violence if the tenant or family member continues to reside in the dwelling unit; and

iv. A statement that the party, based on the tenant's verification, believes the tenant and understands that the verification may be used as the ground for releasing the tenant from a lease or terminating the tenant's interest under the lease.

4. If there is only one individual tenant of the dwelling unit:

a. A release under this Section terminates the lease on the date specified in the notice under this Section if the tenant vacates the dwelling unit on or before that date; and

b. The tenant is not liable for rent accruing after the lease terminates or other actual damages resulting from termination of the lease, but the tenant remains liable to the landlord for rent and other amounts owed to the landlord before termination of the lease.

5. If there are multiple individual tenants of the dwelling unit:

a. The tenant who gave notice under this Section is released from the lease as of the date specified in the notice if the tenant vacates the dwelling unit on or before the specified date, but the release of one tenant under this Section does not terminate the lease with respect to other tenants;

b. The tenant released from the lease is not liable to the landlord or any other person for rent accruing after the tenant's release or actual damages resulting from the tenant's release;

c. Any other tenant under the lease may recover from the perpetrator actual damages resulting from the termination; and

d. The landlord is not required to return to the tenant released from the lease or a remaining tenant any security deposit or unearned rent to which the tenant is otherwise entitled under this Title until the lease terminates with respect to all tenants.

6. If a tenant is released from a lease under this Section, the landlord:

a. Except as otherwise provided in this Section, shall return any security deposit and unearned rent to which the tenant is entitled under this Title after the tenant vacates the dwelling unit;

b. May not assess a fee or penalty against the tenant for exercising a right granted under this Section; and

c. May not disclose information required to be reported to the landlord under this Section unless:

i. The tenant provides specific, time-limited, and contemporaneous consent to the disclosure in writing signed by the tenant; or

ii. The information is required to be disclosed by a court order or applicable law other than this Title.

7. A landlord may terminate the lease of a tenant of a dwelling unit by giving the tenant written notice that the lease will terminate on a date specified in the notice, which must be at least thirty (30) days after notice is given, and such termination shall not constitute retaliation if:

a. Without the landlord's permission, the tenant invited a perpetrator of domestic or family violence onto the premises or allowed a perpetrator of domestic or family violence to occupy the dwelling unit:

i. After the landlord gave the tenant written notice to refrain from inviting the perpetrator onto the premises; or

ii. During a time the tenant knows the perpetrator is subject to a no-contact court order or a court order barring the perpetrator from the premises; and

b. The landlord demonstrates that:

i. There is an actual and imminent threat to the health or safety of any individual on the premises, the landlord, or the landlord's agent if the lease is not terminated; or

ii. The perpetrator has damaged the premises.

8. If a perpetrator is a party to the lease of the dwelling unit, on issuance of a court order requiring the perpetrator to vacate the dwelling unit, other than an order granted ex parte without a hearing and subject to the provisions of Title IV of this Code governing orders for possession related to orders for protection, the perpetrator's interest under the lease terminates and the landlord and any remaining tenant may recover from the perpetrator actual damages resulting from the termination, provided that:

a. Termination of a perpetrator's interest under this subsection does not terminate the interest or alter the obligations of any other tenant under the lease; and

b. The landlord shall not be required to return to the perpetrator or any remaining tenant any security deposit or unearned rent until the lease terminates with respect to all tenants.

9. If a landlord has a reasonable belief that a tenant of a dwelling unit is the victim of an act of domestic or family violence and another tenant of the same landlord who resides in the same building as the tenant is the perpetrator, the landlord may terminate the perpetrator's interest in the lease by giving the perpetrator written notice that the perpetrator's interest will terminate immediately or on a later specified date, which is not later than thirty (30) days after notice is given. The notice must state that the landlord has a reasonable belief that the perpetrator has committed an act of domestic or family violence and the approximate date of the act. Termination pursuant to this subsection shall be subject to the following:

a. Before giving notice to the perpetrator, the landlord shall give notice, by any means reasonably calculated to reach the tenant, of the landlord's intent to terminate the perpetrator's interest to the tenant who was the victim of the act of domestic or family violence;

b. Failure of a tenant to receive notice of the landlord's intent to terminate the perpetrator's interest

shall not affect the landlord's right to terminate under this subsection or expose the landlord to any liability;

c. If a landlord terminates a perpetrator's interest under a lease under this subsection, any other tenant under the lease may recover from the perpetrator actual damages resulting from the termination;

d. Termination of a perpetrator's interest under a lease under this subsection does not terminate the interest or alter the obligations of any other tenant under the lease;

e. The landlord shall not be required to return to the perpetrator or any remaining tenant any security deposit or unearned rent until the lease terminates with respect to all tenants; and

f. In an action between a landlord and tenant involving the right of the landlord to terminate the tenant's interest under this subsection, the landlord must prove by a preponderance of the evidence that the landlord had a reasonable belief that the tenant was a perpetrator.

10. On issuance of a court order requiring a perpetrator to vacate a dwelling unit because of an act of domestic or family violence, other than an order granted ex parte without a hearing and subject to the provisions of Title IV of this Code governing orders for possession related to orders for protection, neither the landlord nor tenant has a duty to:

a. Allow the perpetrator access to the dwelling unit unless accompanied by a law enforcement officer; or

b. Provide the perpetrator with any means of access to the dwelling unit.

11. A landlord may recover from a perpetrator actual damages resulting from a tenant's exercise of a right under this Section and, if the perpetrator is a party to the lease who remains in possession of the dwelling unit, hold the perpetrator liable on the lease for all obligations under the lease or this Title.

12. A perpetrator may not recover actual damages or other relief resulting from the exercise of a right by a tenant or landlord under this Section.

13. Terms used in this Section which are defined in Title IV of this Code shall have the meanings set forth in Title IV of this Code.

CHAPTER 4
NON-RESIDENTIAL TENANCIES

Section 11-4-1. Applicability. This Chapter applies to nonresidential leases and all tenancies not governed by Chapter 5 of this Title.

Section 11-4-2. Landlord Lien for Rent.

1. A landlord shall have a lien for rent due on property of the tenant not exempt by the laws of the Tribe until the rent is paid as follows:

   a. Upon crops, livestock, or other agricultural products raised on the premises for the current year, which lien shall be superior to all other liens regardless of the date the lien was acquired; and

   b. Upon all other property of the tenant placed upon, used, or usually kept on the premises, which lien shall be superior to any lien acquired subsequent to the property being brought on the premises.

2. A landlord may enforce a lien under this Section through an action in the Tribal Court seeking a writ of execution in accordance with the laws of the Tribe.

3. When the premises are sublet or when the lease is assigned, a landlord shall have the same lien against the sublessee or assignee as the landlord would have against the tenant and may enforce the lien in like manner.

Section 11-4-3. Non-Residential Landlord Duties.

1. In the absence of a provision in the lease or other written agreement signed by the landlord and tenant otherwise, the landlord of a non-residential lease shall:

   a. Comply with the obligations imposed on the landlord by the lease and this Title;

b. Comply with all obligations imposed on the landlord by any applicable building, housing, fire, or health code or other applicable law;

c. Maintain all structural elements of the premises in a safe and habitable condition, including making necessary repairs, including but not limited to, ensuring to the extent necessary for or applicable to the use of the premises or purpose of the lease:

i. Such structural elements comply with any applicable building, housing, fire, or health code or other applicable law;

ii. Floors, doors, windows, walls, ceilings, stairways, and railings are in good repair;

iii. The roof and exterior walls, including windows and doors, have effective waterproofing and weather protection;

iv. Plumbing facilities conform to applicable law and are maintained in good working order;

v. To the extent necessary and appropriate, there is a water supply approved under applicable law which can provide hot and cold running water;

vi. Ventilation and heating facilities conform to applicable law and are maintained in good working order;

vii. Electrical lighting, wiring, and equipment conform to applicable law and are maintained in good working order;

viii. Locks or other security devices on all exterior doors and on windows that open and close are in good repair;

ix. Any safety equipment required by applicable law is in good working order; and

x. Reasonable measures are in place to control the presence of rodents and other vermin and to prevent exposure to unsafe levels of radon, lead paint, asbestos, toxic mold, and other hazardous substances;

d. To the extent the premises include a parking area, common area, or other areas under the landlord's control, have reasonable measures in place to make the area:

i. Clean and sanitary;

ii. Safe for normal and reasonably foreseeable use consistent with the lease and in good repair; and

iii. Reasonably free of debris, filth, rubbish, garbage, vermin, and hazardous substances;

e. Have an adequate number of appropriate receptacles in reasonably clean condition if the landlord is obligated to provide trash removal or recycling service by applicable law or a written agreement signed by the landlord and tenant;

f. Have in good repair other facilities and appliances supplied or required to be supplied by the landlord;

g. Ensure the premises have access to essential services, provided the lease may require an account with a utility provider of an essential service be in the name of the tenant and the tenant pay the periodic cost for the service and, if the service is not provided because the tenant fails to pay for the service, the landlord does not fail to comply with this subsection; and

h. Not enter the premises unless:

i. Entry is as a member of the public in the same manner other members of the public may enter the premises;

ii. Entry is permitted by the lease, this Title, or the tenant otherwise agrees;

iii. Entry is for a legitimate emergency;

iv. Entry is to make necessary or agreed repairs, decorations, alterations, or improvements after written notice to the tenant of the date and time for the same;

v. Entry is to supply necessary or agreed services;

vi. Entry is under a court order;

vii. The tenant has abandoned the premises under this Title; or

viii. Permitted by applicable law other than this Title.

2. In this Section, "structural elements" means the parts of a premises related to the support of the premises, including but not limited to, roofs and roof membranes; sidewalks; walls; foundations; plumbing; pipes, tubes, and other conduits and utility lines leading to or from the premises or embedded into the structure of the premises; floor slabs and structures; exterior surfaces of the premises; building shell; structural members; and electrical, heating and air conditioning, plumbing, and ventilation systems.

3. If a sublessor is a landlord for purposes of this Title, the sublessor has the duty to comply with this Section except for duties that would require the sublessor to access parts of the premises beyond the sublessor's control.

Section 11-4-4. Non-Residential Tenant Duties. In the absence of a provision in the lease or other written agreement signed by the landlord and tenant otherwise, a tenant shall:

1. Comply with the obligations imposed on the tenant by the lease and this Title;

2. Comply with all applicable rules of the landlord adopted in accordance with this Title;

3. Comply with the obligations imposed on a tenant by any building, housing, fire, or health code or other applicable law;

4. Maintain, including making necessary repairs, all additions or improvements installed by the tenant, interior surfaces of the premises, and elements of the premises which are necessary only for the tenant's use of the premises, including but not limited to, partition walls, carpeting, lighting, wall coverings, and plumbing fixtures;

5. Comply with any applicable laws necessitated solely due to the tenant's particular use of the premises;

6. Unless the landlord and tenant otherwise agree, use the premises only for the purposes identified in the lease;

7. Except with respect to duties imposed on the landlord by the lease, this Title, or other applicable law, keep the premises reasonably safe and sanitary;

8. Remove all garbage, rubbish, and other debris from the premises in a clean and safe manner;

9. Use in a reasonable manner all electrical, plumbing, heating, ventilating, and air-conditioning systems and other facilities and appliances on the premises;

10. Without the landlord's consent, not intentionally or negligently, and not intentionally or negligently permit the tenant's guests to, destroy, deface, damage, impair, remove, or render inoperative any part of the premises or safety equipment on the premises;

11. Not engage in or permit the tenant's guests to engage in criminal activity on the premises;

12. Notify the landlord within a reasonable time of any condition of the premises which requires repair by the landlord under the lease or Section 11-4-3;

13. Not disturb the use and enjoyment of the premises by another tenant or permit the tenant's guests to do the same;

14. Return the premises to the landlord at the termination of the lease in the same condition as it was at the commencement of the term of the lease, with the premises free of any damage caused by the tenant or the tenant's guests, except for:

a. Normal wear and tear;

b. Damage resulting from a cause beyond the control of the tenant or the tenant's guests; and

c. Any addition or improvement installed on the premises with the landlord's consent, provided that if the tenant is required to or permitted to remove any such addition or improvement and removes such addition or improvement, the tenant shall restore the premises as closely as possible to their condition before the installation of such addition or improvement; and

15. Not unreasonably withhold consent for the landlord to enter the premises to:

a. Inspect the premises;

b. Make a necessary or agreed-to repair, alteration, or improvement;

c. Supply a necessary or agreed-to service; or

d. Exhibit the premises to a prospective or actual purchaser, mortgagee, tenant, worker, or contractor or to a public official responsible for enforcing a building, housing, fire, or health code or other applicable law.

Section 11-4-5. Maintenance Agreements.

1. A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling.

2. A landlord may not treat performance of an agreement described in this Section as a condition to the performance of any obligation under the lease or this Title.

CHAPTER 5
RESIDENTIAL TENANCIES

Section 11-5-1. Applicability. This Chapter applies to the leasing and rental of a dwelling unit.

Section 11-5-2. Landlord Lien Prohibited. Notwithstanding anything to the contrary in this Title, a landlord may not create, perfect, or enforce a lien or security interest on a tenant's tangible personal property to secure the tenant's performance under the lease or this Title.

Section 11-5-3. Residential Landlord Duties.

1. The landlord of a dwelling unit shall:

a. Comply with the obligations imposed on the landlord by the lease and this Title;

b. Maintain the premises in a habitable condition, including making necessary repairs, including but not limited to, ensuring that the premises:

i. Comply with all obligations imposed on the landlord by any applicable building, housing, fire, or health code or other applicable law;

ii. Have effective waterproofing and weather protection of the roof and exterior walls, including windows and doors;

iii. Have plumbing facilities that conform to applicable law and are maintained in good working order;

iv. Have access to a water supply approved under applicable law which can provide hot and cold running water;

v. Have adequate ventilation and heating facilities that conform to applicable law and are maintained in good working order;

vi. Have electrical lighting, with wiring and equipment that conform to applicable law and are maintained in good working order;

vii. Have reasonable measures in place to control the presence of rodents, bedbugs, and other vermin and to prevent exposure to unsafe levels of radon, lead paint, asbestos, toxic mold, and other hazardous substances;

viii. To the extent the premises include a common area or other areas under the landlord's control, have reasonable measures in place to make the area:

(1) Clean and sanitary;

(2) Safe for normal and reasonably foreseeable use consistent with the lease and in good repair; and

(3) Reasonably free of debris, filth, rubbish, garbage, vermin, and hazardous substances;

ix. Have an adequate number of appropriate receptacles in reasonably clean condition if the landlord is obligated to provide trash removal or recycling service by applicable law or a written agreement signed by the landlord and tenant;

x. Have in good repair floors, doors, windows, walls, ceilings, stairways, and railings;

xi. Have in good repair other facilities and appliances supplied or required to be supplied by the landlord;

xii. Have in good repair locks or other security devices on all exterior doors and on windows that open and close, including those of the dwelling unit and other parts of the premises; and

xiii. Have in good working order any safety equipment required by applicable law;

c. Ensure the premises have access to essential services, provided the lease may require an account with a utility provider of an essential service be in the name of the tenant and the tenant pay the periodic cost for the service and, if the service is not provided because the tenant fails to pay for the service, the landlord does not fail to comply with this subsection; and

d. Not enter the dwelling unit unless:

i. Entry is permitted by the lease, this Title, or the tenant otherwise agrees;

ii. Entry is for a legitimate emergency;

iii. Entry is to make necessary or agreed repairs, decorations, alterations, or improvements after written notice to the tenant of the date and time for the same;

iv. Entry is to supply necessary or agreed services;

v. Entry is under a court order;

vi. The tenant has abandoned the dwelling unit under this Title; or

vii. Permitted by applicable law other than this Title.

2. The landlord and tenant of a dwelling unit which is a single family residence may provide for the tenant to be responsible for some or all of the landlord's duties under this Section in the lease or other written agreement signed by the landlord and tenant.

3. If a sublessor is a landlord for purposes of this Title, the sublessor has the duty to comply with this Section except for duties that would require the sublessor to access parts of the premises beyond the sublessor's control.

Section 11-5-4. Residential Tenant Duties. In the absence of a provision in the lease or other written agreement signed by the landlord and tenant otherwise, a tenant shall:

1. Comply with the obligations imposed on the tenant by the lease and this Title;

2. Comply with all applicable rules of the landlord adopted in accordance with this Title;

3. Comply with the obligations imposed on a tenant by any building, housing, fire, or health code or other applicable law;

4. Unless the landlord and tenant otherwise agree, use the dwelling unit only for residential purposes;

5. Except with respect to duties imposed on the landlord by the lease, this Title, or other applicable law, keep the premises reasonably safe and sanitary;

6. Remove all garbage, rubbish, and other debris from the premises in a clean and safe manner;

7. Keep all plumbing fixtures in the dwelling unit reasonably clean;

8. Use in a reasonable manner all electrical, plumbing, heating, ventilating, and air-conditioning systems and other facilities and appliances on the premises;

9. Without the landlord's consent, not intentionally or negligently, and not intentionally or negligently permit the tenant's guests to, destroy, deface, damage, impair, remove, or render inoperative any part of the premises or safety equipment on the premises;

10. Not disturb the use and enjoyment of the premises by another tenant or permit the tenant's guests to do the same;

11. Not engage in or permit the tenant's guests to engage in criminal activity on the premises;

12. Notify the landlord within a reasonable time of any condition of the premises which requires repair by the landlord under the lease or Section 11-5-3 of this Chapter;

13. Return the premises to the landlord at the termination of the lease in the same condition as it was at the commencement of the term of the lease, with the premises free of any damage caused by the tenant or the tenant's guests, except for:

a. Normal wear and tear;

b. Damage resulting from a cause beyond the control of the tenant or the tenant's guests; and

c. Any addition or improvement installed on the premises with the landlord's consent, provided that if the tenant is required to or permitted to remove any such addition or improvement and removes such addition or improvement, the tenant shall restore the premises as closely as possible to their condition before the installation of such addition or improvement; and

14. Not unreasonably withhold consent for the landlord to enter the dwelling unit to:

a. Inspect the dwelling unit;

b. Make a necessary or agreed-to repair, alteration, or improvement;

c. Supply a necessary or agreed-to service; or

d. Exhibit the dwelling unit to a prospective or actual purchaser, mortgagee, tenant, worker, or contractor or to a public official responsible for enforcing a building, housing, fire, or health code or other applicable law.

Section 11-5-5. Maintenance Agreements.

1. A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

a. The agreement is in writing, other than the lease, signed by the parties and supported by adequate consideration;

b. The work is not necessary to cure the landlord's noncompliance with this Title; and

c. The agreement does not affect the obligation of the landlord to other tenants on the premises.

2. A landlord may not treat performance of an agreement described in this Section as a condition to the performance of any obligation under the lease or this Title.

Section 11-5-6. Domestic or Family Violence.

1. If a tenant is a victim of an act of domestic or family violence and the tenant has a reasonable fear that the perpetrator or other person acting on the perpetrator's behalf may attempt to gain access to the dwelling unit, the tenant, without the landlord's consent, may cause the locks or other security devices for the dwelling unit to be changed or rekeyed in a professional manner and shall give a key or other means of access for the new locks or security devices to the landlord and any other tenant that is a party to the lease, other than the perpetrator, provided:

a. If locks or other security devices are changed or rekeyed under this subsection, the landlord may change or rekey them, at the tenant's expense, to ensure compatibility with the landlord's master key or other means of access or otherwise accommodate the landlord's reasonable commercial needs; and

b. If a perpetrator is a party to the lease, locks or other security devices may not be changed or rekeyed under this subsection unless a court order, other than an order granted ex parte without a hearing and subject to the provisions of Title IV of this Code governing orders for possession related to orders for protection, expressly requires that the perpetrator vacate the dwelling unit or

restrains the perpetrator from contact with the tenant and a copy of the order has been given to the landlord.

2. A landlord may not refuse or threaten to refuse to rent a dwelling unit if the landlord's purpose for the refusal or threat is that a tenant is or has been the victim of an act of domestic or family violence.

3. A perpetrator may not recover actual damages or other relief resulting from the exercise of a right by a tenant or landlord under this Section.

4. Terms used in this Section which are defined in Title IV of this Code shall have the meanings set forth in Title IV of this Code.

CHAPTER 6
NONCOMPLIANCE

Section 11-6-1. Landlord Noncompliance.

1. Except as otherwise provided in this Title, a landlord shall be in noncompliance if the landlord fails to comply with the lease or this Title.

2. If a landlord's noncompliance results in the tenant not receiving an essential service, materially interferes with the health or safety of the tenant or the tenant's guests, or materially interferes with the use and enjoyment of the premises by the tenant and the noncompliance is not remedied during the applicable period specified in this Section, the tenant may:

a. If the noncompliance materially interferes with the health or safety of the tenant or the tenant's guests, terminate the lease immediately by giving written notice to the landlord of the tenant's intent to terminate the lease immediately;

b. If the noncompliance does not materially interfere with the health or safety of the tenant or the tenant's guests, terminate the lease by giving written notice to the landlord of the tenant's intent to terminate the lease on a specified date which is at least fourteen (14) days after the applicable period required to remedy the breach; or

c. Continue the lease and elect one or more of the following remedies:

i. Withhold rent for the period of noncompliance beginning on the date the tenant gave notice in accordance with this Section;

ii. Recover actual damages;

iii. Obtain injunctive relief, specific performance, or other equitable relief;

iv. Make repairs and deduct the cost from the rent as provided in this Section; or

v. Secure an essential service the landlord is obligated to provide or, in the case of a dwelling unit, comparable substitute housing during the period of noncompliance.

3. If a landlord's noncompliance materially interferes with the health or safety of a tenant or the use and enjoyment of the premises by the tenant and it is impossible for the landlord to remedy the noncompliance within thirty (30) days after the tenant gave notice of the noncompliance, the landlord may terminate the lease by giving the tenant written notice that the lease will terminate on a specified date, which must be at least thirty (30) days after the landlord gives the notice, provided that the landlord may not rent the premises for ninety (90) days after termination of the lease.

4. If a landlord's noncompliance does not materially interfere with the health or safety of the tenant or the tenant's guests or the use and enjoyment of the premises by the tenant, the tenant may:

a. Recover actual damages;

b. Obtain injunctive relief, specific performance, or other equitable relief; or

c. Make repairs and deduct the cost from the rent as provided in this Section.

5. A tenant may make repairs and deduct the cost from the rent to remedy the landlord's noncompliance under this Section subject to the following:

a. The tenant must give notice of the noncompliance in accordance with this Section;

b. The landlord must fail to remedy the noncompliance within the applicable period specified in this Section;

c. The reasonable cost to remedy the noncompliance may not exceed one month's periodic rent;

d. The repair must be made in a professional manner and in compliance with applicable law;

e. If the tenant makes repairs, the tenant is entitled to recover the actual and reasonable cost incurred or the reasonable value of the work performed to remedy the noncompliance, not exceeding one month's periodic rent;

f. Unless the tenant has been reimbursed by the landlord, the tenant may deduct the cost or value from rent after submitting to the landlord an itemized statement, accompanied by receipts for purchased items and services; and

g. The tenant's use of the remedy under this subsection is limited to one month's periodic rent during any twelve (12) month period.

6. If a lease is terminated under this Section, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under this Title.

7. If a landlord is in noncompliance, the tenant has the remedies under this Section if the tenant gives the landlord:

a. Written notice of the noncompliance; and

b. An opportunity to remedy the noncompliance within the following periods:

i. If the noncompliance involves failure to provide an essential service or materially interferes with the health or safety of the tenant or the tenant's guest, as soon as practicable but not later than five (5) days after the tenant gave the notice; and

ii. In all other cases, not later than fourteen (14) days after the tenant gave the notice.

8. If a landlord is in noncompliance and the tenant has complied with the provisions of this Section governing notice and opportunity to remedy, the tenant may defend an action by the landlord based on nonpayment of rent on the ground that no rent was due because of the noncompliance.

9. A tenant is not entitled to a remedy under this Section to the extent:

a. The landlord's noncompliance was caused by an act or omission of the tenant or the tenant's guest; or

b. The tenant or the tenant's guest prevented the landlord from having access to the premises to remedy the act or omission described in the notice of the tenant.

Section 11-6-2. Tenant Noncompliance.

1. Except as otherwise provided in this Chapter, a tenant shall be in noncompliance if the tenant:

a. Fails to pay rent when due;

b. Fails to comply with the lease or this Title;

c. The tenant or the tenant's guest commits a criminal act on the premises; or

d. Is subject to eviction for any of the grounds specified in this Title.

2. Except as otherwise provided by applicable law other than this Title, if a tenant fails to pay rent when due, the landlord may terminate the lease by giving written notice to the tenant of the landlord's intent to terminate the lease on a specified date which is at least fourteen (14) days after the applicable period required to remedy the noncompliance.

3. Except as otherwise provided by applicable law other than this Title, if there is a material noncompliance with a lease or this Title by the tenant, other than nonpayment of rent, the landlord may terminate the lease by giving written notice to the tenant of the landlord's intent to terminate the lease on a specified date which is at least thirty (30) days after the applicable period required to remedy the noncompliance.

4. If the tenant or the tenant's guest has committed a criminal act on the premises, the landlord may terminate the lease by giving written notice to the tenant of the landlord's intent to terminate the lease on a specified date, provided that a landlord may not terminate a lease under this subsection if the criminal act was the act of the tenant's guest and the tenant:

a. Neither knew nor should have known the act was going to be committed; and

b. Took reasonable steps to ensure that there will not be a repeated criminal act on the premises by the guest.

5. Except as otherwise provided in this Title, if a tenant is otherwise in noncompliance, the landlord may:

a. Obtain injunctive relief or specific performance;

b. Make repairs and recover the cost from the tenant; or

c. Regardless of whether the lease terminates as a result of the tenant's noncompliance, recover actual damages.

6. If a tenant is in noncompliance, the landlord has the remedies under this Section if the landlord gives the tenant:

a. Written notice of the noncompliance which shall specify the reason for the termination and the actions required to remedy the noncompliance;

b. An opportunity to remedy the noncompliance within fourteen (14) days after the landlord gave the notice, provided that a landlord may terminate the lease without giving the tenant an opportunity to remedy a noncompliance if:

i. The tenant failed to pay rent in a timely manner on at least two (2) occasions within the four (4) month period preceding the notice to terminate the lease;

ii. The tenant committed substantially the same act or omission of material noncompliance for which notice was given within six (6) months preceding the latest noncompliance;

iii. The noncompliance by the tenant poses an actual and imminent threat to the health or safety of any individual on the premises or the landlord or landlord's agent; or

iv. Subject to the limitations in this Section, the tenant or the tenant's guest has committed a criminal act on the premises; and

c. If the landlord will terminate the lease, a statement that:

i. If termination is based on an actual and imminent threat to health or safety or criminal act as provided in this subsection, the lease will terminate immediately or on a later specified date; and

ii. In all other cases, the lease will terminate on a specified date, which must be at least fourteen (14) days after the landlord gave the notice.

7. Without limiting the rights of a landlord or tenant to terminate a periodic tenancy as provided in this Title, unless the landlord and tenant otherwise agree after the noncompliance occurs, a landlord waives the right to terminate the lease for the noncompliance by accepting:

a. Rent for two or more successive rental periods with knowledge of noncompliance by the tenant; or

b. The tenant's performance that varies from the terms of the lease or this Title.

Section 11-6-3. Retaliation.

1. A landlord may not take action against a tenant or engage in conduct if the landlord's purpose for taking the action or engaging in the conduct is to retaliate against a tenant that:

a. Complained to a governmental agency responsible for enforcement of a building, housing, fire, or health code or other applicable law, alleging a violation applicable to the premises materially affecting the health or safety of the tenant or the tenant's guests;

b. Complained to a governmental agency responsible for enforcement of applicable laws prohibiting discrimination

related to the premises or, in the case of a dwelling unit, rental housing;

c. Complained to the landlord of noncompliance with the lease or this Title;

d. Organized or became a member of a tenant's union or similar organization;

e. Exercised or attempted to exercise a right or remedy under the lease, this Title, or applicable law other than this Title;

f. Pursued an action or administrative remedy against the landlord or testified against the landlord in court or an administrative proceeding; or

g. In the case of a dwelling unit, is a victim, or has an immediate family member that is a victim, of an act of domestic or family violence that resulted in either a violation of the lease or this Title by the tenant or a law enforcement or emergency response.

2. Conduct that may be retaliatory includes doing or threatening to do any of the following:

a. Increasing the rent or fees;

b. Decreasing services;

c. Increasing the tenant's obligations;

d. Imposing different rules on or selectively enforcing the landlord's rules against the tenant or the tenant's guests;

e. Otherwise materially altering the terms of the lease;

f. Bringing an action for eviction on a ground other than nonpayment of rent;

g. Refusing to renew a tenancy for a fixed term under a lease containing a renewal option that is exercisable by the tenant without negotiation with the landlord for any period after the lease would otherwise terminate;

h. Terminating a periodic tenancy; or

i. Committing a criminal act against the tenant or the tenant's guest.

3. A landlord is not liable for retaliation under this Section if:

a. The violation of which the tenant complained was caused primarily by the tenant or the tenant's guest;

b. The tenant's conduct which the landlord is alleged to be retaliating against was in an unreasonable manner or at an unreasonable time or was repeated in a manner harassing the landlord;

c. The tenant was in default in the payment of rent at the time notice of an action for eviction was sent;

d. The tenant or the tenant's guest engaged in conduct that threatened the health or safety of another tenant on the premises;

e. The tenant or the tenant's guest engaged in a criminal act;

f. The landlord is seeking to recover possession based on a notice to terminate the lease and the notice was given to the tenant before the tenant engaged in conduct which the landlord is alleged to be retaliating against; or

g. The landlord is complying or complied with a building, housing, fire, or health code or other applicable law by making a required repair, alteration, remodeling, or demolition that effectively deprives the tenant of the use and enjoyment of the premises.

4. Evidence that a tenant engaged in conduct described in subsection 1 of this Section within six (6) months before the landlord's alleged retaliatory conduct creates a rebuttable presumption that the purpose of the landlord's conduct was retaliation, provided that:

a. A presumption does not arise under this subsection if the tenant engaged in conduct described in subsection 1 of this Section after the landlord gave the tenant notice of the

landlord's intent to engage in the conduct which is alleged to be retaliatory; and

b. A landlord may rebut a presumption under this subsection by a preponderance of evidence showing that the landlord had sufficient justification for engaging in the conduct that created the presumption and would have engaged in the conduct in the same manner and at the same time whether or not the tenant engaged in conduct described in subsection 1 of this Section.

5. If a landlord's purpose for taking action against a tenant or engaging in conduct is to retaliate against a tenant:

a. The tenant has a defense against an action for eviction, may recover possession, or may terminate the lease;

b. The tenant may recover three (3) times the periodic rent or three (3) times the actual damages, whichever is greater, or, where the Tribe is the landlord, the actual damages;

c. If a tenant terminates the lease under this subsection, the landlord shall return any security deposit and unearned rent to which the tenant is entitled under this Title; and

d. A tenant's exercise of a right under this subsection does not release the landlord from the landlord's duties under Chapter 4 or Chapter 5 of this Title, as applicable.

6. If a tenant engages in conduct described in subsection 1 of this Section knowing there is no factual or legal basis for the conduct, the landlord may recover actual damages and the Tribal Court may award the landlord up to three (3) times the periodic rent.

CHAPTER 7
EVICTION

Section 11-7-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Nuisance" means the maintenance on the premises of a condition which:

a. Unreasonably threatens the health or safety of the public or neighboring land users; or

b. Unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

2. "Waste" means spoil or destruction of land, buildings, gardens, trees, or other improvements or natural occurrences which results in substantial injury to the landlord's interest in the premises.

Section 11-7-2. Grounds for Eviction. A tenant or other person may be evicted by the landlord in accordance with this Chapter if such person remains in possession of the premises under any of the following situations after the expiration of any opportunity to remedy required under this Title:

1. When such person fails to pay rent when due;

2. When such person owes to the landlord any costs, fees, or damages other than rent which have been due for thirty (30) days or more, provided that the receipt by the landlord of partial payments under an agreement shall not excuse the payment of any balance that is due upon demand;

3. When such person holds over or otherwise fails or refuses to vacate any part of the premises after the lease has ended or been terminated in accordance with the lease or this Title;

4. When such person materially breaches or violates any condition or covenant of the lease or violates any other condition or covenant of the lease where language in the lease states that the violation or breach of the condition or covenant allows the landlord to terminate the lease;

5. When such person continues to fail to keep or perform any obligations primarily imposed upon tenants by applicable provisions of building, housing, fire, or health codes materially affecting health and safety;

6. When such person violates the rules of the landlord governing the premises when such rules have been either:

a. Adopted in accordance with this Title; or

b. Made a part of the lease by the landlord either before or after the lease is signed or agreed to;

7. When such person continues to commit or to permit waste upon the premises or maintain a nuisance upon the premises after having been given notice and opportunity to remedy;

8. Where such person disturbs the peace and quiet of the landlord or the other tenants or occupants on the premises;

9. When such person has caused or is causing intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants or disturbed another tenant's right to quiet enjoyment of the premises;

10. When such person uses the premises in violation of applicable law or for a purpose not authorized under the lease or this Title;

11. When such person has engaged in conduct that creates or is reasonably likely to create immediate injury or death to other tenants or catastrophic destruction to the premises;

12. When such person knowingly gives false material information or omits material facts in an application for tenancy such that if the landlord had known the truth, the landlord's consistent and lawful policy would have been to deny the lease, provided that eviction is commenced no later than ninety (90) days after the falsity or omission is discovered;

13. When such person enters onto, remains, or occupies the premises without permission, agreement, or any substantial claim of a lease, tenancy, or title to the premises following any reasonable demand by a person in authority over the premises to leave; or

14. Under other terms in the lease which do not conflict with the provisions of this Title.

Section 11-7-3. Self-Help Eviction Prohibited.

1. A landlord may evict a tenant or other person from the premises only in accordance with this Chapter. A landlord may not recover or take possession of premises which are still occupied by

a tenant through an act of self-help or in any forceful manner, including but not limited to:

a. A manner which causes a breach of the peace;

b. Willful interruption or causing the willful interruption of an essential service to the premises;

c. Forcing or changing locks;

d. Breaking doors, windows, gates, fences, security systems or other parts of the premises;

e. Removing the tenant's property from the premises; or

f. Threatening the tenant with bodily injury, harm, or loss of or harm to personal property.

2. Notwithstanding anything to the contrary in this Title, in the case of a non-residential lease, the landlord may change the locks or remove the tenant's property from the premises in a manner which does not cause a breach of the peace:

a. When the lease has ended or been terminated by either party in accordance with the lease or this Title; or

b. When the premises are occupied without permission or agreement following any reasonable demand by a person in authority over the premises to leave.

3. Nothing in this Section shall be construed as preventing the removal of any person trespassing on property by law enforcement or an authorized official of the Tribe.

Section 11-7-4. Notice to Quit.

1. Except as otherwise provided in this Section, a landlord or owner of any premises shall not commence an action in Tribal Court for eviction prior to fourteen (14) days from the date of service on the tenant of a written notice to vacate and quit the premises in accordance with this Section.

2. A notice issued pursuant to this Section shall be in writing substantially in the following form:

I (or we) hereby give you notice that you are to quit possession or occupancy of the premises now occupied by you at (insert the address or other reasonable description of the location of the premises), on or before the (insert the date) for the following reason(s) (insert the legally cognizable reason or reasons for the notice to quit possession using statutory language or words of similar import). Signed, (insert the signature, name and address of the landlord as well as the date and place of signing).

3. A notice issued pursuant to this Section shall be given to the tenant by either:

a. Delivering a copy personally to the tenant or to any adult member of his or her family resident on the premises;

b. By sending a copy to the tenant by certified mail, return receipt requested, properly addressed, postage prepaid; or

c. Posting said notice in a conspicuous place near the entrance to said premises, and by sending an additional copy to the tenant by certified mail, return receipt requested, properly addressed, postage prepaid.

4. A notice under this Section shall not be required:

a. When the lease has ended or been terminated by either party in accordance with the lease or this Title; or

b. When the premises are occupied without permission or agreement following any reasonable demand by a person in authority over the premises to leave.

Section 11-7-5. Procedure.

1. Proceedings in the Tribal Court under this Chapter shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Title.

2. The Tribal Court may issue orders under this Chapter by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 11-7-6. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

a. To be represented by legal counsel at their own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Tribal Court compel the attendance of a witness on his or her behalf; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including complaints and motions.

Section 11-7-7. Initiation of Proceedings.

1. Proceedings in the Tribal Court to evict a person from premises shall be initiated by the filing of a complaint.

2. Complaints may be filed by the landlord or other person with authority over the premises.

3. In addition to any other information required by the laws of the Tribe, all complaints under this Section shall contain the following information:

a. The name(s) of the person(s) sought to be evicted;

b. The basis for the Tribal Court's jurisdiction;

c. The address or reasonable description of the location of the premises;

d. A description of the lease, if any;

e. The grounds for eviction;

f. Any claim for damages or compensation due from the persons to be evicted;

g. Evidence that a notice to quit has been properly served or information as to why a notice to quit is not required under this Chapter;

h. Copies of the written lease and notice to quit, if any;

i. Copies of any notices, decisions, orders, or judgments relating to the termination of the lease, if any; and

j. The relief demanded, including any claims for possession of the premises, damages, fees, costs, or other special relief.

4. Two (2) or more persons occupying the same premises may be included in the same complaint.

5. A complaint which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 11-7-8. Summons and Service of Process.

1. Upon the filing of a complaint, a summons shall be issued to all named defendants to the petition in accordance with the general rules governing the issuance of summons by the Tribal Court.

2. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the complaint.

Section 11-7-9. Responsive Pleading.

1. Any defendant may file a responsive pleading.

2. Any responsive pleading shall be filed with the Tribal Court and served on all parties within the time period provided in the rules of procedure for the Tribal Court for answering or responding to a claim or at least seven (7) business days before the first hearing, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint.

Section 11-7-10. Defenses. The Tribal Court shall evict the tenant as provided in this Chapter unless:

1. Due to the fault of the landlord and no fault of the tenant, the premises are uninhabitable;

2. The landlord, after the expiration of any opportunity to remedy required under this Title, has failed to comply with the lease or the obligations placed on landlords under this Title and such failure:

   a. Has resulted in the tenant not receiving an essential service;

   b. Materially interferes with the health or safety of the tenant or the tenant's guests; or

   c. Materially interferes with the use and enjoyment of the premises by the tenant;

3. The landlord has failed to keep or perform any material condition or covenant of the lease after the expiration of any opportunity to remedy required under this Title;

4. The landlord is evicting the tenant because of the race, sex, sexual orientation, religion, age, marital status, family status, or disability of the tenant;

5. The landlord is evicting the tenant or terminated the lease to retaliate against the tenant as prohibited by this Title;

6. The tenant has remedied any default or otherwise rendered moot any alleged ground for eviction; or

7. This Title provides another legal defense to eviction.

Section 11-7-11. Settlement.

1. After a notice to quit has been served on a tenant and anytime before the entering of a judgment by the Tribal Court in a proceeding under this Chapter, a landlord and tenant may settle the matter between the parties without affecting their rights in any manner except as agreed upon. Such settlement may include, but is not limited to:

a. The tenant voluntarily quitting the premises without the landlord filing an action or the Tribal Court entering a judgment under this Chapter;

b. The barter for services or goods, or any other means of securing a fair exchange of value for the use of the premises;

c. The stipulation of a judgement to be entered by the Tribal Court; or

d. The dismissal of the matter in exchange for any agreement reached.

2. The Tribal Court may stay an action under this Chapter, as necessary and just, where the parties have entered negotiations for settlement.

Section 11-7-12. Discovery. The parties may conduct discovery in a proceeding under this Chapter in accordance with the Tribal Rules of Civil Procedure, subject to the following:

1. Initial disclosures shall not be required;

2. Any party may serve discovery on an opposing party after service of the complaint has been completed;

3. The party upon whom a discovery request has been served shall serve his or her response, and objections if any, within five (5) days after the service of the discovery;

4. All discovery must be completed no later than five (5) days prior to the first hearing on the complaint; and

5. Extensive, prolonged, or time consuming discovery or discovery beyond the time limits permitted in this Section shall not be permitted unless the Tribal Court finds, upon motion of a party, that there is good cause for such discovery and the interests of justice require it.

Section 11-7-13. Conduct of Hearings. All hearings involving proceedings under this Chapter shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard on their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable; and

5. A verbatim record shall be taken of all hearings.

Section 11-7-14. Continuance.

1. Upon request of a defendant in a proceeding under this Chapter, the Tribal Court may continue a hearing under this Chapter beyond the time limit within which the hearing is otherwise required to be held for good cause and upon provision of security by the defendant in an amount equal to the fair rental value of the premises subject of the complaint for an amount of time equal to the length of the continuance granted.

2. Upon request of a plaintiff in a proceeding under this Chapter, the Tribal Court may for good cause continue any hearing under this Chapter for such period of time as is necessary, provided that if such continuance is granted over the objection of the defendant, the defendant shall not be liable for the use and occupancy of the premises during the period of the length of the continuance granted.

3. In no event may any hearing under this Chapter be postponed or continued for more than one hundred eighty (180) days.

Section 11-7-15. Hearing on Complaint.

1. Upon the filing of the proof of service of a complaint filed under this Chapter, the Tribal Court shall schedule and conduct a hearing on the complaint on the first scheduled court day that is at least fifteen (15) days after service of the complaint has been completed.

2. The purpose of a hearing on the complaint is to determine whether the tenant or other person should be evicted and whether the plaintiff is entitled to any other relief requested.

3. The Tribal Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Tribal Court shall order the eviction of the defendant if:

a. The defendant was properly served with notice of the action and the hearing in accordance with the laws of the Tribe;

b. The landlord has complied with all applicable provisions of this Chapter and the lease governing eviction of the defendant; and

c. One or more grounds for eviction enumerated in this Chapter exists without a valid defense of the defendant permitted under this Chapter.

5. The burden of proof shall lie with the plaintiff to prove by a preponderance of the evidence that eviction should be ordered and any other relief requested by the plaintiff be granted. The burden of proof shall lie with the defendant to prove by a preponderance of the evidence any valid defense to the eviction and that any relief requested by the defendant be granted.

Section 11-7-16. Judgment.

1. No later than five (5) days after a hearing on a complaint filed under this Chapter, the Tribal Court shall enter a written judgment based on the results of said hearing.

2. If the Tribal Court orders the eviction of the defendant, the Tribal Court's judgment shall order the immediate eviction of the defendant and delivery of the premises to the plaintiff or other appropriate person no later than fourteen (14) days after the entry of the judgment unless the parties agree otherwise.

3. If the Tribal Court finds in favor of the plaintiff, in whole or in part, the Tribal Court's judgment may also:

a. Award the payment of back rent, unpaid utilities, or unpaid charges due the plaintiff under the lease;

b. Award to the plaintiff damages caused by the defendant to the premises other than ordinary wear and tear or damages otherwise required by the lease or this Title;

c. Order the performance of any obligation required by law; and

d. Grant any other necessary and just relief.

4. If the Tribal Court finds in favor of the defendant, in whole or in part, the Tribal Court's judgment may:

a. Award to the defendant the payment of damages for injury caused by the plaintiff or required by the lease or this Title, except where such damages would be awarded against the Tribe;

b. Award possession of the premises by the defendant;

c. Order the performance of any obligation required by law; and

d. Grant any other necessary and just relief.

5. If the Tribal Court's judgment awards damages to either party, such damages shall be limited to the extent the other party failed to mitigate his or her damages.

6. The Tribal Court's judgment may award to the prevailing party his or her reasonable legal counsel fees, except where such legal counsel fees would be awarded against the Tribe.

7. If the Tribal Court orders the eviction of the defendant, the Tribal Court's judgment shall inform the defendant that if he or she does not vacate the premises voluntarily within fourteen (14) days of the entry of the judgment:

a. The defendant will be subject to being forcibly evicted;

b. The defendant's property will be subject to storage, sale, and disposal in accordance with this Title;

c. The defendant will be subject to the fines provided in this Chapter for each day the defendant remains on the premises; and

d. The defendant will be considered in trespass and may be subject to arrest and/or prosecution for the same.

8. A judgment issued under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals, except that the notice of appeal must be filed within ten (10) days after entry of the judgment.

Section 11-7-17. Stay of Judgment.

1. After the entry of a judgment against a defendant under this Chapter, such defendant may apply to the Tribal Court for a stay of execution of such judgment if, within ten (10) days of the entry of the judgment, the defendant:

a. Establishes good and reasonable grounds affecting the well-being of the party or that execution of any order of eviction will or likely will result in extreme hardship for the defendant;

b. Establishes that there would not be substantial prejudice or injury to the plaintiff or owner during the period of the stay; and

c. A bond is posted or monies paid to the Tribal Court to satisfy the judgment or pay for the reasonable use and occupancy of the premises during the period of the stay, provided such monies shall be paid to the plaintiff upon expiration of the stay.

2. No judgment issued under this Chapter may be stayed pursuant to this Section for longer than three (3) months from the date of entry of the judgment.

3. If a defendant timely appeals an order evicting the defendant from the premises, the order of eviction shall be automatically stayed pending the resolution of such appeal, but all other aspects of the judgment shall not be stayed in the absence of an order staying enforcement of the judgment in accordance with the Tribal Rules of Civil Procedure, provided that, upon request of the plaintiff, the Tribal Court may require the defendant to post a bond or pay monies to the Tribal Court to pay for the reasonable use and occupancy of the premises during the period of the automatic stay of the order of eviction pending appeal.

4. Any stay of an order of eviction, including during an appeal, shall not relieve the defendant of liability for payment of the reasonable use and occupancy of the premises during the period of the stay. The plaintiff may request that the Tribal

Court modify the judgment to award the plaintiff amounts for the reasonable use and occupancy of the premises during the period of such stay, including an appeal, in accordance with the Tribal Rules of Civil Procedure, provided that the time for requesting such modification shall be ten (10) days from the date the judgment becomes final or the stay expires, whichever is later.

Section 11-7-18. Enforcement of Eviction.

1. If a defendant fails or refuses to vacate the premises and deliver the same to the plaintiff or other appropriate person after the expiration of fourteen (14) days after the entry of judgment and the defendant has not obtained a stay of execution or filed an appeal in accordance with the laws of the Tribe, any duly authorized law enforcement officer, authorized official of the Tribe, or officer of the Tribal Court appointed by the Tribal Court for such a purpose shall enforce such judgment, as necessary, within five (5) calendar days of receipt of a copy of such judgment by:

a. Providing a copy of the judgment to all adult tenants or, if no adult tenant is present at the time of enforcement, posting copies of the judgment on the doors of the premises;

b. Removing all evicted persons from the premises and verbally ordering them not to re-enter; and

c. Supervising the removal of all personal property of the evicted persons from the premises.

2. A plaintiff may move the Tribal Court to appoint an officer of the Tribal Court to enforce the judgement of the Tribal Court in accordance with this Section.

3. A defendant who fails or refuses to vacate the premises and deliver the same to the plaintiff or other appropriate person after the expiration of fourteen (14) days after the entry of judgment without obtaining a stay of execution or filing an appeal in accordance with the laws of the Tribe shall be subject to a civil fine not to exceed one hundred dollars ($100) plus an amount for the reasonable use and occupancy of the premises for each day the defendant fails or refuses to vacate the premises. Such fine may be enforced and collected through a civil cause of action brought by the plaintiff on behalf of the Tribe in a proceeding in the Tribal Court and any plaintiff other than the Tribe who brings such an action shall be entitled to ten percent (10%) of any fine

recovered in such action. The imposition of a fine pursuant to this Section shall not preclude the Tribal Court from finding the defendant in contempt and enforcing such contempt in accordance with the laws of the Tribe.

4. A defendant who fails or refuses to vacate the premises and deliver the same to the plaintiff or other appropriate person after the expiration of fourteen (14) days after the entry of judgment without obtaining a stay of execution or filing an appeal in accordance with the laws of the Tribe shall be deemed in trespass and subject to any applicable civil or criminal law governing the same.

APPROVED 4/20/21

RESOLUTION 21-21

TITLE XII
TAXATION

CHAPTER 1
GENERAL PROVISIONS

Section 12-1-1. Purpose. The Tribe wishes to exercise its sovereignty to obtain revenue to fund the government of the Tribe through the imposition of taxes and, therefore, the purpose of this Title is:

1. To strengthen the Tribe's government by licensing and regulating certain conduct within the territory of the Tribe through taxation;

2. To provide for the levy and collection of certain revenue and taxes for the benefit of the Tribe;

3. To provide funding for governmental operations of the Tribe and programs promoting the health, education, and general welfare of the Tribe and its members; and

4. To provide straightforward, fair, and efficient procedures for assessment and collection of taxes imposed and collected by the Tribe.

Section 12-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Commission" means the Ponca Tribe of Nebraska Tax Commission.

2. "Commissioner" means a member of the Commission.

3. "Small purchase threshold" means the dollar amount set forth in the procurement policies or regulations of the Tribe below which purchases of property, goods, or services may be made using small purchase methods where no competition, including quotes, bids, or proposals, are required.

4. "Substantial indebtedness of the Tribe" means a financial liability or obligation, including a loan, bond, interim certificate, promissory or other note, debenture, or mortgage, due

and owing by certain and express agreement to repay such liability or obligation to a creditor when such liability or obligation:

a. Is or was in an original principal amount exceeding five million dollars ($5,000,000);

b. Is either:

i. That of the Tribe itself as debtor; or

ii. That of a commission, board, agency, department, division, instrumentality, or economic enterprise as debtor and expressly authorized or approved by the Tribal Council prior to such liability or obligation being incurred; and

c. Is not an amount owed on a credit card.

5. "Tax" means the tax imposed by or assessed pursuant to this Title and includes any interest, penalty, or collection costs added to such tax.

6. "Taxpayer" means a person who has paid or is liable for or subject to taxes imposed or assessed, including persons required to collect and remit such taxes.

7. "Tribal lands" means:

a. All lands held in trust by the United States for the benefit of the Tribe or its members;

b. All fee lands owned by the Tribe and located within one or more of the Tribe's service areas as defined by Public Law 101-484 and any amendments thereto;

c. All lands of the Tribe or its members defined as Indian country by 18 U.S.C. § 1151, including dependent Indian communities; and

d. All other lands where the Tribe may lawfully exercise its jurisdiction to impose taxes.

Section 12-1-3. Consent to Jurisdiction. Any person who resides in the territory of the Tribe or conducts business or engages in a business transaction in the territory of the Tribe or with the

Tribe, enters into a consensual relationship with Tribe, acts under Tribal authority, or enters the territory of the Tribe shall be deemed to have consented to the following:

1. To be bound by the terms of this Title; and

2. To the exercise of jurisdiction by the Tribal Court over him or her in an action arising under this Title.

Section 12-1-4. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 12-1-5. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 12-1-6. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2
TAX COMMISSION

Section 12-2-1. Establishment.

1. There is hereby established a tax commission to be known as the Ponca Tribe of Nebraska Tax Commission as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Commission may employ such other personnel and employees as may be required for the proper discharge of its duties under this Title, provided that, to the maximum extent feasible, the Commission shall first use personnel and employees of the Tribal administration as authorized in this Chapter.

3. The Commission may require any personnel or employee who will handle monies, revenues, tax stamps or like items to be bonded and/or insured in an amount determined by the Commission with any premiums for such bonding and/or insurance to be paid from the Commission's budget.

Section 12-2-2. Composition.

1. The Commission shall consist of

a. Five (5)members of the Tribe who shall be appointed by the Tribal Council; and

b. The Treasurer of the Tribal Council as an ex-officio member who will not vote on matters before the Commission and shall serve as the liaison between the Tribal Council and the Commission.

2. The Tribal Council may require any Commissioner who will handle monies, revenues, tax stamps or like items to be bonded and/or insured in an amount determined by the Tribal Council with any premiums for such bonding and/or insurance to be paid from the Commission's budget.

Section 12-2-3. Qualifications. To be qualified to be appointed a Commissioner that is not an ex-officio member, a person shall:

1. Be an enrolled member of the Tribe;

2. Be at least the age of majority;

3. Have no conflicts of interest, as defined in this Chapter;

4. Not be serving on a board or commission of the Tribe upon which any other Commissioner, serving or to be appointed, also serves;

5. Be willing and able to comply with the ethical duties of Commissioners, as defined in this Chapter;

6. Be willing and able to perform the Commission's duties in compliance with the laws of the Tribe;

7. Have or acquire knowledge of this Title, unless the Tribal Council waives such qualification for the appointee;

8. Have the time available to actively fulfill the duties of a Commissioner; and

9. Be willing to receive orientation and training regarding the duties of the Commission.

Section 12-2-4. Term of Office.

1. Commissioners serving as ex-officio members shall hold office until they no longer hold the office which causes them to serve on the Commission regardless of whether there is a successor in the office, but a former ex-officio member may be appointed to another position on the Commission in accordance with this Chapter.

2. Upon the selection of the initial Commissioners, the Tribal Council shall choose from the members that are not ex-officio members, by lot, one Commissioner who will serve an initial term of one (1) year, one Commissioner who will serve an initial term of two (2) years, and one Commissioner who will serve an initial term of three (3) years. Thereafter, the term of office for Commissioners who are not ex-officio members shall be three (3) years.

3. Each Commissioner not an ex-officio member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

Section 12-2-5. Compensation. Commissioners shall be compensated at a rate set by the Tribal Council. In addition, Commissioners shall be paid for mileage for every Commission meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

Section 12-2-6. Resignation and Removal.

1. Any Commissioner who is not an ex-officio member may resign from his or her position by delivering a written resignation to the Tribal Council.

2. Any Commissioner who is an ex-officio member shall automatically be removed from the Commission upon the

Commissioner's resignation or removal from the office which causes them to serve on the Commission.

3. The Tribal Council may, by majority vote, remove a Commissioner who is not an ex-officio member or discipline, in accordance with the laws of the Tribe, a Commissioner who is an ex-officio member for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty;

c. Malfeasance or misfeasance in the handling of taxation matters;

d. Acceptance or solicitation of bribes;

e. Violation of the ethical duties or conflict of interest provisions of this Chapter;

f. Unexcused absence from three (3) or more Commission meetings;

g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the Commissioner ineligible for appointment if the event had occurred prior to appointment.

4. The Tribal Council's decision to remove a Commissioner shall be final and not subject to challenge, review or appeal.

Section 12-2-7. Vacancies. In the event of a vacancy on the Commission in a position which is not held by an ex-officio member, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Commissioner being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 12-2-8. Officers.

1. The Commission shall elect a Chairperson and Secretary from its members at its first meeting each calendar year or at the

next meeting of the Commission if a vacancy occurs in the relevant office.

2. The Chairperson shall call and preside over Commission meetings. The Chairperson shall only vote on matters before the Commission in the event of a tie. The Chairperson shall report to the Tribal Council as required.

3. The Secretary shall be responsible for assuring the timely and proper production, distribution, and storage of all written records of the Commission, including administrative and financial documents. The Secretary shall keep minutes of all meetings of the Commission and shall keep informed about the Commission's expenditures and budget.

Section 12-2-9. Ethics and Conflicts.

1. No person may be appointed to the Commission who:

a. Has a private ownership interest, whether direct or indirect, in any entity or organization that does business with or is operated by the Tribe, its agencies, departments, or enterprises;

b. Has failed to pay when due any taxes owed by him or her imposed by this Title or has failed to file when due any return which he or she is required to file as a taxpayer pursuant to this Title;

c. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Commission; or

d. Has a similar interest that would necessarily conflict with the impartial performance of a Commissioner's duties.

2. The Tribal Council's determination whether an applicant for the Commission is barred from appointment by a conflict of interest shall be final and not subject to challenge, review or appeal.

3. Commissioners shall:

a. Avoid the appearance of impropriety;

b. Not act in an official capacity when a matter before the Commission directly and specifically affects a Commissioner's own interests or the interests of his or her immediate family;

c. Not attempt to exceed the authority granted to Commissioners by this Title;

d. Recognize that the authority delegated by this Title is to the Commission as a whole, not to individual Commissioners and, accordingly, the powers of the Commission may only be exercised by the Commission acting through the procedures established by this Title;

e. Not take action on behalf of the Commission unless authorized to do so by the Commission;

f. Not involve the Commission in any controversy outside the Commission's duties; and

g. Hold all confidential information revealed during the course of Commission business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Commission business.

Section 12-2-10. Preparation of Tax Returns. No Commissioner, agent, personnel or employee of the Commission shall, for compensation, prepare or assist in preparing any tax return required to be filed with the Commission.

Section 12-2-11. Recusal.

1. No Commissioner shall participate in any action or decision by the Commission directly involving the tax liability of:

a. Himself or herself;

b. A member of his or her immediate family;

c. Any person, business, or other entity of which he or she or a member of his or her immediate family is an employee;

d. Any business or other entity in which he or she or a member of his or her immediate family has a substantial ownership interest;

e. Any business or other entity with which he or she or a member of his or her immediate family has a substantial contractual relationship; or

f. Any business or other entity where he or she or a member of his or her immediate family has any other personal or financial interest or any management authority or control, including being a member of the controlling board or committee of such business or entity.

2. Nothing in this Section shall preclude a Commissioner from participating in any action or decision by the Commission which:

a. Generally affects a class of taxpayers, regardless of whether the Commissioner or a member of his or her immediate family is a member of the affected class; and

b. Affects the Tribe, an economic enterprise of the Tribe, or a person or entity in a contractual relationship with the Tribe or an economic enterprise of the Tribe, regardless of whether the Commissioner is also a member of the Tribe.

3. A Commissioner may voluntarily recuse himself or herself and decline to participate in any action or decision by the Commission when the Commissioner, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias; or

b. That there would be an appearance that he or she could not act fairly or without bias.

4. The Commission shall have the authority to determine by majority vote whether a Commissioner is required to or shall not participate in an action due to a potential conflict or appearance of partiality or bias and the determination of the Commission shall be binding on the Commissioner. The Commissioner whose

participation is at issue shall not vote on the question of his or her own participation.

5. For purposes of this Section, participation in an action or decision of the Commission includes:

a. Sponsoring, influencing, or in any manner attempting to influence any vote or determination related to such action or decision;

b. Participating in any discussion of such action or decision before the Commission;

c. Voting or otherwise participating in such action or decision; and

d. Taking any other official action, whether in a meeting of the Commission or otherwise, with respect to such action or decision.

Section 12-2-12. Quorum. Three (3) Commissioners shall constitute a quorum for conducting business.

Section 12-2-13. Meetings.

1. The Commission may hold meetings as it deems necessary.

2. The Chairperson of the Commission shall have the authority to call a meeting of the Commission as he or she sees fit upon forty-eight (48) hours written notice. The Commissioners, by unanimous consent or appearance at a meeting, may waive any notice requirement.

3. The Commission may conduct a meeting exclusively by telephone, video conference or other electronic means provided that the notice of the Commission meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

4. All decisions of the Commission shall be made by a majority vote of the Commissioners attending the meeting, provided a quorum is present, unless otherwise provided in this Title.

5. Matters dealing with personnel, enforcement, individual taxpayers, or other confidential matters shall be conducted in executive session and shall not be open to the public.

Section 12-2-14. Powers and Duties of Commission. The power, authority and duties of the Commission shall be as follows:

1. To administer, implement and enforce this Title;

2. To make recommendations to the Tribal Council concerning amendments to this Title;

3. To make recommendations to the Tribal Council on the rates of taxes imposed by this Title and to publish such rates upon the Tribal Council setting such rates as provided in this Chapter;

4. To determine, assess, collect, and issue receipts for all taxes imposed by this Title;

5. To abate, compromise and settle any tax owed in accordance with this Title;

6. To bring legal action in the name of the Tribe to collect taxes, penalties and interest in accordance with this Title;

7. In the conduct of any enforcement action authorized by this Title, including examinations and audits, to make an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer during normal business hours;

8. To conduct hearings and hear appeals authorized by this Title, provided the Commission shall have no authority to alter tax rates set by this Title or to declare any portion of this Title or other law of the Tribe invalid for any reason;

9. To issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath at any hearing conducted by the Commission;

10. To examine, under oath, either orally or in writing, any taxpayer or any agent, officer or employee of any taxpayer or any other witness with respect to any matter subject of this Title;

11. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as necessary to implement and enforce this Title and other laws administered by the Commission;

12. To negotiate mutual assessment and collection assistance agreements with other tax jurisdictions, provided that any such agreement shall be subject to approval of the Tribal Council;

13. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

14. To utilize or adopt forms from other appropriate jurisdictions to use as its own so long as such forms meet the requirements of the laws of the Tribe for which such forms are utilized;

15. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title or any other laws administered by the Commission;

16. To delegate any of its power, authority and duties to an individual Commissioner or other personnel or employee of the Commission, provided that the Commission shall not delegate its power to promulgate rules and regulations or to conduct hearings and hear appeals; and

17. To perform all other duties delegated or assigned to the Commission by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 12-2-15. Obtaining Information.

1. The Commission may request such information relevant and material to the enforcement of this Title from any and all persons who:

a. Are engaged in business activity within the territory of the Tribe or with the Tribe;

b. Own an interest in a lease granted by the Tribe; or

c. Are otherwise subject to the jurisdiction of the Tribe.

2. Upon a written request, such persons shall provide the information requested by the Commission. The Commission may issue a subpoena as provided in this Chapter or request the Court to issue a subpoena or other order, including ex parte without a hearing, to obtain the information required to be provided under this Section.

Section 12-2-16. Investigative Authority.

1. For the purpose of enforcing the provisions of this Title, the Commission shall have the authority to inspect property, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry of the Commission, and to make a permanent record of the proceeding.

2. For the purpose of accomplishing the authority granted in this Section, the Commission shall have the power to issue subpoenas and summons requiring attendance and testimony of witnesses and production of papers or other things at any hearing held pursuant to this Title.

3. If a person fails to comply with a subpoena issued by the Commission, the Commission may apply to the Tribal Court for issuance of an order to show cause which directs that the person against whom the subpoena was issued shall comply with the subpoena within ten (10) days or show cause why he or she should not be held in contempt of court in accordance with the laws of the Tribe. The Tribal Court shall issue the order to show cause without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or was not properly served in accordance with this Section.

4. Any subpoena, summons or notice issued by the Commission shall be served in the manner provided for service of the same in the rules of procedure governing civil actions in Tribal Court.

Section 12-2-17. Private Rulings.

1. Upon request as provided in this Section, the Commission shall have the discretionary authority to issue private rulings

concerning the validity or application of any law administered by it or any rule or regulation of the Commission with respect to any property, person, or state of facts, except that no ruling will be given in any matter already under examination or appeal.

2. A taxpayer, designee, or representative may request a private ruling in connection with determining any obligation under this Title.

3. A request for a private ruling shall:

a. Be made in writing at the office of the Commission;

b. State with particularity the ruling sought; and

c. Contain a complete statement of the facts to be relied on together with any information and documents necessary to present those facts.

4. Private rulings are binding on the Commission with respect to the facts and issues presented and ruled upon, but only as to the subject property or the person requesting the ruling.

Section 12-2-18. Rules and Regulations. The Commission shall promulgate rules and regulations, not inconsistent with this Title and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Commission including, but not limited to:

1. Internal operational procedures;

2. The forms to be used by taxpayers;

3. The form and manner in which taxpayers keep records, books and accounts;

4. The interpretation or application of laws of the Tribe governing taxation to ascertain or compute the tax owed by a taxpayer;

5. The manner and method of collection of delinquent taxes, including procedures to attach and seize assets;

6. Procedures for conducting investigations, inspections, examinations, and field and office audits;

7. Requirements concerning payment by a taxpayer of all or a portion of the costs of investigation of that taxpayer;

8. Procedures for all hearings conducted by the Commission; and

9. Protection of the due process rights of taxpayers and all persons subject to the enforcement of this Title by the Commission.

Section 12-2-19. Setting Tax Rates.

1. For any tax rate imposed by this Title which is subject to change without amending this Title, the Tribal Council may set such tax rate, including the effective date for such tax rate, by resolution of the Tribal Council.

2. Upon approval by the Tribal Council of any tax rate subject to change by the Commission, the Commission shall post notice of such new tax rate at all Tribal governmental offices and on the Tribe's website and shall publish such notice in the Tribal newsletter. In addition, the Commission shall mail such notice to every taxpayer known to the Commission subject to such tax. Such notice shall include:

a. The name of the tax subject of the new rate with reference to the appropriate chapter or section imposing such tax;

b. The current tax rate for the tax subject of the new rate;

c. The new tax rate for the tax subject of the new tax rate; and

d. The effective date of the new tax rate.

3. The Commission shall maintain an easily accessible list of all current tax rates for all taxes imposed by the Title and make such list publicly available on the Tribe's website, at the Commission's offices, and upon request of any person.

Section 12-2-20. Commission Seal.

1. The Commission shall acquire an official seal which shall be used on all original and/or certified copies of all documents of the Commission to evidence their authenticity.

2. The seal of the Commission shall:

a. Be circular in shape;

b. Contain the words "Ponca Tribe of Nebraska" around the top edge;

c. Contain the words "Tax Commission" around the bottom edge; and

d. Contain the words "Official seal" in the center.

3. The seal shall be secured at all times to prevent unauthorized use.

Section 12-2-21. Stamps and Licenses.

1. The Commission shall provide for the form, size, color and identifying characteristics of all licenses, permits, tax stamps, tags, receipts or other instruments evidencing receipt of any license or payment of any tax or fee administered by the Commission or otherwise showing compliance with this Title.

2. Unless otherwise provided by the law applicable to a particular instrument developed by the Commission, any instrument developed by the Commission under this Section shall contain at least the following information:

a. The words "Ponca Tribe" or, if space allows, "Ponca Tribe of Nebraska;"

b. If space allows, the words "Tax Commission;"

c. The amount for which the instrument was issued or represents, unless display of the amount is reasonably impractical or constrained by space;

d. If the instrument is for the imposition of a tax, an indication of the tax imposed;

e. If the instrument is a license or permit, an indication of the type of license or permit, its effective dates, and the name and address of the taxpayer to whom it is issued; and

f. If the instrument is a receipt, an indication of what the receipt is for, any amount the receipt is for, and the name and address of the taxpayer to whom it is issued.

3. The Commission shall provide for the manufacture, delivery, storage and safeguarding of any instrument developed under this Section and shall safeguard such instruments against theft, counterfeiting and improper use.

4. The Commission may, pursuant to and in accordance with such rules and regulations as the Commission shall prescribe:

a. Allow the use of metering devices in lieu of paper stamps; and

b. Exchange new stamps for damaged, out of date or otherwise unusable stamps.

Section 12-2-22. Treatment of Tax Proceeds.

1. The Commission, in coordination with the Finance Department, shall maintain financial records and books of account in accordance with the following:

a. Such records and books shall adequately account for all funds received and disbursed by the Commission;

b. Such records and books shall be maintained in accordance with generally accepted accounting standards;

c. Separate records and books shall be maintained for each tax imposed by the laws of the Tribe; and

d. Such records and books shall be reconciled with any original tax returns or other pertinent records of the Commission.

2. The proceeds of any tax imposed by the laws of the Tribe and collected by the Commission shall be distributed by the Commission in accordance with any provisions of the law governing such tax. If no provision for distribution is made by such law, all such tax proceeds shall be deposited in accounts as provided in this Section.

3. Except where a law governing a particular tax provides otherwise, all taxes, fees, penalties, interest or other funds collected by the Commission shall be deposited immediately into a federally insured bank account for the benefit of the Tribe and refunds paid from the same account.

4. For purposes of making deposits and issuing refunds, the Commission may establish an account with a federally insured financial institution or utilize an existing account of the Tribe, provided that if the Commission utilizes an existing account of the Tribe, the Commission, in coordination with the Finance Department, shall maintain appropriate records accounting for all funds deposited to and refunded from such account by the Commission.

5. Except for refunds authorized by the Commission in accordance with this Title and the rules and regulations of the Commission, monies shall be expended from the revenues of the Commission only as directed by the Tribal Council in accordance with the laws and practices of the Tribe governing appropriation of Tribal funds and current procedures of the Finance Department.

Section 12-2-23. Records of Commission.

1. The Commission shall create and maintain accurate and complete records which contain information and documents necessary for the proper and efficient operation of the Commission, including, but not limited to:

a. All taxes, penalties and interest levied, due and collected;

b. All refunds issued;

c. All licenses, permits, stamps and the like issued and any fees or taxes received for the same; and

d. Each and every official transaction, communication or action of the Commission.

2. The records of the Commission shall be maintained at the office of the Commission and shall not be removed from said office without the written authorization of the Commission.

3. Except where expressly provided otherwise in this Section or elsewhere the laws of the Tribe, names, records, and other information concerning the individual business or personal activities of a particular person, including information supplied by a person in response to a request, included in any return or form required to be filed with the Commission or obtained in the course of an examination, shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person subject of the record or information and his or her legal counsel or other authorized representative;

b. Persons directly connected with the administration of the Commission;

c. Legal counsel for the Commission;

d. Other departments and agencies of the Tribe and the Tribal Attorney upon written request demonstrating a legitimate need for such records or information in connection with the governmental function of such department, agency or Tribal Attorney;

e. To a governmental agency of another federally recognized Indian tribe, the United States or a state according to the terms of a reciprocal agreement for the exchange of information or if the receiving agency has entered into a written agreement with the Commission to use the information for tax purposes only and that the receiving agency has enacted a similar confidentiality rule; and

f. To others when the person subject of the record or information has authorized the release of information or otherwise waived confidentiality expressly in writing.

4. Nothing in this Section shall prevent the Commission from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Commission;

b. In a proceeding before the Commission involving the person subject of the record or information;

c. In a proceeding in a court or other tribunal to which the Commission is a party or representing the Tribe, including any action to enforce any act of the Commission, to collect taxes, or where the person subject of the record or information has put his or her own liability for taxes at issue;

d. That is solely the name, address, or other general information which is otherwise in the public record or generally available to the public upon the making of a reasonable inquiry;

e. In recording tax liens on the property of the person subject of the record or information or collecting taxes by levy upon the property or rights to property of such person;

f. Which is only the amount and basis of unpaid taxes to the purchaser or an intended purchaser of property or business of the person subject of the records or information;

g. In accordance with a valid written order of the Tribal Court; or

h. When the person subject of the record or information authorizes the release of information or otherwise waives confidentiality expressly in writing.

5. The Commission may limit the information disclosed to persons, agencies, and entities as authorized under this Section to that information necessary to accomplish the purposes for which such information is requested or for which such information is being disclosed. Nothing in this Section shall be construed as granting to the persons, agencies, and entities authorized to receive information under this Section the right to review or copy the complete record involving a person or any information beyond what is necessary.

6. Notwithstanding anything to the contrary in this Section, the following records and information shall be considered public records of the Commission and shall be provided or made

available for inspection during regular business hours upon proper written request to the Commission and payment of any copying costs set by the Commission, provided that the names and other identifying or personal information appearing in such record is rendered unreadable prior to provision or inspection:

a. Rulings, decisions and opinions rendered by the Commission; and

b. Any other record or information of the Commission which does not concern the individual business or personal activities of a particular person.

7. Any person who willfully discloses confidential information other than as expressly authorized in this Section shall be subject to a civil fine not to exceed fifty dollars ($50) or, in the case of an employee or officer of the Tribe, suspension for 30 days, or both, and any such fine may be imposed by the Commission pursuant to a notice of assessment and thereafter enforced and collected through a civil cause of action brought by the Commission on behalf of the Tribe in a proceeding in the Court.

8. The records of the Commission shall be subject to audit at any time at the direction of the Tribal Council, but not less than once each year.

Section 12-2-24. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Commission may use the services, information or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies and others shall furnish such services, information or records upon request of the Commission; and

2. The Commission may use personnel and employees of the Tribal administration as it would personnel and employees of the Commission, provided the Commission coordinates with and obtains approval from the Tribal administration.

CHAPTER 3
COLLECTION AND ENFORCEMENT

Section 12-3-1. Payment and Filing.

1. Except where the laws of the Tribe expressly provide otherwise, all filings and payments related to taxes under the laws of the Tribe shall be tendered to the Commission.

2. Any payment received by the Commission will be applied as follows:

a. First, to satisfy any penalty;

b. Second, to satisfy any interest accrued;

c. Third, to the tax owed; and

d. Lastly, any overpayment refunded to the taxpayer.

Section 12-3-2. Extensions of Time.

1. A taxpayer may file a written request for a one-month extension of the time for filing a return and for any payment due with the return, subject to the following:

a. The request must identify the taxpayer, return, and assessment date or period;

b. The request must include a statement of reason for requesting the extension; and

c. The request must be filed at the place and by the time for filing the return.

2. Upon receipt of a valid request for extension, the time for filing the return subject of the extension will be automatically extended by one month. The time for any payment shall also be extended, provided that the taxpayer pays with the request an amount equal to the tax liability due for the previous period or at least ninety percent (90%) of the tax due with the return subject of the extension, whichever is less. The balance of any tax due, along with accrued interest, must be paid by the expiration of the extension granted.

3. In its discretion and for good cause shown, the Commission may grant additional extensions of time of up to three months on the basis of a similar written request filed before the expiration of an extension already granted. The Commission may require the payment of an estimated amount of tax or condition the grant of an extension of time to pay upon the posting of a bond or provision of other security or the creation of a lien.

Section 12-3-3. Duty to Keep Records. Every taxpayer shall keep and maintain accurate records in such form as to make it possible to determine the tax due. Such records shall be maintained until the period of limitations governing the assessment of such tax expires as provided in this Chapter.

Section 12-3-4. Assessment of Tax.

1. The Commission may determine and assess against a taxpayer liability for tax, interest, penalties, or other costs in the following circumstances:

a. When it appears that a return filed or a payment made does not reflect the amount of tax due under applicable law;

b. When a required return has not been filed or is incomplete;

c. If a taxpayer fails or refuses to provide information within its possession or control which is relevant to a determination of tax due and is required to be provided under this Title;

d. Pursuant to an examination and audit as provided for in this Chapter; and

e. When it appears that a taxpayer has made an overpayment.

2. The Commission shall make assessments pursuant to this Section upon the information available to the Commission and may also obtain information in accordance with this Title upon which to base an assessment of the tax.

3. When the value of an item is relevant to the calculation of an assessment, the Commission shall determine the value on the basis of the best information it finds readily available.

4. Upon making an assessment pursuant to this Section, the Commission shall issue a notice of assessment which sets forth the deficiency, interest, penalties and any other costs or, in the case of an overpayment, issue a notice of refund and remit a refund in the amount of overpayment.

Section 12-3-5. Examination and Audit.

1. The Commission may examine and audit any taxpayer for the following purposes:

a. To make an assessment;

b. To make a required return where none has been made;

c. To determine the correctness of any return or form filed;

d. To determine the liability of the taxpayer for taxes;

e. To determine the liability in law or in equity of any transferee or fiduciary of any taxpayer for taxes; or

f. For collecting any liability to the Commission.

2. In conducting an examination and audit pursuant to this Section, the Commission may:

a. Examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry upon reasonable notice:

i. During normal business hours;

ii. At any other time agreed to by the person having possession, custody or care for such data; or

iii. At any time pursuant to an order of the Tribal Court;

b. Summon the person liable for the tax or required to perform the act, or any officer or employee or agent of the person, or any person having possession, custody or care of the books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Commission may deem proper, to appear before the Commission at the time and place named in the summons and to produce such books, records, papers, maps, documents or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry; and

c. Take testimony of any person, under oath, as may be relevant or material to the inquiry.

Section 12-3-6. Notices of Assessment and Refund.

1. A notice of assessment or refund may arise from:

a. An initial assessment of tax;

b. An estimate of the tax due when a required return has not been filed;

c. A deficiency in the amount of tax reported or paid determined upon examination of a declaration; or

d. An application of interest, penalties, or charges for costs.

2. A notice of assessment or refund will require the payment of the amount assessed or remittance of the refund by a time not less than sixty (60) days after the date of the notice.

3. Upon receipt of a notice of assessment or refund, the taxpayer must either comply with the terms of the notice or request a formal or informal conference as provided in this Chapter.

Section 12-3-7. Formal Conference.

1. Within thirty (30) days of service of a notice of assessment or refund, a taxpayer may request a conference with the Commission to seek an abatement or a review and redetermination of an assessment or denial of refund.

2. A request for a conference shall:

a. Be made in writing to the Commission or its designee;

b. Identify the notice of assessment or denial of refund;

c. Declare the redetermination sought; and

d. Include a complete statement of the facts relied on.

3. The Commission, after an initial inquiry, may deny the request for a conference and direct the taxpayer to proceed to an appeal in accordance with this Chapter.

4. Upon a proper request for a conference, payment on the notice will be stayed until a time not more than thirty (30) days after issuance of a decision.

5. The Commission may confer with the taxpayer by phone or in person, or may require the submission of additional written material and will issue a written decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

6. After the Commission issues its decision, the taxpayer may appeal the matters in dispute as provided in this Chapter. The taxpayer may request a stay of payment on the decision within ten (10) days after issuance of the decision, provided the request is based upon an intention to request a hearing.

7. If no appeal is made within the time allowed, the decision from a formal conference is final and is not subject to any appeal before the Commission or in any court.

Section 12-3-8. Appeal to Commission.

1. Within sixty (60) days of service of a notice of assessment or denial of refund, or issuance of a decision from a formal conference, the taxpayer may file an appeal with the Commission.

2. A request for appeal shall:

a. Be made in writing to the Commission;

b. Identify the notice of assessment or denial of refund;

c. Identify any conference decision;

d. Declare the redetermination sought; and

e. Include a complete statement of the facts relied on.

3. Payment of taxes which are being appealed in an administrative hearing may be stayed upon the written request of the appellant. The stay may be conditioned on the posting of a bond or provision of other security, or on the creation of a lien.

4. The Commission shall take testimony and examine documentary evidence as necessary to determine the appeal.

5. In voting upon an appeal, any abstention by a Commissioner shall be counted as a vote to deny the appeal.

6. After hearing an appeal, the Commission shall issue a decision, including the actual redetermination of taxes based on correction of tax computations or corrections to the classification of property or income.

7. The decision of the Commission on an appeal under this Section shall be the final decision of the Commission, provided that the Commission shall be considered to have issued a final decision denying the appeal if the Commission:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

8. The Commission may permit or require, pursuant to the rules and regulations of the Commission, one or more levels of review by its employees or delegates in addition and prior to appeal to the Commission, provided that the failure to proceed to

a next required level of review shall constitute a waiver of any further appeal or judicial review.

9. The failure to file an appeal pursuant to this Section shall not prevent the taxpayer from defending any collection action of the Commission in Tribal Court.

Section 12-3-9. Judicial Review.

1. If a taxpayer is aggrieved by a final decision of the Commission on appeal, the taxpayer may challenge the decision by filing a petition requesting judicial review of the final order in the Tribal Court.

2. Judicial review of the Commission's final decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Commission's decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Commission;

c. No new or additional issues may be raised and only issues raised before the Commission may be heard regardless of the Commission's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Commission unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Commission;

e. In reviewing legal conclusions reached by the Commission, the Tribal Court shall give proper weight to the Commission's interpretation of this Title and any rules and regulations of the Commission;

f. The Tribal Court may affirm, reverse, modify or vacate and remand the Commission's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Commission is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion;

iv. Beyond the Commission's authority; or

v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Commission if:

a. The taxpayer has not exhausted all administrative remedies before the Commission, including an appeal to the Commission; and

b. The payment of the taxes assessed or determined by the Commission have not been made.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a taxpayer except for enjoining the collection of or ordering the return of taxes, penalties or interest.

Section 12-3-10. Collection of Tax.

1. All taxes assessed by the Commission are a debt due and owing the Tribe from the taxpayer.

2. Any amount set forth in a notice of assessment or reported due in a filed return and not paid by the due date is collectible as of that date without further notice.

3. If any amount due the Commission is not paid when due, the Commission may collect such amount in any manner:

a. Provided in this Chapter;

b. Permitted under the laws of the Tribe for the collection of a debt by a member of the public generally, including, but not limited to, garnishment, seizure, attachment and execution; and

c. Available to the Tribe for collection of debts owed the Tribe.

4. Any suit brought by the Commission to collect amounts due and owing or otherwise enforce the laws of the Tribe enforceable by the Commission shall be captioned: "The Ponca Tribe of Nebraska ex rel. Ponca Tribe of Nebraska Tax Commission, Plaintiff vs. (name of taxpayer(s)), Defendant."

Section 12-3-11. Refunds.

1. Any taxpayer who has made an overpayment may file a written claim for refund with the Commission, except that:

a. No claim for refund need be filed if the basis therefor has already been established under an abatement or asserted in an appeal under this Chapter; and

b. An issue determined in an appeal may not be reopened by filing a claim for refund.

2. If any overpayment arises from an action of a Tribal, federal or state agency or court, other than in an appeal under this Chapter, the time for filing a claim for refund will be one (1) year from the date of such action.

3. A claim for refund may take the form of an amended return for the period for which the overpayment was made. The return must contain a clear statement of the amount of the refund being claimed and the facts or other basis for determining an overpayment.

4. At the option of the taxpayer, an overpayment may be applied toward tax due for a current or future period.

5. If a taxpayer owes other taxes, interest or penalties to the Commission, any overpayment shall be applied to such other taxes, interest or penalties as a payment received from the taxpayer.

Section 12-3-12. Interest.

1. Interest shall be imposed on any unpaid tax from the date the tax was first due until the date payment is received without regard to any extension or stay of time. The rate of

interest on unpaid tax shall be the rate in use from time to time by the United States Internal Revenue Service.

2. Interest shall be remitted to a taxpayer on any overpayment of tax from the date the payment was received to the date a refund is made. The rate of interest on refunds shall be the rate in use by the United States Internal Revenue Service.

Section 12-3-13. Costs of Collection.

1. A taxpayer who fails to pay any taxes at the time due may be charged for extraordinary administrative costs incurred in collecting the unpaid amount, including legal counsel fees and other costs of collection.

2. Costs of collection shall be limited to direct costs and out-of-pocket expenses incurred in collection efforts beyond the ordinary office functions, duties, and notices for collecting taxes and the usual legal expenses for obtaining court judgments.

3. The Commission may relieve a taxpayer from the operation of this Section for good cause shown, considering all surrounding facts and circumstances, including the pattern of compliance of the taxpayer, mistake, the absence of negligence or intentional disregard of the law, or the presence of substantial issues of interpretation of the law.

4. If the Commission determines to charge costs of collection to a taxpayer, the Commission shall issue a notice of assessment to the taxpayer which itemizes all costs charged.

Section 12-3-14. Penalties.

1. A taxpayer who fails to file a return by the time due shall be assessed a penalty of ten percent (10%) of the tax due for the assessment date or period, but not less than one hundred dollars ($100), provided that a return filed on or before the date of a granted extension for filing shall be deemed timely filed. For each full month a return is overdue, an additional penalty of one percent (1%) of the tax due will be assessed up to an amount equal to twenty-four percent (24%) of the tax. The Commission may waive the penalty under this subsection after the return is filed if the taxpayer shows the failure to timely file was due to reasonable cause and not to willful neglect.

2. A taxpayer who fails to pay an amount of tax by the time it is due shall be assessed a penalty of five percent (5%) of the amount of the underpayment, provided that a payment made on or before the date of a granted extension for paying shall be deemed timely filed. For each full month a payment is overdue, an additional penalty of one-half percent (1/2%) of the amount of the underpayment will be assessed up to an amount equal to thirty-six percent (36%) of the underpayment. The Commission may waive the penalty under this subsection after the tax is paid if the taxpayer shows the failure to timely pay was due to reasonable cause and not to willful neglect.

3. Any taxpayer who is under-assessed by reason of providing incomplete or incorrect information, or who understates tax imposed, through negligent or intentional disregard of the laws of the Tribe governing taxation shall be assessed a penalty of two hundred fifty dollars ($250) plus twenty-five percent (25%) of the amount of the underpayment of tax. If any part of such under-assessment or understatement of tax is due to fraud, the taxpayer will be assessed an additional penalty of fifty percent (50%) of the amount of the underpayment of tax. Any person who assists a taxpayer in such fraud will be subject to a penalty of five hundred dollars ($500), plus twenty-five percent (25%) of the amount of the underpayment of the tax.

4. Any taxpayer who violates any provision of this Title or other law of the Tribe governing taxation for the purpose of evading the payment of taxes shall be assessed a penalty of five hundred dollars ($500) plus twenty-five percent (25%) of the amount of the tax due.

5. Any person obligated to collect or remit a tax imposed by this Title who knowingly fails to collect or remit such tax shall be liable for the full amount of the tax that should have been collected plus interest at the rate set forth in this Chapter. If such failure to collect or remit such tax is willful, the person shall be subject to an additional penalty in an amount equal to one hundred percent (100%) of the taxes that should have been collected or remitted.

Section 12-3-15. Enjoining Business. In addition to any other remedies available to it, the Commission may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Title or other law of the Tribe governing taxation requires

a license for the conduct of such business, activity or function. The enjoining of a business pursuant to this Section shall be deemed an exclusion of the business pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 12-3-16. Tax Lien.

1. If a taxpayer fails to pay any amount set forth in a notice of assessment by the date required in such notice, the amount shall be a lien in favor of the Tribe against all property of the taxpayer then owned and thereafter acquired that is not exempt from garnishment or attachment under the laws of the Tribe.

2. A lien for unpaid amounts in a notice of assessment shall commence upon the date of the notice of assessment and shall continue until the amount of the lien is satisfied or released or ten (10) years from the date of the notice of assessment, whichever occurs first.

3. A lien for unpaid amounts in a notice of assessment shall not be effective against other parties until a notice of lien is recorded in the office of the Commission in a form available for inspection by the public.

4. The Commission may file or record a notice of lien for unpaid taxes against specified personal or real property of a taxpayer in any office of any jurisdiction in the manner permitted under the laws of such jurisdiction, provided that the Commission shall file a release of any such lien in the same office upon the satisfaction or release of the lien.

5. The Commission may enforce a lien against the property of a taxpayer transferred to another person and the person takes subject to the lien if:

a. The property was transferred after the lien became effective;

b. A notice of the lien has been filed in the offices of the Commission as provided in this Section; and

c. The taxpayer received clearly inadequate or no consideration for the transfer.

6. The Commission may foreclose upon any or all items of property subject to a lien under this Section through an action for foreclosure or writ of execution in an appropriate court.

Section 12-3-17. Seizure of Contraband.

1. In addition to any other remedies available to it, the Commission, pursuant to an order issued by the Commission, may seize any property declared to be contraband by this Title.

2. Upon seizure of any property pursuant to this Section, the Commission shall inventory all items seized and leave a written copy of such inventory with the person from whom it was seized or, if such person cannot be found, posted at the place from which the property was seized.

3. Within ten (10) business days of any seizure of property pursuant to this Section, the Commission shall file a complaint for forfeiture against such property in the Tribal Court. The complaint shall be served on the taxpayer and any and all other persons known by the Commission to claim an ownership interest, right of possession to, or other interest in the property.

4. Upon the Commission showing by clear and convincing evidence that such property is contraband under this Title, the Tribal Court shall enter an order that such property is forfeited and that all title and ownership interest in such property is vested in the Tribe.

5. Any person who claims an ownership interest, right of possession to, or other interest in property seized pursuant to this Section may intervene in the Tribal Court action and raise any defense he or she may have. Such persons may redeem the property at any time prior to final judgment of forfeiture by depositing with the Court all taxes assessed or owing with respect to such property.

Section 12-3-18. Sale of Property.

1. Upon a final order of forfeiture entered by the Tribal Court or receipt of property through foreclosure, execution or other appropriate means, the Commission shall convert such property into money through public sale of such property in accordance with this Section.

2. Prior to any public sale of property, the Commission shall provide notice of the public sale at least twenty (20) days prior to the date of such public sale. The notice shall be posted at all Tribal governmental offices and on the Tribe's website and, if an edition of the Tribal newsletter will be released prior to the public sale, published in the Tribal newsletter. The Commission may post and publish the notice in such other locations and periodicals as the Commission deems appropriate. The notice shall include:

a. The date and time of the public sale;

b. The location of the public sale;

c. A statement that the property will be sold to the highest bidder; and

d. Unless the inventory of property to be sold is included with the notice, information on where individuals may obtain or view an inventory of the property to be sold.

3. All public sales pursuant to this Section shall be held at one of the government offices of the Tribe and all property shall be sold at public auction to the highest bidder.

4. The amount received for any property sold at public auction in accordance with this Section shall be deemed to be the fair market value of such property for any purpose under applicable law.

5. All revenue from the sale of property at a public sale shall be applied as a payment to the Commission to the credit of the taxpayer who previously owned the property and deposited in the accounts of the Commission, provided that the taxpayer shall not receive any excess funds from the sale of property seized as contraband and such excess funds shall become the property of the Tribe. If the revenues from the sale of property of a taxpayer do not satisfy the total amount owed by the taxpayer, the taxpayer shall remain liable for any remaining balance.

6. The Commission may conduct a public sale at such times as it deems sufficient property has accumulated to make the sale profitable.

Section 12-3-19. Abatement of Taxes.

1. In response to a written request but before any court acquires jurisdiction in the matter, or at any time when an assessment is found to be incorrect, the Commission may abate any part of an assessment which it determines was incorrectly, erroneously, or illegally made.

2. A request for an abatement must:

a. Be made in writing to the Commission or its designee;

b. State the abatement sought; and

c. Contain a complete statement of the facts relied on, together with any information and documents necessary to present those facts.

3. Abatements in excess of $1,000 will be recorded in the offices of the Commission in a form available for public inspection and shall maintained for a minimum of six (6) years after the date of abatement.

Section 12-3-20. Settlement Agreements.

1. At any time after an assessment of taxes, the Commission may compromise the liability of a taxpayer by entering with the taxpayer into a written settlement agreement that adequately protects the interests of the Tribe.

2. If a settlement agreement is entered into after a court acquires jurisdiction over the matter, the settlement agreement shall be made part of a stipulated order or judgment disposing of the case.

3. As a condition for entering into a settlement agreement, the Commission may require the provision of security for payment of any taxes due according to the terms of the agreement.

4. Upon the compromise of a liability and according to the terms of the settlement agreement, the Commission will cause the abatement of the appropriate amount of the assessment.

5. A settlement agreement is conclusive as to the liability or non-liability for payment of taxes for the assessment dates or periods referred to in the agreement, except upon a showing of fraud, malfeasance, or misrepresentation or concealment of a material fact.

Section 12-3-21. Violations.

1. It shall be a violation of this Title for any person to:

a. Knowingly file any false report or return with the Commission;

b. Aid, abet, or assist another in making a false or fraudulent return;

c. Aid, abet, or assist another in an attempt to evade the payment of any tax;

d. Counterfeit, forge, embezzle, steal, knowingly convert, knowingly misapply, or knowingly permit to be misapplied any stamp, tag, license or other instrument evidencing the payment of taxes;

e. Use, pass, tender as true, or otherwise be in possession of any unauthorized, altered, forged, counterfeited or previously used stamp, tag, license or other instrument evidencing the payment of taxes for the purpose of evading the payment of taxes; or

f. Knowingly violate any provisions of this Title or other law of the Tribe governing taxation.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title shall be subject to a civil fine of five hundred dollars ($500) per occurrence, which may be imposed by the Commission pursuant to a notice of assessment and thereafter enforced and collected through a civil cause of action brought by the Commission on behalf of the Tribe in a proceeding in the Court.

3. The Commission may report any violation of this Title to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation

as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Section 12-3-22. Effectiveness of Notices.

1. Any notice required to be given by the Commission shall be deemed effectively given to a person if it is mailed to the individual last designated by the person at the address shown on the designation.

2. Where a person has not designated an individual, notice shall be deemed effectively given if mailed to any owner of an interest in the business or property subject of the notice.

3. Public notice of lien shall be deemed effective as to all property and rights to property of a taxpayer, business, or person if the description of the taxpayer, business, or person is sufficient to put a reasonable person on inquiry to ascertain the existence of a lien on the property.

4. Nothing in this Section shall preclude the use of other methods of providing notice, including publication, so long as such methods comport with due process.

Section 12-3-23. Limitations of Actions.

1. Any claim or request for credit or refund must be filed within four (4) years of the date the taxes from which such refund or credit is claimed or requested were due and not afterward.

2. A tax, interest or penalty shall not be assessed after the expiration of four (4) years from the date set for the filing of the return or the date the return was filed, whichever is later.

3. The Commission shall impose any civil fine for a violation of this Title within four (4) years from the date such violation occurs and not afterward.

4. The limitation periods provided in this Section will be suspended:

a. During the pendency of any hearing or other legal proceeding concerning the deficiency, interest or penalty;

b. Upon the consent of the taxpayer or, in the case of a claim or request for refund or credit, the Commission; and

c. Except for a claim or request for refund or credit, for any period for which a return is not filed.

5. The issuance of a notice of assessment shall commence a cause of action for collection of any amounts stated in the notice as well as any penalties and interest which may later be added to such amounts for purposes of any civil statute of limitations which may apply to the collection of such amounts.

6. The filing of a written request for refund or credit with the Commission shall commence a cause of action for a return of such amount claimed as well as any interest applicable to such amount for purposes of any civil statute of limitations which may apply to the collection of such refund so long as such request for refund is diligently pursued.

Section 12-3-24. Prohibition of Suits. No suit to restrain the assessment and collection of any tax imposed by this Title or any other law of the Tribe shall be maintained in any court by any person, whether or not such person is the one on whom such taxes were assessed.

Section 12-3-25. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a decision of the Commission as provided in this Title, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Commission or any of its agents, officers, officials, personnel or employees.

2. An action brought or taken by the Commission, including without limitation the bringing of suit for the collection of taxes or fines or enjoining a business, activity or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Commission, including a suit for the collection of taxes or fines or enjoining a business, activity or function of such economic enterprise and, to the extent necessary, the Tribe waives the

sovereign immunity of its economic enterprises in any action brought or taken by the Commission against such economic enterprise.

CHAPTER 4
SALES TAX

Section 12-4-1. Purpose. The purpose of the tax imposed on sales pursuant to this Chapter is:

1. To regulate and monitor retail sales made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-4-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who receives goods from a seller in exchange for money, other goods, or services delivered to the seller.

2. "Complimentary" means the provision of goods without charge to a person.

3. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value, but does not include dietary supplements.

4. "Goods" means tangible personal property which may be seen, weighed, measured, felt, or touched or which is in any other manner perceptible to the senses.

5. "Gross receipts" means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

6. "Occasional sale" means:

a. A sale of an individual's own property at his or her residence or at an online auction site, including garage sales, provided such sales do not occur for more than seven (7) days during a calendar year and the individual does not conduct or engage in a trade or business of selling similar items;

b. Sales of goods solely from an individual's primary residence or at an online auction site with gross receipts of less than $10,000 per year even if the individual is engaged in a trade or business of selling goods;

c. Sales of goods for a period of less than seven (7) consecutive days at a time, such as sales by a vendor at a powwow or similar cultural event, flea market, craft show, antique show, coin show, stamp show, comic book show, convention exhibit area, school or community-based fundraising event, or similar selling event;

d. Sales of household goods or personal farm equipment at auction by an auctioneer, provided the auctioneer has five (5) or fewer auctions per year;

e. Sales made at public auction pursuant to the laws of the Tribe by the Commission or another department or agency of the Tribe.

7. "Prepared foods" means:

a. Food intended for immediate consumption either on or off the premises of the seller;

b. Food sold in a heated state or heated by the seller;

c. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws;

d. Two or more food ingredients mixed or combined by the seller for sale as a single item, except for:

i. Bakery items, including, but not limited to, bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas;

ii. Ready-to-eat meat and seafood in an unheated state sold by weight;

iii. Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer so as to prevent food borne illnesses; and

iv. Food that is only sliced, repackaged, or pasteurized by the seller; or

e. Food otherwise sold in or by restaurants, cafes, lunch counters, cafeterias, other eating establishments, hotels, gaming establishments, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, convenience stores, and other like places of business at which prepared food or drink is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities.

8. "Retail sale" means any sale made for any purpose other than for resale or further processing, but includes any goods purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

9. "Sale" means the transfer, whether singly, by subscription, or in any other manner, of all or part of the ownership of, title to, possession of, use of, or other interest in goods for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, licensing, conditional sales, and any sales where possession or use of goods is given to the buyer but title is retained by the seller.

10. "Seller" means the person making a sale to a buyer.

11. "Soft drinks" means non-alcoholic carbonated beverages and other non-alcoholic beverages that contain natural or

artificial sweeteners, but does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by volume.

Section 12-4-3. Tax Imposed.

1. For the privilege of conducting retail sales in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of goods on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs on Tribal lands if the location at or from which delivery of the goods is made to the buyer is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any retail sale consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such retail sale for computing the tax imposed by this Chapter shall be the fair market value of the goods sold.

Section 12-4-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect sales tax on the following:

    a. Sales made to the Tribe where the gross receipts from the sale of goods in the transaction is not more than the small purchase threshold, unless payment for the goods is made directly from the proceeds of a substantial indebtedness of the Tribe;

    b. Sales made to the government of a state or another federally recognized Indian tribe when the state or tribe

grants a reciprocal exemption to the Tribe and its agencies and departments;

c. Sales made outside Tribal lands;

d. Occasional sales;

e. Sales of food other than soft drinks and prepared foods;

f. Sales of feminine hygiene products;

g. Sales of items paid for by food stamps;

h. Sales of residential heating fuels, natural or artificial gas, electricity, water, steam, telecommunications service, and any other utility;

i. Sales of automobiles, trucks, truck-tractors, semi-trailers, trailers, boats, travel trailers, motorcycles and all-terrain cycles;

j. The provision of complimentary goods to customers or employees;

k. Sales of cigarettes and tobacco products subject to the tax imposed pursuant to Chapter 6 of this Title;

l. Sales of liquor subject to the tax imposed pursuant to Chapter 7 of this Title;

m. Sales of motor vehicle fuel subject to the tax imposed pursuant to Chapter 6 of this Title;

n. Sales of medical and dental supplies, medicines, and pharmaceutical products;

o. Sales of newspapers and periodicals;

p. Sales of admissions to events and movies;

q. Sales of gambling devices regulated by the laws of the Tribe governing gaming and gambling within the territory of the Tribe;

r. Wagers or other amounts paid as consideration for playing a game of chance; or

s. Sales of products from vending machines.

2. In computing the amount of sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

3. A seller only making occasional sales shall be exempt from collection and payment of the tax imposed by this Chapter.

Section 12-4-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-4-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-4-7. Tax Stated Separately.

1. Each seller shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale. If the seller does not state the tax separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-4-8. License.

1. Any person who engages in retail sales on Tribal lands shall be required to first obtain a retail sales tax license from the Commission. If a person makes retail sales at two or more separate places of business on Tribal lands, a separate retail sales tax license shall be required for each place of business.

2. A retail sales tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A retail sales tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A retail sales tax license issued by the Commission shall permit the licensee to purchase goods for resale from a wholesaler or any other person free from the tax imposed by this Chapter on such goods, provided that if the licensee later withdraws the goods, in whole or in part, from inventory for use or consumption by the licensee or any other person, the purchase price of such goods shall be included in the licensee's gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only occasional sales shall not be required to obtain a retail sales tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the retail sales tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person liable for the tax imposed by this Chapter who fails to obtain a retail sales tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make retail sales on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-4-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be

signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-4-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 5
SERVICES TAX

Section 12-5-1. Purpose. The purpose of the tax imposed on sales pursuant to this Chapter is:

1. To regulate and monitor sales of services made to the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development, and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-5-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who purchases or receives services from a seller in exchange for money, goods, other services, or other consideration delivered to the seller.

2. "Complimentary" means the provision of services without charge to a person.

3. “Construction services” means the performance of services which constitute or are part of construction, repair, demolition, replacement, alteration, modification, or improvement of property, other than personal property which retains its identity as personal property upon completion of the construction services, and includes, but is not limited to:

a. Designing, constructing, building, erecting, repairing, grading, excavating, drilling, exploring, testing, or adding to any building, project, development, highway, street, road, railroad, sidewalk, bridge, culvert, excavation, sewer system, irrigation, system, water system, power plant, electrical system, air conditioning system, heating system, transmission line, pipeline, tower, water well, or other improvement or structure, or any part thereof; and

b. Pre-development services, architect services, engineer services, geologist services, land surveying services, landscape architect services, and other design services, regardless of whether such services are provided separately from or as part of other construction services.

4. “Gross contract price” means the total price or other consideration valued in money, whether received in money or otherwise, paid to a seller under a contract, whether written or unwritten, for all work, items, and other obligations, including goods, materials, services, and labor, prior to deduction for any costs, expenses, or payments to subcontractors or other third parties and exclusive of any rebates.

5. “Gross receipts” means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

6. “Occasional sale” means:

a. A sale of an individual’s own personal services, provided such sales do not occur for more than seven (7) days during a calendar year and the individual does not conduct or engage in a trade or business of selling similar services; and

b. Sales of services solely from an individual's primary residence or on an online site with gross receipts of less than $10,000 per year even if the individual is engaged in a trade or business of selling services.

7. "Seller" means the person making a sale to a buyer.

8. "Service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing goods or property, including construction activities, facilitating or providing financial transactions, and activities performed by a business entity for its owners, members, or shareholders, but excluding services rendered by an employee for his or her employer for the payment of wages.

Section 12-5-3. Tax Imposed.

1. For the privilege of conducting sales of services in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all sales of services on Tribal lands.

2. For purposes of this Chapter, a sale of services occurs on Tribal lands if:

a. The seller is located on Tribal lands;

b. The location where services are provided is on Tribal lands; or

c. The buyer or other person to whom services are provided is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any sale of services consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such sale of services for computing the tax imposed

by this Chapter shall be the fair market value of the services provided.

Section 12-5-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect service sales tax on the following:

a. Sales of services made to the Tribe other than construction services where the gross contract price, including as modified by any change orders or modifications, is greater than the small purchase threshold, unless payment for the construction services is made directly from the proceeds of a substantial indebtedness of the Tribe;

b. Sales of services made to the government of a state or another federally recognized Indian tribe when the state or tribe grants a reciprocal exemption to the Tribe and its agencies and departments;

c. Sales of services provided outside Tribal lands;

d. Occasional sales;

e. Sales of residential heating fuels, natural or artificial gas, electricity, water, steam, telecommunications service, and any other utility;

f. The provision of complimentary services to customers or employees;

g. Sales of any goods included in such gross receipts separately invoiced and for which the tax imposed pursuant to Chapter 4 of this Title has been charged and paid;

h. Sales of motor vehicle fuel included in such gross receipts separately invoiced and for which the tax imposed pursuant to Chapter 6 of this Title has been charged and paid;

i. Sales of cigarettes and tobacco products included in such gross receipts subject to the tax imposed pursuant to Chapter 7 of this Title;

j. The provision of liquor included in such gross receipts for which the tax imposed pursuant to Chapter 8 of this Title has been charged and paid;

k. The provision of lodging or other occupancy included in such gross receipts for which the tax imposed pursuant to Chapter 9 of this Title has been charged and paid;

l. Sales of medical, dental, and pharmaceutical services;

m. Sales of admissions to events and movies; or

n. Wagers or other amounts paid as consideration for playing a game of chance.

2. In computing the amount of service sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal deduction or exclusion or an exemption to similar transactions in the territory of the Tribe.

3. A seller only making occasional sales of services shall be exempt from collection and payment of the tax imposed by this Chapter.

4. The Tribe, other than its economic enterprises, shall be exempt from the collection and payment of the tax imposed by this Chapter.

Section 12-5-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-5-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller or the liability of a seller to remit the tax to the Tribe, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-5-7. Tax Stated Separately.

1. Each seller may state the tax imposed by this Chapter separately from the selling price on any receipt, invoice, or other instrument of sale. If the seller does not state the tax

separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a sale of services shall be conclusively presumed to be the price quoted in any price list, sales document, contract, or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-5-8. License.

1. Any person who engages in sales of services and is located on Tribal lands shall be required to first obtain a services sales tax license from the Commission. If a person makes sales of services at two or more separate places of business on Tribal lands, a separate service sales tax license shall be required for each place of business. Upon application of such person, the Commission may also issue a service sales tax license to any person who is not located on Tribal lands, but engages in sales of services to the Tribe or on Tribal lands.

2. A service sales tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A service sales tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A service sales tax license issued by the Commission shall permit the licensee to purchase services from subcontractors free from the tax imposed by this Chapter on such services, provided that the gross cost or other price paid for such subcontractor shall be included in the licensee’s gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only occasional sales shall not be required to obtain a service sales tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the service sales tax license of any person found by the Commission to have violated any provision of

this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person who engages in sales of services and is located on Tribal lands who is liable for the tax imposed by this Chapter and fails to obtain a service sales tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make service sales to the Tribe and on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-5-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-5-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 6
MOTOR VEHICLE FUEL TAX

Section 12-6-1. Purpose. The purpose of the tax imposed on motor vehicle fuel pursuant to this Chapter is:

1. To regulate and monitor sales of motor vehicle fuel made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, general welfare and economic development programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-6-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Gallon" means the quantity of fuel that fills a standard United States gallon liquid measurement.

2. "Motor vehicle fuel" means flammable hydrocarbon liquid, including blended gasoline of any type and diesel fuel, used primarily in internal combustion engines for the generation of power for the propulsion of motor vehicles.

3. "Purchase" means the transfer of ownership of, title to, or possession of motor vehicle fuel for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of motor vehicle fuel is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

4. "Retailer" means any person who acquires motor vehicle fuel from a wholesaler or otherwise sells, distributes, or gives away any amount of motor vehicle fuel from any location or facility which generally dispenses such motor vehicle fuel into the fuel supply tanks of motor vehicles.

5. "Wholesaler" means any person who acquires motor vehicle fuel for resale or otherwise sells, distributes, resells or gives away any amount of motor vehicle fuel to a retailer.

Section 12-6-3. Tax Imposed.

1. For the privilege of distributing or retailing any amount of motor vehicle fuel within the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at

the rate of four cents ($0.04), upon each gallon of motor vehicle fuel or fraction thereof purchased by a retailer located on Tribal lands.

2. Every retailer shall account for and pay all taxes imposed by this Chapter based on the amount of motor vehicle fuel purchased by it. The tax imposed by this Chapter shall constitute a debt of the retailer owed to the Tribe and collectible by the Tribe as such.

3. For purposes of this Chapter, motor vehicle fuel is purchased by a retailer located on Tribal lands if:

a. The location of the retailer at which delivery of the motor vehicle fuel is made is located on Tribal lands; or

b. The location of the retailer from which such motor vehicle fuel will be or is intended to be sold or dispensed is located on Tribal lands.

Section 12-6-4. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-6-5. Legal Incidence of Tax. The legal incidence of the tax imposed by this Chapter shall be on the retailer.

Section 12-6-6. Tax Included in Price. The tax imposed by this Chapter shall be included in the selling price of the motor vehicle fuel. No retailer shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale.

Section 12-6-7. License.

1. Any person who is a retailer located on Tribal lands shall be required to first obtain a motor vehicle fuel tax license from the Commission. If a person makes retail sales of motor vehicle fuel at two or more separate places of business on Tribal lands, a separate motor vehicle fuel tax license shall be required for each place of business.

2. A motor vehicle fuel tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the

location, including the street number of such business, and such other facts as the Commission may require.

3. A motor vehicle fuel tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the motor vehicle fuel tax license of any retailer found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

5. Any person liable for the tax imposed by this Chapter who fails to obtain a motor vehicle fuel tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to sell motor vehicle fuel on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-6-8. Return.

1. Any retailer subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of motor vehicle fuel purchased for its business, any allowable deductions, and the amount of tax for which the retailer is liable. The return shall be signed by the retailer or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any retailer operating two (2) or more places of business shall file a consolidated return covering all such places of business.

Section 12-6-9. Payment. A retailer shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 7
TOBACCO TAX

Section 12-7-1. Purpose. The purpose of the tax imposed on cigarettes and tobacco pursuant to this Chapter is:

1. To regulate and monitor sales of cigarettes and tobacco made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe for the purpose of safeguarding and promoting the peace, safety, health, morals, and general welfare of the Tribe and its members;

2. To reduce the risk of harm to the health and welfare of the Tribe and its members associated with the use of cigarettes and tobacco products, particularly by minors;

3. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

4. To raise revenues to help fund health, safety, general welfare and economic development programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-7-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Cigarette" means:

   a. Any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state; and

   b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this subsection.

2. “Consumer” means, without limiting the scope thereof, a person who receives cigarettes or tobacco products from a retailer regardless of whether the person ultimately uses or consumes the cigarettes or tobacco products.

3. “Retail sale” means any sale made for any purpose other than for resale or further processing, but includes any product purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

4. “Retailer” means any person who acquires cigarettes or tobacco products from a wholesaler or otherwise sells, distributes, or gives away any cigarettes and/or tobacco products from any location or facility for any purpose other than resale or further processing.

5. “Sale” means the transfer of ownership of, title to, or possession of cigarettes or tobacco products for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of goods is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

6. “Tax stamp” means the tax stamp developed and approved by the Commission as provided in this Chapter to be affixed to cigarettes.

7. “Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobacco; shorts, refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking, or both for chewing and smoking and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but excludes cigarettes.

8. “Wholesaler” means any person who acquires or otherwise possesses cigarettes or tobacco products for resale or otherwise sells, distributes, resells or gives away cigarettes and/or tobacco products to a retailer.

Section 12-7-3. Tax Imposed on Cigarettes.

1. For the privilege of selling cigarettes within the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of three-quarters of a cent ($0.0075) upon each cigarette or fifteen cents ($0.15) per pack of twenty (20) cigarettes until March 1, 2020, and thereafter at the rate of one cent ($0.01) upon each cigarette or twenty cents ($0.20) per pack of twenty (20) cigarettes, purchased by a retailer located on Tribal lands.

2. For purposes of this Chapter, cigarettes are purchased by a retailer located on Tribal lands if:

a. The location of the retailer at which delivery of the cigarettes is made is located on Tribal lands; or

b. The location of the retailer from which such cigarettes will be or are intended to be sold is located on Tribal lands.

3. Every wholesaler shall collect the tax imposed by this Chapter on cigarettes from the retailer based on the number of cigarettes sold to a retailer located on Tribal lands. Until collected by the wholesaler, such tax shall constitute a debt owed to the wholesaler from the retailer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the wholesaler and the retailer jointly and severally owed to the Tribe and collectible by the Tribe as such.

Section 12-7-4. Tax Imposed on Tobacco Products.

1. For the privilege of selling tobacco products in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of tobacco products on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs Tribal lands if the location at or from which delivery of the

tobacco products is made to the consumer is located on Tribal lands.

3. For any retail sale of tobacco products consummated by trade, barter, exchange of anything other than money or given away, the amount of gross receipts from such retail sale for computing the tax imposed by this Chapter on tobacco products shall be the fair market value of the tobacco products sold.

4. Every retailer shall collect the tax imposed by this Chapter on tobacco products from the consumer. Until collected by the retailer, such tax shall constitute a debt owed to the retailer from the consumer and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt from the retailer owed to the Tribe and collectible by the Tribe as such.

Section 12-7-5. Tax as Additional Tax. The taxes imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-7-6. Legal Incidence of Tax. The legal incidence of the taxes imposed by this Chapter shall be on the retailer.

Section 12-7-7. Inclusion of Tax in Price.

1. The tax imposed by this Chapter upon cigarettes shall be included in the selling price of the cigarette. No retailer shall state the tax imposed by this Chapter upon cigarettes separately from the selling price on any receipt, invoice or other instrument of sale.

2. Each retailer may state the tax imposed by this Chapter on tobacco products separately from the selling price on any receipt, invoice or other instrument of sale. If the retailer does not state the tax separately on the instrument of sale, then the retailer shall account for the tax separately in the retailer’s records of the transaction.

3. In computing the tax imposed by this Chapter on tobacco products, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the retailer and consumer without tax unless

the retailer advertises the selling price as including the tax imposed by this Chapter.

Section 12-7-8. Tax Stamp.

1. The Commission shall develop and approve a tax stamp in accordance with this Title to be affixed to all cigarettes sold to a retailer on Tribal lands.

2. The Commission shall only disseminate tax stamps to a wholesaler upon payment by the wholesaler of the tax imposed by this Chapter on cigarettes, provided that the Commission may enter into a written agreement with a wholesaler to permit the wholesaler to remit the tax to the Commission based upon the number of tax stamps affixed by the wholesaler and sold to retailers located on Tribal lands.

3. All cigarettes sold by a retailer shall bear the tax stamp provided for under this Section, unless the cigarettes already have another jurisdiction's tax stamp affixed. Any cigarettes which do not bear the tax stamp provided for under this Section shall be contraband and subject to seizure as provided in this Title.

4. Every wholesaler shall be responsible for affixing the tax stamp provided for under this Section to the smallest container or package that will be handled, sold, used, consumed, or distributed to permit any person to readily ascertain by inspection whether or not the tax imposed by this Chapter has been paid. In the case of cigarettes contained in individual packages, as distinguished from cartons or larger containers, the tax stamp shall be affixed securely on each individual package.

5. The tax stamp provided for under this Section shall be affixed so that the tax stamp may not be removed from the package or container without destroying the tax stamp.

Section 12-7-9. License.

1. Any person who is a retailer located on Tribal lands shall be required to first obtain a tobacco tax license from the Commission. If a person makes retail sales of cigarettes or tobacco products at two or more separate places of business on

Tribal lands, a separate tobacco tax license shall be required for each place of business.

2. A tobacco tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A tobacco tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the tobacco tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the taxes imposed by this Chapter.

5. Any person liable for the taxes imposed by this Chapter who fails to obtain a tobacco tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to sell cigarettes and tobacco products on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-7-10. Return.

1. Any wholesaler who sells cigarettes subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the number of cigarettes sold to retailers located on Tribal lands by retailer, the number of tax stamps affixed to cigarettes, the number of affixed tax stamps purchased from the Commission and paid in full, any allowable deductions, and the amount of tax for which the wholesaler is liable. The return shall be signed by the wholesaler or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any retailer subject to the taxes imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month on a form prescribed by the Commission showing the number of cigarettes purchased from wholesalers for its

business by wholesaler, the entire amount of gross receipts for its business from the retail sale of tobacco products, any allowable deductions, and the amount of tax for which the retailer is liable. The return shall be signed by the retailer or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

3. Any wholesaler or retailer operating two (2) or more places of business shall file a consolidated return covering all such places of business.

Section 12-7-11. Payment. Wholesalers and retailers shall remit the amount of tax due under this Chapter with their returns and such tax shall be due at the time the return is due.

CHAPTER 8
LIQUOR TAX

Section 12-8-1. Purpose. The purpose of the tax imposed on sales of liquor pursuant to this Chapter is:

1. To impose, collect, and administer taxes on retail sales of liquor made by the economic enterprises of the Tribe and otherwise within the territory of the Tribe;

2. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

3. To raise revenues to help fund health, safety, economic development and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-8-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Buyer" means, without limiting the scope thereof, a person who receives goods from a seller in exchange for money, other goods, or services delivered to the seller.

2. "Complimentary" means the provision of goods without charge to a person.

3. "Gross receipts" means the total amount of the sales of a seller either on Tribal lands or outside Tribal lands, exclusive of any rebates.

4. "Liquor" means alcohol, beer, spirits, wine, all other fermented, spirituous, vinous, or malt liquors, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor or otherwise intoxicating, and includes every liquid, solid, semi-solid or other substance, patented or not, containing alcohol, beer, spirits, or wine and all preparations or mixtures of liquor capable of human consumption.

5. "Retail sale" means any sale made for any purpose other than for resale or further processing, but includes any liquor purchased at wholesale and withdrawn from stock to be used or consumed in the business or by the owner or any other person, whether or not in the regular course of business or trade.

6. "Sale" means the transfer of ownership of, title to, or possession of or otherwise supplying liquor for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of liquor is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

7. "Seller" means the person making a sale to a buyer.

Section 12-8-3. Tax Imposed.

1. For the privilege of conducting retail sales of liquor in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross receipts from all retail sales of liquor, in whatever package or container, on Tribal lands.

2. For purposes of this Chapter, a retail sale occurs on Tribal lands if the location at or from which delivery of the liquor is made to the buyer is located on Tribal lands.

3. Every seller shall collect the tax imposed by this Chapter from the buyer. Until collected by the seller, such tax shall constitute a debt owed to the seller from the buyer and shall

be recoverable as such. Whether collected or not, the tax shall constitute a debt of the seller owed to the Tribe and collectible by the Tribe as such.

4. For any retail sale consummated by trade, barter, or exchange of anything other than money, the amount of gross receipts from such retail sale of liquor for computing the tax imposed by this Chapter shall be the fair market value of the liquor sold.

Section 12-8-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, a seller shall deduct from the amount of gross receipts and shall not collect sales tax on the following:

a. Sales made outside Tribal lands;

b. The provision of complimentary liquor to customers, guests, or employees;

c. Sales by a licensed practicing physician or dentist in the strict practice of his or her profession;

d. Sales by a hospital or other institution caring for the sick and diseased persons, for the treatment of patients of the hospital or institution;

e. Sales by a drug store employing a licensed pharmacist in the compounding of prescriptions from licensed physicians.

2. In computing the amount of sales tax due under this Chapter, a seller shall deduct from the amount of tax due the amount of tax actually paid by the seller to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

Section 12-8-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by Tribe or another jurisdiction.

Section 12-8-6. Legal Incidence of Tax. Without limiting the liability of a buyer to remit the tax to the seller, the legal incidence of the tax imposed by the Chapter shall be on the seller.

Section 12-8-7. Tax Stated Separately.

1. Each seller shall state the tax imposed by this Chapter separately from the selling price on any receipt, invoice or other instrument of sale. If the seller does not state the tax separately on the instrument of sale, then the seller shall account for the tax separately in the seller's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross receipts from a retail sale shall be conclusively presumed to be the selling price quoted in any price list, sales document, contract or other agreement between the seller and buyer without tax unless the seller advertises the selling price as including the tax imposed by this Chapter.

Section 12-8-8. License.

1. Any person who engages in retail sales of liquor on Tribal lands shall be required to first obtain a retail liquor tax license from the Commission. If a person makes retail sales at two or more separate places of business on Tribal lands, a separate retail liquor tax license shall be required for each place of business.

2. A retail liquor tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of such business and the location, including the street number of such business, and such other facts as the Commission may require.

3. A retail liquor tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. A retail liquor tax license issued by the Commission shall permit the licensee to purchase liquor for resale from a wholesaler or any other person free from the tax imposed by this Chapter on such liquor, provided that if the licensee later withdraws the liquor, in whole or in part, from inventory for use or consumption by the licensee or any other person, the purchase price of such liquor shall be included in the licensee's gross receipts for purposes of calculating the tax imposed by this Chapter.

5. A seller making only sales exempt from the tax imposed by this Chapter shall not be required to obtain a retail liquor tax license.

6. The Commission, after at least ten (10) days notice and a full hearing, may revoke the retail liquor tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

7. Any person liable for the tax imposed by this Chapter who fails to obtain a retail liquor tax license under this Section or who continues to conduct business after such license has been revoked shall forfeit his or her right to make retail sales of liquor on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-8-9. Return.

1. Any seller subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross receipts of liquor sales for its business, the allowable deductions, and the amount of tax for which the seller is liable. The return shall be signed by the seller or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any seller operating two (2) or more places of business shall file a consolidated return covering all such places of business.

3. No return need be filed by any seller who is exempt under this Chapter, provided that the Commission may require such seller to file the information necessary to establish his or her exempt status.

Section 12-8-10. Payment. A seller shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 9
LODGING TAX

Section 12-9-1. Purpose. The purpose of the tax imposed on occupancy pursuant to this Chapter is:

1. To regulate and monitor the rental of motels, hotels, and other temporary lodging businesses located within the territory of the Tribe;

2. To support tourism within the territory of the Tribe;

3. To support tribal government, tribal public improvement programs, and tribal infrastructure that benefit members of the Tribe and others within the territory of the Tribe;

4. To raise revenues to help fund health, safety, economic development, and general welfare programs and services provided to members of the Tribe and others within the territory of the Tribe.

Section 12-9-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Complimentary" means the provision of space in a hotel without charge to a person.

2. "Gross consideration" means the total amount charged or other consideration paid for the use of space in a hotel if the space is one ordinarily used for accommodations, but excludes any charge for food or beverage served or personal services rendered to the occupant of such space.

3. "Hotel" means any facility in which the public may, for a consideration, obtain sleeping accommodations, including hotels, motels, tourist homes, campgrounds, houses, courts, lodging houses, inns, rooming houses, trailer houses, trailer motels, recreational vehicle parks, and dormitories, apartments, and all other facilities where sleeping accommodations are rented to individuals or groups for less than thirty (30) consecutive days, but excluding hospitals, sanitariums, nursing homes, chronic care centers, and dormitories or facilities

operated by an educational institution and regularly used to house students.

4. "Occupant" means a person who uses, possesses, or has the right to use or possess any space in a hotel if the space is ordinarily used for accommodations.

5. "Operator" means any person operating a hotel, including, but not limited to, the owner, proprietor, lessee, sub-lessee, and mortgagee in possession, licensee, or any other person otherwise operating such hotel or entitled to receive consideration for the use of space in a hotel.

Section 12-9-3. Tax Imposed.

1. For the privilege of conducting a hotel business and the privilege of use and occupancy of a hotel in the territory of the Tribe, there is levied and there shall be collected a tax at the rate set by the Tribal Council as provided in this Title, but initially at the rate of seven percent (7%), upon the gross consideration charged for occupancy of any space furnished by any hotel located on Tribal lands.

2. Every operator shall collect the tax imposed by this Chapter from the occupant. Until collected by the operator, such tax shall constitute a debt owed to the operator from the occupant and shall be recoverable as such. Whether collected or not, the tax shall constitute a debt of the operator owed to the Tribe and collectible by the Tribe as such.

3. For any occupancy of any space in a hotel consummated by trade, barter, or exchange of anything other than money, the amount of gross consideration from such occupancy for computing the tax imposed by this Chapter shall be the fair market value of the space furnished.

Section 12-9-4. Exemptions.

1. In computing the amount of tax imposed by this Chapter, an operator shall deduct from the amount of gross consideration and shall not collect lodging tax on the following:

    a. Space furnished to the Tribe or any of its agencies or departments;

b. Space furnished to the government of a state or another federally recognized Indian tribe when the state or tribe grants a reciprocal exemption to the Tribe and its agencies and departments; or

c. The provision of complimentary space in a hotel.

2. In computing the amount of lodging tax due under this Chapter, an operator shall deduct from the amount of tax due the amount of tax actually paid by the operator to a state or territory of another federally recognized Indian tribe when such state or tribe grants a reciprocal exclusion or an exemption to similar transactions in the territory of the Tribe.

Section 12-9-5. Tax as Additional Tax. The tax imposed by this Chapter shall be in addition to all other taxes imposed by the Tribe or another jurisdiction.

Section 12-9-6. Legal Incidence of Tax. Without limiting the liability of an occupant to pay the tax to the operator, the legal incidence of the tax imposed by the Chapter shall be on the hotel and operator.

Section 12-9-7. Tax Stated Separately.

1. Each operator shall state the tax imposed by this Chapter separately from the gross consideration on any receipt, invoice, or other instrument recording the transaction or occupancy. If the operator does not state the tax separately on the instrument recording the transaction, then the operator shall account for the tax separately in the operator's records of the transaction.

2. In computing the tax imposed by this Chapter, the amount of gross consideration for occupancy of any space in a hotel shall be conclusively presumed to be the price quoted in any price list, rental document, contract, or other agreement between the operator and occupant without tax unless the operator advertises the price as including the tax imposed by this Chapter.

Section 12-9-8. License.

1. Any person who engages in operating a hotel on Tribal lands shall be required to first obtain a lodging tax license from the Commission. If a person operates hotels at two or more

separate places of business on Tribal lands, a separate lodging tax license shall be required for each place of business.

2. A lodging tax license shall be granted or renewed only upon application stating the name and address of the person desiring such a license, the name of the hotel and the location, including the street number of such hotel, and such other facts as the Commission may require.

3. A lodging tax license issued by the Commission shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

4. The Commission, after at least ten (10) days notice and a full hearing, may revoke the lodging tax license of any person found by the Commission to have violated any provision of this Chapter or any other provision of this Title with respect to the tax imposed by this Chapter.

5. Any person liable for the tax imposed by this Chapter who fails to obtain a lodging tax license under this Section or who continues to operate a hotel after such license has been revoked shall forfeit his or her right to operate a hotel on Tribal lands until he or she complies with all of the provisions of this Title.

Section 12-9-9. Return.

1. Any operator subject to the tax imposed by this Chapter shall, on or before the twentieth (20th) day following the end of each calendar month, complete a return for the preceding month, on a form prescribed by the Commission, showing the entire amount of gross consideration received for its hotel, the allowable deductions, and the amount of tax for which the operator is liable. The return shall be signed by the operator or its duly authorized agent and, if applicable, the person and/or firm preparing the return.

2. Any operator operating two (2) or more hotels shall file a consolidated return covering all such hotels.

3. No return need be filed by any operator who is exempt under this Chapter, provided that the Commission may require such operator to file the information necessary to establish his or her exempt status.

Section 12-9-10. Payment. An operator shall remit the amount of tax due under this Chapter with its return and such tax shall be due at the time the return is due.

CHAPTER 10
TAX AGREEMENTS

Section 12-10-1. Tax Agreements. The Tribe may enter into an intergovernmental agreement or compact with any state or other foreign jurisdiction for purposes of collection and remittance of any tax imposed by the laws of the Tribe or any other tax.

Section 12-10-2. Compliance with Agreement. Any tax imposed by the laws of the Tribe shall conform to any requirements imposed by an intergovernmental agreement or compact entered into by the Tribe, including the manner of collection and filing of returns.

Section 12-10-3. Tax Rate Affected. The tax rates applicable to any tax imposed by the laws of the Tribe shall be the greater of the applicable tax rate set forth in the laws of the Tribe or the tax rate set forth in an intergovernmental agreement or compact related to such tax, provided that the amount of tax collected and paid under any agreement or compact to the Tribe shall be an amount equal to or exceeding the amount imposed by the laws of the Tribe.

Section 12-10-4. Tax Exemptions. Any exemptions or deductions provided in an intergovernmental agreement or compact related to a tax imposed by the laws of the Tribe shall be in addition to any exemptions or deductions provided in the laws of the Tribe applicable to such tax, provided that if there is a conflict between any exemption or deduction provided in such agreement or compact and the laws of the Tribe governing such tax, the agreement or compact shall prevail.

Approved 8/23/09
Resolution 09-44

Approved 4/15/19
Resolution 19-30

Approved 3/2/20
Resolution 20-16

Approved 2/2/22
Resolution 22-08

Approved 9/17/24
Resolution 24-59

TITLE XIII

PONCA TRIBE OF NEBRASKA
GOVERNMENTAL SECURED TRANSACTIONS ORDINANCE

CHAPTER 1
PURPOSE

Section 13-1-1 The purpose of this Ordinance is to establish tribal laws governing security interests granted by a Tribal Party; to provide that the proper office for filing a financing statement against any Tribal Party shall be the office specified by Iowa law as if such Tribal Party were located in Iowa; and to provide that a security interest in Pledged Revenues may be perfected by the filing of an initial financing statement.

Section 13-1-2 This Ordinance may be cited as the "Ponca Tribe of Nebraska Governmental Secured Transactions Ordinance".

CHAPTER 2
SCOPE

Section 13-2-1 Except as otherwise provided in Article 5 hereof, this Ordinance shall apply only with respect to those security interests that (i) are granted by a Tribal Party, and (ii) are expressly stated to be granted in reliance on this Ordinance.

Section 13-2-2 This Ordinance shall remain in effect as to any security interest to which it applies until all obligations secured thereby have been fully and finally discharged or otherwise satisfied, except that this Ordinance may be amended in any manner that is not adverse to any secured party with respect to any such security interest.

CHAPTER 3
DEFINITIONS

Section 13-3-1 In this Ordinance the following terms have the following meanings:

(a) *Iowa UCC* means, with respect to any particular transaction, the Uniform Commercial Code of the State of Iowa, as amended from time to time.

(b) *Contract UCC* means, with respect to any particular transaction, the Uniform Commercial Code (as amended from time to time) of the state of the

United States that is stated to apply in a writing signed by a Tribal Party with respect to such transaction, or if none is so stated to apply, the Iowa UCC.

(c) *Pledged Revenues* means all of a Tribal Party's money, earnings, income and revenues, and the rights to receive the foregoing, whether in the form of money, deposit accounts, investments, accounts, instruments or other assets, and the proceeds thereof, in which such Tribal Party has granted a security interest in a writing signed by such Tribal Party.

(d) *Tribal Party* means the Tribe and all of its governmental authorities, instrumentalities, subdivisions, subsidiaries and departments, including the successors and assigns of all of the foregoing.

(e) *Tribe* means the Ponca Tribe of Nebraska, a federally recognized Indian tribe.

Section 13-3-2 Any undefined terms that are defined in the Iowa UCC are used in this Ordinance with the meanings that apply in the Iowa UCC.

CHAPTER 4
LAWS APPLICABLE TO SECURITY INTERESTS

Section 13-4-1 Except as provided elsewhere in this Ordinance, the rights and obligations of any person with respect to any security interest to which this Ordinance applies shall be governed by the Contract UCC.

Section 13-4-2 Except as provided elsewhere in Article 4 of this Ordinance, the perfection, effect of perfection or nonperfection and priority of any security interest to which this Ordinance applies shall be determined in accordance with the Iowa UCC as if each Tribe and Tribal Party were (for purposes of Sections 554.9301 through 554.9307 of the Iowa UCC) located in the State of Iowa and as if the reservation were located in the State of Iowa.

Section 13-4-3 Notwithstanding any other provision of the Contract UCC, the Iowa UCC or this Ordinance to the contrary, a security interest granted in Pledged Revenues in which the applicable Tribal Party has rights shall be created and attach upon the giving of value and the granting of such security

interest by such Tribal Party in a writing executed by that Tribal Party, and such security interest may be perfected only by the filing of an initial financing statement with respect to such security interest in the same manner and in the same location as if all of such Pledged Revenues were accounts.

Section 13-4-4 The provisions of Section 554.9109(3) of the Iowa UCC and the Contract UCC shall be ineffective to limit the application of Iowa UCC and the Contract UCC in accordance with this Ordinance.

CHAPTER 5
EFFECTIVE DATE AND REPEALER

Section 13-5-1 To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supercede and the conflicting provision shall be and hereby is repealed as it shall apply to a security interest to which this Ordinance applies.

Section 13-5-2 This Ordinance is effective upon the date of its enactment by the Tribe's Tribal Council.

Approved 8/23/09
Resolution 09-44

Revised 10/28/18
Resolution 18-76

PONCA TRIBE OF NEBRASKA
TITLE XIV
BUSINESS ENTITIES

CHAPTER 1
GENERAL PROVISIONS

Section 14-1-1. Authority. This Title is enacted pursuant to and in accordance with:

1. Article V, Section 1(f), (j), (l), (n), (o), and (p) of the Constitution; and

2. The Tribe's inherent sovereignty, governmental power, and fiscal authority.

Section 14-1-2. Purpose. This Title shall be interpreted and construed to fulfill the purpose of providing for economic development of the Tribe and its members by:

1. Providing the legal framework for organizing individually-owned business entities in order to expand the private business sector in the territory of the Tribe;

2. Providing for the registration and regulation of foreign business entities doing business in the territory of the Tribe and with the Tribe; and

3. Authorizing the formation of business entities wholly owned by the Tribe, and providing for the governance of the same, for managing the Tribe's economic activities separate from the general affairs of the Tribe.

Section 14-1-3. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Business entity" means any entity organized for the purpose of conducting or transacting business, regardless of whether for profit or the jurisdiction of formation, including corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships, limited liability limited partnerships, and cooperatives.

2. "Domestic business entity" means a business entity organized or formed under the laws of the Tribe and includes a Tribal business entity formed under the laws of the United States.

3. "Foreign business entity" means a business entity formed under the law of a jurisdiction other than the Tribe, but does not include a Tribal business entity formed under the laws of the United States.

4. "Manager" means the board of directors, general partner, manager, or any other person or entity under whose authority the powers of a business entity are exercised and under whose direction the activities and affairs of the business entity are managed pursuant to the organizational documents of the business entity or, if there are not yet any owners or other managers of the business entity, the organizers of the business entity.

5. "Office of the Secretary" means the Secretary of the Tribal Council elected from the membership of the Tribal Council in accordance with Article IV, Section 1 of the Constitution or his or her designee.

6. "Organizer" means the incorporators, organizers, or other person who initially forms a business entity.

7. "Organizational documents" means the public organizational documents and private organizational documents of a business entity.

8. "Owner" means an owner, member, shareholder, general partner, limited partner, or other person who has an ownership or membership interest in a business entity.

9. "Principal office" means the principal executive office of a business entity, whether or not the office is located in the territory of the Tribe.

10. "Private organizational documents" means the currently adopted or effective rules, including operating agreements, partnership agreements, and bylaws, that govern and determine the internal governance and affairs of a business entity, are binding on all of its owners and managers, and are not part of the business entity's public organizational documents, if any.

11. "Public organizational documents" means the documents and records that establish a business entity or are filed with the Office of the Secretary or similar filing authority in a foreign jurisdiction pursuant to law applicable to that business entity, or the most recent restatement of those documents and records, together with any amendments to those documents and records or

restatement of those documents and records, including articles of incorporation, articles of organization, partnership agreements, statements of qualification, certificates of limited partnership, foreign registration statements, agreements of trust, and declarations of trust.

12. "Qualified foreign business entity" means a foreign business entity that is registered to do business in the territory of the Tribe pursuant to a filing with the Office of the Secretary in accordance with this Title.

13. "Registered agent" means an agent of a business entity which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the business entity.

14. "Tribal business entity" means a business entity which is owned, either in whole or in part, by the Tribe or the subsidiary of any such business entity.

Section 14-1-4. Applicability and Consent to Jurisdiction.

1. This Title shall apply to:

a. All domestic business entities;

b. All business entities that elect to accept the provisions of this Title or the laws of the Tribe governing business entities or claim a privilege under the laws of the Tribe;

c. All business entities, including qualified foreign business entities and other foreign business entities, conducting or transacting business within the territory of the Tribe;

d. All business entities which engage in a business transaction in the territory of the Tribe or with the Tribe or its members, enter into a consensual relationship with Tribe or its members, act under Tribal authority, or enter the territory of the Tribe.

2. Any business entity to which this Title applies shall be deemed to have consented to the following:

a. To be bound by the terms of this Title and all laws of the Tribe governing business entities generally and

governing the type of business entity of which it is organized; and

b. To the exercise of jurisdiction by the Tribal Court over the business entity in an action arising under this Title or a law of the Tribe governing business entities generally or governing the type of business entity of which it is organized.

3. The provisions of this Section shall supersede any contrary provision of any contract or agreement and no provision of a contract or agreement which purports to exempt or avoid the provisions of this Section shall be valid, including a provision of a contract or agreement providing for:

a. A particular law to govern the contract or agreement;

b. A particular law to be utilized for the construction or interpretation of the contract or agreement; or

c. The resolution of disputes in a particular court or jurisdiction or using a particular method of dispute resolution, including arbitration.

Section 14-1-5. No Impairment of Contracts.

1. This Title does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this Title. Nothing in this Title shall be construed to restrict the general application of the laws of the Tribe to the acts and contracts of a business entity.

2. A transaction effected under this Title may not create or impair a right, duty, or obligation of a person under a law of the Tribe relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, or converting business entity, or domesticating business entity unless:

a. If the business entity does not survive the transaction, the transaction satisfies any requirements of the law; or

b. If the business entity survives the transaction, the approval of the plan is by a vote of the owners or managers

which would be sufficient to create or impair the right, duty, or obligation directly under the law.

3. Otherwise lawful contracts and other obligations of any business entity shall not be impaired by the enactment of this Title or any subsequent amendment thereto. Actions to restrain any attempts to impair contracts of a business entity or to declare such actions null and void shall be available in a proper action before the Tribal Court.

Section 14-1-6. Amendment or Repeal. The Tribe has the power to amend or repeal all or part of this Title and any other law of the Tribe governing business entities at any time and all business entities subject to this Title or such other law of the Tribe governing the business entity are governed by the amendment or repeal.

Section 14-1-7. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 14-1-8. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
BUSINESS ENTITIES GENERALLY

Section 14-2-1. Business Entity Names.

1. In addition to any other requirements for the name of a business entity under the laws of the Tribe, the name of each business entity:

a. Shall not contain language stating or implying that the business entity is organized for a purpose other than that permitted by the laws of the Tribe and its organizational documents;

b. Shall not contain any term the inclusion of which would violate any law of the Tribe;

c. Shall be distinguishable from:

i. The name of any other domestic business entity or qualified foreign business entity; and

ii. Any trade name registered or reserved under this Title;

d. Shall not contain immoral, deceptive, or scandalous matter;

e. Except for Tribal business entities, shall not disparage or falsely suggest a connection with the Tribe;

f. If a corporation, shall contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd.", unless a law of the Tribe permits the use of other names;

g. If a nonprofit corporation, may, but need not, contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd.", unless a law of the Tribe requires otherwise;

h. If a limited liability company, shall contain the term or abbreviation "limited liability company", "ltd. liability company", "limited liability co.", "ltd. liability co.", "l.l.c.", or "llc", unless a law of the Tribe permits the use of other names;

i. If a limited liability partnership, shall contain the term or abbreviation "limited liability partnership", "registered limited liability partnership", "llp", "l.l.p.", "rllp", or "r.l.l.p.", unless a law of the Tribe permits the use of other names;

j. If a limited partnership that is not a limited liability limited partnership, shall contain the term or abbreviation "limited partnership", "l.p.", or "lp", unless a law of the Tribe permits the use of other names;

k. If a limited liability limited partnership, shall contain the term or abbreviation "limited liability limited partnership", "registered limited liability limited partnership", "l.p.", "lp", "l.l.l.p.", "lllp", "r.l.l.l.p.",

or "rlllp", unless a law of the Tribe permits the use of other names;

l. If a cooperative, may, but need not, contain the term "cooperative association" or "cooperative", provided "cooperative" may be abbreviated "co-op" or "coop" and "association" may be abbreviated "assoc." or "assn.", or the abbreviation "c.a.", or "ca", unless a law of the Tribe requires otherwise;

m. If a limited cooperative, must contain the term "limited cooperative association" or "limited cooperative", provided "limited" may be abbreviated "ltd.", "cooperative" may be abbreviated "co-op" or "coop", and "association" may be abbreviated "assoc." or "assn.", or the abbreviation "l.c.a." or "lca", unless a law of the Tribe requires otherwise;

n. If an unincorporated nonprofit association, may, but need not, contain the term or abbreviation "unincorporated nonprofit association," "nonprofit association", "nonprofit assoc.", "nonprofit assn.", "u.n.a", "una", "n.a.", or "na", unless a law of the Tribe requires otherwise;

o. If another business entity, such term or abbreviation required or allowed under the laws of the Tribe governing such business entity;

p. Shall not include the term or abbreviation "cooperative", "co-op", or "coop" unless organized on a cooperative basis under the laws of the Tribe or the equivalent laws of a foreign jurisdiction;

q. Need not be in Ponca or English if written in English letters or arabic or roman numerals;

r. Shall comply with any other requirements of the law of the Tribe under which the business entity is formed or otherwise applies to the business entity.

2. Except as otherwise provided in this Section, in determining whether a name is the same as or not distinguishable on the records of the Office of the Secretary, words, phrases, or abbreviations indicating the type of entity, such as "corporation",

"corp.", "incorporated", "inc.", "limited", "ltd.", "limited partnership", "lp", "l.p.", "limited liability partnership", "llp", "l.l.p.", "registered limited liability partnership", "rllp", "r.l.l.p.", "limited liability limited partnership", "lllp", "l.l.l.p.", "registered limited liability limited partnership", "rlllp", "r.l.l.l.p.", "limited liability company", "llc", or "l.l.c.", "cooperative association", "cooperative", "ca", or "c.a." may not be taken into account.

3. A business entity may use a name which is not distinguishable as provided in this Section if the applicant files with the Office of the Secretary either:

a. The written consent of the holder of the name to use the same name and one or more words are added or deleted to make the name distinguishable from the other name, including the addition of a word, phrase, or abbreviation indicating the type of business entity; or

b. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name applied for in the territory of the Tribe.

4. A business entity that is not a Tribal business entity may use a name which includes the name of the Tribe if the applicant files with the Office of the Secretary a resolution of the Tribal Council consenting to the use of the name of the Tribe and complies with any restrictions contained in such resolution.

Section 14-2-2. Governing Law. The laws of the Tribe govern:

1. The internal affairs of a domestic business entity; and

2. The liability of an owner as an owner and a manager as a manager for a debt, obligation, or other liability of a domestic business entity.

Section 14-2-3. Nature and Powers of Business Entities.

1. A business entity may be organized under the laws of the Tribe for any lawful purpose, regardless of whether for profit.

2. Unless the organizational documents state a term for a business entity's existence, the business entity has perpetual duration.

3. Unless otherwise provided in its organizational documents or a provision of law of the jurisdiction under whose law it is organized, a business entity has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including power to:

a. Sue, complain, defend, and consent to be sued in its name, provided that if the business entity is a Tribal business entity, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless its public organizational documents otherwise provide;

b. Have a seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

c. Make and amend private organizational documents, not inconsistent with its public organizational documents or the laws of the Tribe, for managing the business and regulating the affairs of the business entity;

d. Purchase, take, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal in or with real or personal property or any interest in property wherever located;

e. Sell, convey, mortgage, pledge, create a security interest in, lease, exchange, or otherwise dispose of all or any part of its property;

f. Purchase, take, receive, subscribe for, or otherwise acquire and own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and deal in and with ownership or other interests in, or obligations of, any other entity;

g. Make contracts and guarantees, incur liabilities, borrow monies, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage, deed of trust, security agreement, pledge, or other encumbrance of any of its property, franchises, or income;

h. Lend monies, invest and reinvest its monies, and receive and hold real and personal property as security for repayment;

i. Be a promoter, incorporator, partner, owner, associate, or manager of any business entity, trust, or other entity;

j. Conduct its business, locate offices, and exercise the powers granted by the laws of the Tribe governing such business entity inside or outside the territory of the Tribe;

k. Elect or appoint managers, officers, agents, and employees, define their duties, fix their compensation, and, unless otherwise prohibited by its organizational documents or the laws of the Tribe governing the business entity, lend them monies and credit;

l. Unless otherwise prohibited by its organizational documents or the laws of the Tribe governing the business entity, lend money, property, and services to and otherwise assist its owners and managers;

m. Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, and benefit or incentive plans for any of its or its affiliates' current or former directors, officers, employees and agents;

n. Provide benefits or payments to owners, managers, employees, and agents of the business entity and to their estates, families, dependents, or beneficiaries in recognition of past services of the owners, managers, employees, and agents of the business entity;

o. Indemnify an owner, manager, employee, officer, agent, or any other person;

p. Make donations to and otherwise devote its resources for the public welfare or for charitable, scientific, educational, humanitarian, philanthropic, or religious purposes;

q. Transact any lawful business that will aid governmental policy of the Tribe or another jurisdiction to the extent not contrary to the governmental policy and interests of the Tribe;

r. Make payments or donations or do any other act not inconsistent with the law that furthers the business of the business entity;

s. Take any action to pursue any purpose, including a nonmonetary purpose, or to create any private or public benefit; and

t. Transact any lawful business that the owners or the managers find to be appropriate to promote and further the business and affairs of the business entity.

Section 14-2-4. Conduct of Business Entities.

1. A business entity shall conduct its business, carry on its operations, and have and exercise its powers in a manner which balances the pecuniary interests of the owners, managers, and business entity with the best interests of persons that are materially affected by the conduct of the business entity.

2. In carrying out its obligations under this Section, a business entity shall consider the effects of any action or inaction on:

a. The owners of the business entity, including their pecuniary interests;

b. The employees and workforce of the business entity and its subsidiaries, if any, and each of their suppliers;

c. Interests of the customers or beneficiaries of the business entity;

d. Community and societal factors, including those which may be unique to the Tribe and its members;

e. The interests of anyone else who may be materially affected by the business entity's conduct;

f. The environment;

g. The short-term and long-term interests of the business entity and its owners, including whether any short-term benefit may harm the long-term interest of the business entity and its owners; and

h. The ability of the business entity to accomplish any specific non-pecuniary purpose, including a public benefit or charitable purpose, identified in its organizational documents.

3. The managers and officers of a business entity, if any, shall manage and direct the affairs of the business in accordance with this Section. With respect to a decision implicating the duties under this Section, a manager or officer of a business entity may not be held personally liable for monetary damages and will be deemed to satisfy the manager's or officer's fiduciary duties to the owners and the business entity if the manager's or officer's decision is both:

a. Informed and disinterested; and

b. A decision which a person of ordinary sound judgment would approve.

4. Nothing in this Section shall be construed as prohibiting a business entity from considering other pertinent factors in carrying out its obligations under this Section or any other applicable law or requiring the business entity to give priority to an particular interest or factor described in this Section over any other interest or factor, provided that the pecuniary interests of the business entity and/or its owners shall not alone justify or constitute a defense to causing a material harm to any other interest or factor required to be considered in this Section.

Section 14-2-5. Activities in Foreign Jurisdictions. A business entity may conduct its business, carry on its operations, and have and exercise the powers granted to it under the laws of the Tribe in any foreign jurisdiction, including any jurisdiction of another tribe, a foreign nation, the United States, or any state, territory, district, or possession of the United States.

Section 14-2-6. Indemnification of Owners and Managers.

1. A business entity shall indemnify or reimburse a present or former owner or manager for any expenses made by the owner or manager with respect to a proceeding where the owner or manager was a party in the capacity of an owner or manager of the business entity.

2. Except as otherwise provided in this Section, the organizational documents of a business entity may alter the rights to indemnification or reimbursement to owners and managers provided in this Section or provide rights to indemnification or reimbursement to owners and managers in addition to those provided in this Section.

3. Notwithstanding the provisions of this Section, a business entity may not indemnify or reimburse an owner or manager unless it is determined that the owner or manager did not breach or fail to perform a duty to the business entity as provided under the laws of the Tribe governing the business entity.

4. Unless otherwise provided in a business entity's organizational documents:

a. An owner or manager shall be conclusively presumed not to have breached or failed to perform a duty to the business entity to the extent that the owner or manager has been successful on the merits or otherwise in the defense of the proceeding; and

b. In situations where the owner or manager has not been successful on the merits or otherwise in the defense of the proceeding, the determination of whether the owner or manager breached or failed to perform a duty to the business entity shall be made by the vote of a majority of the ownership interests of the owners, excluding any owner who is a party to the same or related proceeding unless all owners are parties.

5. In this Section, "expenses" means all costs and expenses reasonably related to a proceeding, including attorney's fees, and any judgment or penalty, or settlement payment in lieu thereof, paid in connection with a proceeding against an owner or manager in such capacity.

6. A business entity may purchase and maintain insurance on behalf of an owner or manager against liability asserted against or incurred by the owner or manager in that capacity or arising from that status even if the organizational documents could not eliminate or limit the owner's or manager's liability to the business entity for the conduct giving rise to the liability.

Section 14-2-7. Statements of Authority and Denial.

1. A business entity may deliver to the Office of the Secretary for filing a statement of authority. The statement:

a. Must include the name of the business entity;

b. Must include the name and street and mailing addresses of the business entity's registered agent;

c. With respect to any position that exists in or with respect to the business entity, may state the authority, or limitations on the authority, of all persons holding the position to enter into transactions on behalf of, or otherwise act for or bind, the business entity; and

d. May state the authority, or limitations on the authority, of a specific person to enter into transactions on behalf of, or otherwise act for or bind, the business entity.

2. To amend or cancel a statement of authority filed by with the Office of the Secretary, a business entity must deliver to the Office of the Secretary for filing an amendment or cancellation stating:

a. The name of the business entity;

b. The name and street and mailing addresses of the business entity's registered agent;

c. The date the statement being affected became effective; and

d. The contents of the amendment or a declaration that the statement is canceled.

3. A statement of authority affects only the power of a person to bind a business entity to persons that are not owners. A statement of authority cannot grant a person power or authority contrary to the provisions of this Title or other law of the Tribe governing or applicable to the business entity or which the business entity has no authority to grant.

4. Except as otherwise provided in this Section, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.

5. A grant of authority contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that:

a. The person has knowledge to the contrary;

b. The statement has been canceled or restrictively amended in accordance with this Section; or

c. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant.

6. An effective statement of dissolution or termination is a cancellation of any filed statement of authority and is a limitation on authority.

7. After a statement of dissolution becomes effective, a business entity may deliver to the Office of the Secretary for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority.

8. Unless earlier canceled, an effective statement of authority is canceled by operation of law five (5) years after the date on which the statement, or its most recent amendment, becomes effective without the need for any recording or filing.

9. A person named in a filed statement of authority granting that person authority may deliver to the Office of the Secretary for filing a statement of denial which shall operate as a restrictive amendment under this Section. The statement of denial must:

a. Provide the name of the business entity;

b. State the caption of the statement of authority to which the statement of denial pertains; and

c. Deny the grant of authority.

Section 14-2-8. Limitations on Organizational Documents. A business entity's organizational documents may not:

1. Vary the law applicable to the business entity as provided in this Title;

2. Except as expressly permitted in its public organizational documents, contain any provision in its private organizational documents contrary to the public organizational documents, provided that if a provision of a business entity’s private organizational documents conflicts with a provision of its public organizational documents, the public organizational documents prevail;

3. Vary the business entity's capacity to sue, complain, defend, and consent to be sued in its name, provided that if the

business entity is a Tribal business entity, it shall be entitled to and shall enjoy the Tribe's sovereign immunity from suit unless its public organizational documents otherwise provide;

4. Vary any requirement, procedure, or other provision of this Title or other law of the Tribe pertaining to registered agents or the Office of the Secretary, including provisions pertaining to records authorized or required to be delivered to the Office of the Secretary for filing under the laws of the Tribe;

5. Vary the provisions of this Title governing execution and filing of documents pursuant to order of the Tribal Court;

6. Reduce or eliminate the fiduciary or other duties or standards of conduct of the business entity or its owners and managers provided in this Title or other law of the Tribe governing the business entity, except the organizational documents may:

a. Prescribe the standards by which the performance of the owners and managers is to be measured; and

b. Except in cases of bad faith, willful or intentional misconduct, or knowing violation of law:

i. Specify the method by which a specific act or transaction that would otherwise violate fiduciary or other duties or standards of conduct may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

ii. To the extent the organizational documents expressly relieve an owner or manager of a responsibility that the owner or manager otherwise would have under this Title and imposes the responsibility on one or more other owners or managers, the organizational documents may also eliminate or limit any fiduciary duty of the owner or manager relieved of the responsibility which would have pertained to the responsibility.

7. Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

8. Unreasonably restrict the duties and rights of owners and managers to information as provided in the laws of the Tribe governing the business entity, but the organizational documents may impose reasonable restrictions on the availability and use of

information obtained and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

9. Vary the causes of dissolution specified in this Title or other law of the Tribe governing the business entity;

10. Vary the requirement to wind up the business entity's activities and affairs as specified in this Title or other law of the Tribe governing the business entity;

11. Unreasonably restrict the right of an owner to maintain an action against another owner, manager, or the business entity or in a derivative action as provided in the laws of the Tribe governing the business entity;

12. Vary the required contents of a plan of merger, interest exchange, conversion, domestication, or division under this Title or other law of the Tribe governing the business entity;

13. Vary the right of an owner to approve a merger, interest exchange, conversion, domestication, or division under this Title or other law of the Tribe governing the business entity; or

14. Except where otherwise provided in such provision or law, contain any provision contrary to the provisions of this Title or other law of the Tribe governing the business entity.

Section 14-2-9. Registered Agents.

1. Each domestic business entity organized under the laws of the Tribe and each qualified foreign business entity shall appoint and continuously maintain in the territory of the Tribe:

a. A known place of business that may be the address of its registered agent; and

b. A registered agent that is either an individual resident of the territory of the Tribe, a domestic business entity, a qualified foreign business entity, or, in the case of a Tribal business entity, the office of a designated officer of the Tribe.

2. The designation of a registered agent is an affirmation of fact by the business entity that the agent has consented to serve.

3. The only duties under this Title of a registered agent that has complied with this Title are:

a. To forward to the business entity at the address most recently supplied to the registered agent by the business entity any process, notice, or demand pertaining to the business entity which is served on or received by the registered agent;

b. If the registered agent changes its address or resigns, to provide the notice required by this Section to the business entity at the address most recently supplied to the registered agent by the business entity and file the statement required by this Section with the Office of the Secretary; and

c. To keep current the information with respect to the registered agent in the appropriate organizational documents of the business entity.

4. A business entity may change its known place of business or registered agent, or both, by delivering to the Office of the Secretary for filing a signed statement, which may be the annual report, setting forth:

a. The name of the business entity;

b. If the current known place of business is to be changed, the street address of the new known place of business; and

c. If its registered agent or the registered agent's street address is to be changed, the name and street address of its successor registered agent or the registered agent's new street address.

5. If a registered agent changes its street address to another place in the territory of the Tribe, it may change the address by delivering a statement to the Office of the Secretary as required by subsection 4 of this Section, except that it need be signed only by the registered agent. The statement shall recite that a copy of it has been mailed to the business entity.

6. A registered agent may resign its agency appointment by signing and delivering to the Office of the Secretary for filing the signed original statement of resignation. The statement may include a statement that the known place of business is also

discontinued. The registered agent shall give written notice of its resignation to the business entity at an address other than the registered agent's address.

Section 14-2-10. Service of Process.

1. A business entity may be served with any process, notice, or demand required or permitted by law by serving its registered agent and, when so served, is lawful personal service on the business entity.

2. In lieu of service on the registered agent, process, notice, or demand may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the business entity at its principal office.

3. If a business entity fails to appoint or maintain a registered agent at the address shown on the records of the Office of the Secretary, the Office of the Secretary is an agent of the business entity on whom any process, notice, or demand may be served. Service on the Office of the Secretary of any process, notice, or demand for a business entity pursuant to this subsection shall be made by registered or certified mail, return receipt requested, or by similar commercial delivery service. Upon receipt of any such process, notice, or demand, the Office of the Secretary shall immediately cause a copy of the process, notice, or demand to be forwarded by mail, addressed to the business entity at its known place of business. If service is made on the Office of the Secretary, the business entity has thirty (30) days to respond in addition to the time otherwise provided by law.

Section 14-2-11. Annual Reports.

1. Each domestic business entity and each qualified foreign business entity shall deliver to the Office of the Secretary for filing an annual report that sets forth all of the following:

a. The name of the business entity and the jurisdiction under whose law it is organized;

b. The address of its known place of business and the name and address of its registered agent in the territory of the Tribe; and

c. The address of its principal office.

2. Information in the annual report must be current as of the date the report is signed by the business entity.

3. The annual report must be delivered to the Office of the Secretary for filing, and the annual fee paid, every year no sooner than ninety (90) calendar days before and no later than the date of the anniversary of the formation of the business entity or, in the case of a foreign business entity, registration to transact business in the territory of the Tribe.

4. If an annual report under this Section contains the name or address of a registered agent which differs from the information shown in the records of the Office of the Secretary immediately before the report becomes effective, the differing information is considered a statement of change.

5. If an annual report does not contain the information required by this Section, the Office of the Secretary shall promptly notify the business entity in writing and return the report for correction. If the report is corrected to contain the information required by this Section and delivered to the Office of the Secretary within thirty (30) days after the date of notice from the Office of the Secretary, it is deemed to be timely filed.

6. If the annual report is not delivered for filing and the fee is not paid within the time specified by this Section, the Office of the Secretary shall assess and collect penalties of twenty per cent (20%) per month or fraction of the month of the fees then due until either the payment is made or the business entity is administratively dissolved or the authority of the foreign business entity is revoked, whichever occurs first.

CHAPTER 3
DOCUMENTS AND FEES

Section 14-3-1. Execution of Documents.

1. Except where otherwise provided in the laws of the Tribe governing the business entity, a document delivered to the Office of the Secretary for filing must be signed as follows:

a. A business entity's initial organizational documents must be signed by at least one person acting as the organizer of the business entity;

b. A document filed on behalf of an existing business entity must be signed by the chairman of the board of directors, an officer, a manager, an owner, or another person authorized by the business entity;

c. A document filed on behalf of an individual must be signed by that individual; and

d. A document filed on behalf of a dissolved business entity must be signed by the person winding up the business entity's business.

2. A document delivered to the Office of the Secretary for filing may be signed by an agent. Whenever the laws of the Tribe require a particular individual to sign a document and the individual is deceased or incapacitated, the document may be signed by a legal representative of the individual. A person that signs a document as an agent or legal representative affirms as a fact that the person is authorized to sign the document.

3. An individual who signs a document authorized or required to be filed with the Office of the Secretary affirms under penalty of perjury that the information stated in the document is accurate.

4. If a document delivered to the Office of the Secretary for filing and filed by the Office of the Secretary contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from a person that signed the document or caused another to sign it on the person's behalf and knew at the time the document was signed that the information was inaccurate.

Section 14-3-2. Execution by Judicial Act.

1. If a person required by the laws of the Tribe to sign or deliver a document to the Office of the Secretary for filing does not do so, any other person that is aggrieved may petition the Tribal Court to order:

a. The person to sign the document;

b. The person to deliver the document to the Office of the Secretary for filing; or

c. The Office of the Secretary to file the document unsigned, which shall be effected upon filing without being signed.

2. If the petitioner under this Section is not the business entity to which the document pertains, the petitioner shall make the business entity a party to the action.

3. Review by the Tribal Court under this Section shall be limited to a determination whether the document complies with the applicable requirements of the laws of the Tribe governing such document.

4. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe.

5. Nothing in this Section shall authorize an action against the Office of the Secretary or for the award of damages or any other relief against the Office of the Secretary.

Section 14-3-3. Filing Documents.

1. The Office of the Secretary shall receive all filings required or permitted by the laws of the Tribe to be filed with the Office of the Secretary and maintain the records of such filings.

2. The Office of the Secretary shall file a document delivered to the Office of the Secretary for filing which satisfies the requirements of this Title and any other law of the Tribe applicable to the document.

3. When the Office of the Secretary files a document, the Office of the Secretary shall stamp or otherwise endorse the date and time of receipt of the document and record it as filed on that date and at that time. After filing a document, the Office of the Secretary shall deliver to the person that submitted the document a copy of the document with a stamp or endorsement acknowledging the date and time of filing.

4. If a document filed with the Office of the Secretary establishes a business entity or otherwise registers the business entity with the Office of the Secretary for the first time, the Office of the Secretary shall assign the business entity an identification number.

5. If the Office of the Secretary refuses to file a document, the Office of the Secretary shall, not later than five (5) business days after the document is delivered:

a. Return the document or notify the person that submitted the document of the refusal; and

b. Provide a brief explanation in writing of the reason for the refusal.

6. The filing of or refusal to file a document does not:

a. Affect the validity or invalidity of the document in whole or in part; or

b. Create a presumption that the information contained in the document is correct or incorrect.

7. Except as otherwise provided by the laws of the Tribe, the Office of the Secretary may deliver any document to a person by delivering it:

a. In person to the person that submitted it, including by electronic mail;

b. To the address, including the electronic mail address, of the person's registered agent;

c. To the principal office of the person; or

d. To another address, including an electronic mail address, the person provides to the Office of the Secretary for delivery.

8. Except where otherwise provided by applicable law, all documents filed with the Office of the Secretary shall be available for inspection by members of the public and, upon payment of all required fees, copies of the same may be provided to members of the public. The Office of the Secretary may establish procedures for the inspection or requesting of copies of documents filed with the Office of the Secretary.

Section 14-3-4. Requirements for Filing.

1. To be filed by the Office of the Secretary, a document must be received by the Office of the Secretary, comply with the laws of the Tribe, and satisfy the following:

a. The filing of the document must be required or permitted by the laws of the Tribe;

b. The document must be physically delivered in written form unless and to the extent the Office of the Secretary permits electronic delivery of documents;

c. The words in the document must be in English or an English translation included, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in Ponca or English if written in English letters or Arabic or Roman numerals;

d. The document must be signed by a person authorized or required under the laws of the Tribe to sign the document or ordered to be filed unsigned by the Tribal Court as provided in this Chapter; and

e. The document must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the document, but need not contain a seal, attestation, acknowledgment, or verification.

2. If applicable law prohibits the disclosure by the Office of the Secretary of information contained in a document delivered to the Office of the Secretary for filing, the Office of the Secretary shall file the document if the document otherwise complies with the laws of the Tribe but may redact the information.

3. When a document is delivered to the Office of the Secretary for filing, any fee required under this Title and any fee, tax, interest, or penalty required to be paid under the laws the Tribe must be paid in a manner permitted by the Office of the Secretary.

4. The Office of the Secretary may require that a document delivered in written form be accompanied by an identical or conformed copy.

Section 14-3-5. Effective Time of Filing. Except as otherwise provided in the laws of the Tribe, a document filed with the Office of the Secretary is effective:

1. On the date and at the time of its filing by the Office of the Secretary;

2. On the date of filing and at the time specified in the document as its effective time, if later than the time of its filing by the Office of the Secretary;

3. At a specified delayed effective time and date, which may not be more than ninety (90) days after the date of filing; or

4. If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than ninety (90) days after the date of filing.

Section 14-3-6. Withdrawal of Filing.

1. Except as otherwise provided in the laws of the Tribe, a document delivered to the Office of the Secretary for filing may be withdrawn before it takes effect by delivering to the Office of the Secretary for filing a statement of withdrawal.

2. A statement of withdrawal must:

a. Be signed by each person that signed the document being withdrawn, except as otherwise agreed by those persons;

b. Identify the document to be withdrawn; and

c. If signed by fewer than all the persons that signed the document being withdrawn, state that the document is withdrawn in accordance with the agreement of all the persons that signed the document.

3. On filing by the Office of the Secretary of a statement of withdrawal, the action or transaction evidenced by the original document does not take effect.

Section 14-3-7. Correction of Filing.

1. A person on whose behalf a filed document was delivered to the Office of the Secretary for filing may correct the document if:

a. The document at the time of filing was inaccurate;

b. The document was defectively signed; or

c. The electronic transmission of the document to the Office of the Secretary was defective.

2. To correct a filed document, a person on whose behalf the document was delivered to the Office of the Secretary must deliver to the Office of the Secretary for filing a statement of correction.

3. A statement of correction:

a. May not state a delayed effective date;

b. Must be signed by the person correcting the filed document;

c. Must identify the filed document to be corrected;

d. Must specify the inaccuracy or defect to be corrected; and

e. Must correct the inaccuracy or defect.

4. A statement of correction is effective as of the effective date of the filed document that it corrects except as to persons relying on the uncorrected filed document and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

Section 14-3-8. Liability for Inaccurate Filing. If a document delivered to the Office of the Secretary for filing and filed by the Office of the Secretary contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

1. A person that signed the document, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the document was signed; and

2. An owner or manager of the business entity if:

a. The document was delivered for filing on behalf of the business entity; and

b. The owner or manager knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the owner or manager reasonably could have delivered to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 14-3-9. Certificate of Status.

1. On request of any person, the Office of the Secretary shall issue a certificate of good standing for a domestic business entity or a certificate of registration for a qualified foreign business entity.

2. A certificate of good standing or certificate of registration, as appropriate, shall set forth the following:

a. The business entity's name or the qualified foreign business entity's name used in the territory of the Tribe;

b. That either:

i. The business entity is organized under the laws of the Tribe and the date of formation; or

ii. The foreign business entity is authorized to transact business in the territory of the Tribe and the date of registration;

c. The period of the business entity's duration if the records of the Office of the Secretary reflect that its period of duration is less than perpetual;

d. That:

i. No statement of dissolution, statement of administrative dissolution, or statement of termination has been filed; and

ii. The records of the Office of the Secretary do not otherwise reflect that the business entity has been dissolved or terminated;

e. That the most recent annual report required by this Title has been delivered to the Office of the Secretary for filing;

f. That all fees, taxes, interest, and penalties owed to the Tribe by the business entity before the date of the certificate and collected through the Office of the Secretary have been paid;

g. That, according to the records of the Office of the Secretary, the business entity is in good standing in the territory of the Tribe; and

h. Other facts reflected in the records of the Office of the Secretary pertaining to the business entity which the person requesting the certificate reasonably requests.

3. In the event the Office of the Secretary cannot certify all matters required for a certificate of good standing or certificate of registration under this Section, the domestic business entity or foreign business entity, as appropriate, shall not be deemed in good standing and the Office of the Secretary may issue a certificate that the business entity is not in good standing or not authorized to transact business in the territory of the Tribe, as appropriate.

4. Subject to any qualification stated in the certificate, a certificate issued by the Office of the Secretary under this Section may be relied on as conclusive evidence of the matters stated in the certificate.

Section 14-3-10. Invalid Provisions. If a document delivered to the Office of the Secretary for filing becomes effective and contains a provision that would be ineffective under or violate this Title or the laws of the Tribe governing the business entity subject of the document, the provision is ineffective and void regardless of its acceptance for filing.

Section 14-3-11. Forms.

1. The Office of the Secretary may develop and provide forms for filings required or permitted to be made with the Office of the Secretary, but their use shall not be required.

2. Notwithstanding anything to the contrary in this Section, the Office of the Secretary may require that a cover sheet for a filing be on a form prescribed by the Office of the Secretary.

Section 14-3-12. Fees.

1. The Office of the Secretary shall impose and collect a reasonable non-refundable filing fee for each document filed when the document is delivered to the Office of the Secretary, provided that the Office of the Secretary may provide, subject to the approval of the Tribal Council, for instances where no filing fee is required.

2. The Office the Secretary shall, subject to approval of the Tribal Council, have the authority to establish a schedule of filing fees applicable to documents filed with the Office of the Secretary and set such fees from time to time, but such fees shall be initially set as follows:

a. Initial, amended, or restated organizational documents, one hundred dollars ($100.00);

b. Annual report, twenty-five dollars ($25);

c. A certificate of status, ten dollars ($10);

d. Statements of dissolution, merger, interest exchange, conversion, or domestication, seventy-five dollars ($75.00);

e. Application for registration of a foreign business entity, fifty dollars ($50.00);

f. A statement of a change of address, five dollars ($5.00);

g. A copy of any document or instrument, five dollars ($5.00) plus fifty cents ($0.50) per page; and

h. Any other document not provided for herein, twenty-five dollars ($25.00).

Section 14-3-13. Records as Evidence. All certificates and documents issued by the Office of the Secretary pursuant to this Title or other law of the Tribe governing business entities and all copies of documents filed with the Office of the Secretary in accordance with the provisions of this Title, when certified by the Office of the Secretary, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts or nonexistence of facts stated therein.

CHAPTER 4
TRIBAL BUSINESS ENTITIES

Section 14-4-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter, "Tribal governmental entity" means an agency, department, division, instrumentality, or subordinate or

other entity of the Tribe, but does not include the executive, legislative, or judicial branch of the Tribe or a Tribal business entity.

Section 14-4-2. Nature of Tribal Business Entities.

1. Unless the public organizational documents of a Tribal business entity wholly owned by the Tribe expressly provide that it is organized pursuant to Article V, Section 1(f) of the Constitution, Tribal business entities and subsidiaries of Tribal business entities at any level shall be deemed instrumentalities of the Tribe and subordinate organizations of the Tribe pursuant to Article V, Section 1(n) of the Tribal Constitution.

2. All Tribal business entities shall serve and support the needs, priorities, goals, objectives, and/or policies of the Tribe, including the Tribal business entity contributing to Tribal economic policy or development and furthering the goals of self-determination and economic self-sufficiency.

3. Notwithstanding any law of any jurisdiction to the contrary, including any contrary law of the Tribe applicable to the type of business entity of the Tribal business entity, all Tribal business entities shall be subject to the provisions of this Chapter regardless of the jurisdiction of formation of the Tribal business entity and the provisions of this Chapter shall be deemed incorporated into the public and private organizational documents of every Tribal business entity.

Section 14-4-3. Formation.

1. The Tribe may establish a Tribal business entity with the Tribe as the sole owner. The Chair of the Tribe shall be the organizer of any Tribal business entity established by the Tribe.

2. Tribal business entities in which the Tribe is an owner shall be established by a duly adopted resolution of the Tribal Council establishing the business entity and adopting the public organizational documents governing the business entity.

3. If authorized by the Tribal Council or by the law of the Tribe establishing or governing such Tribal governmental entity, a Tribal governmental entity may establish a Tribal business entity with the Tribal governmental entity as the sole owner. The chairperson of the board, commission, or other body overseeing such Tribal governmental entity or, in the absence thereof, the director of such Tribal governmental entity shall be the organizer

of any Tribal business entity established by such Tribal governmental entity.

4. Except as otherwise provided in the law establishing or governing such Tribal governmental entity, Tribal business entities owned by Tribal governmental entities shall be established by a duly adopted resolution of the board, commission, or other body governing such Tribal governmental entity or, in the absence such a board, commission, or other body, the Tribal Council establishing the business entity and adopting the public organizational documents governing the business entity.

5. Unless the organizational documents of the Tribal business entity provide otherwise, a Tribal business entity or subsidiary of a Tribal business entity at any level may establish a subsidiary Tribal business entity with such Tribal business entity or subsidiary as the sole owner. A member of the board of directors or, in the absence of a board of directors, the manager of the parent Tribal business entity shall be the organizer of any subsidiary Tribal business entity established by the parent Tribal business entity.

6. Subsidiaries of Tribal business entities at any level shall be created by a duly adopted resolution of the board of directors of the parent Tribal business entity establishing the subsidiary and adopting the public organizational documents governing the subsidiary and any other requirements of the organizational documents of the parent Tribal business entity.

7. A Tribal business entity shall file the public organizational documents establishing a subsidiary Tribal business entity with the Office of the Secretary as provided in this Title along with the resolution authorizing the formation of the subsidiary and approving the public organizational documents.

8. The Tribe, agency, department, instrumentality, or entity of the Tribe, or Tribal business entity, as the case may be, shall file the public organizational documents establishing a Tribal business entity with the Office of the Secretary as provided in this Title along with the resolution authorizing the formation of the Tribal business entity and approving the public organizational documents.

9. Unless a delayed effective date is specified, the existence of a Tribal business entity begins when its public organizational documents have been approved in accordance with

this Section and filed with the Office of the Secretary in accordance with this Title.

10. The Tribe, a Tribal governmental entity, or any Tribal business entity, including subsidiaries thereof at any level, may form, or own interests in, other business entities with each other and with other governmental or non-governmental entities or persons in accordance with the following:

a. The formation or ownership:

i. In the case of the Tribe, must be approved by a duly adopted resolution of the Tribal Council;

ii. In the case of a Tribal governmental entity, must be expressly authorized by the Tribal Council or by the law of the Tribe establishing or governing such Tribal governmental entity and comply with any requirements of such resolution or law of the Tribe;

iii. In the case of a Tribal business entity, including a subsidiary thereof at any level, must not be prohibited by the organizational documents of the Tribal business entity and must be approved by the board of directors or owner of the Tribal business entity and comply with any other requirements of the organizational documents of such Tribal business entity;

b. Such business entities may be established under the laws of the Tribe or another jurisdiction; and

c. The partial ownership interest of the Tribe, a Tribal governmental entity, or a Tribal business entity in such business entity shall not diminish or affect the privileges and immunities of the Tribe, its Tribal Council, commissions, boards, Tribal governmental entities, Tribal business entities, Tribal Council members, commissioners, board members, officials, agents, officers, or employees.

Section 14-4-4. Organizational Documents. In addition to any other requirements for the organizational documents of a business entity, the public organizational documents of all Tribal business entities shall provide for a purpose which supports and relates to the overall needs, priorities, goals, objectives, and/or policies of the Tribe.

Section 14-4-5. Registered Agent. Unless expressly provided otherwise in the public organizational documents of a Tribal business entity, the registered office and registered agent of a Tribal business entity shall be located on lands held in trust for the Tribe or lands owned by the Tribe in fee within the territory of the Tribe where the Tribe maintains jurisdiction to the same extent as its trust lands.

Section 14-4-6. Privileges and Immunities.

1. Except to the extent otherwise expressly provided in its public organizational documents and notwithstanding any power to sue or be sued or consent thereto vested in a Tribal business entity, a Tribal business entity wholly owned by the Tribe, including by a Tribal governmental entity, shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity.

2. Except to the extent otherwise expressly provided in its public organizational documents, a subsidiary of a Tribal business entity at any level wholly owned by a Tribal business entity shall possess all of the privileges and immunities of the Tribe, including the Tribe's sovereign immunity.

3. A business entity in which the Tribe, a Tribal governmental entity, a Tribal business entity or subsidiary thereof at any level, or any combination of the foregoing owns a majority of the ownership interests in such business entity may possess the privileges and immunities of the Tribe, including the Tribe's sovereign immunity, to the extent allowed by the laws of the Tribe, applicable federal law of the United States, and its public organizational documents.

4. Tribal business entities established under the laws of the Tribe shall be deemed to be instrumentalities of the Tribe, and their officers and employees considered officers and employees of the Tribe, created for the purpose of carrying out authorities and responsibilities of the Tribe for economic development of the Tribe and the advancement of members of the Tribe. Such Tribal business entities and their directors, officers, managers, and employees shall be entitled to all of the privileges and immunities enjoyed by the Tribe, including but not limited to, immunity from suit and other judicial process in Tribal, federal, and state courts and federal, state, and local taxation or regulation.

5. Nothing in this Title shall be construed as creating any liability or waiving of sovereign immunity of the Tribe in any

manner, provided that the assets of a Tribal business entity may be subject to liabilities and claims except where otherwise provided in this Chapter or other law of the Tribe. In no event shall any action taken by the Tribe as an owner with respect to a Tribal business entity be construed as a waiver of immunity or creation of a liability on the part of the Tribe separate and apart from its interests as an owner of the Tribal business entity.

6. No Tribal business entity may claim sovereign immunity as a defense or bar to any action brought or taken by the Tribe in any capacity or, in the case of a subsidiary of a Tribal business at any level, its parent Tribal business entity acting as owner.

Section 14-4-7. Waivers of Sovereign Immunity.

1. A Tribal business entity may specifically grant a limited waiver of its immunity from suit and consent to be sued in Tribal Court or another court of competent jurisdiction or consent to binding arbitration only in accordance with the provisions of its public organizational documents, subject to the following:

a. The waiver or consent to suit shall be in writing in a written contract or agreement to which the Tribal business entity is a full party;

b. The language of the waiver shall explicitly limit the waiver to a specific dollar amount not to exceed the dollar amount of the contract or agreement or to other specific, limited non-monetary relief;

c. The waiver or consent shall not be general, but shall be specific and limited as to:

i. The party for whose benefit the waiver or consent is granted;

ii. The duration of the waiver or consent;

iii. The transaction and claims or classes of claims for which the waiver or consent is granted;

iv. The property of the Tribal business entity which may be subject to execution to satisfy any judgment which may be entered;

v. Whether court action, arbitration, mediation, other alternative dispute resolution, or combination of

the foregoing is authorized, the requirements and procedures for initiating mediation or arbitration, if applicable, and, if the waiver or consent includes court other than the Tribal Court, the court in which an action may be brought; and

vi. The law to be applied in any action pursuant to the waiver or consent, provided the application of such law shall not permit or allow any violation of the laws of the Tribe applicable to such Tribal business entity;

d. The board of directors of the Tribal business entity or, in the absence of a board of directors, the owner's board of directors, must adopt a resolution for the specific purpose of approving and granting the waiver or consent;

e. Any waiver or consent to suit shall be strictly limited to the terms of such waiver or consent to suit;

f. Any contract or agreement containing written language of any such waiver or consent to suit shall be reviewed and approved by an attorney representing the Tribe or the Tribal business entity prior to the execution of such contract or agreement;

g. Any such waiver or consent to suit shall in no manner or way extend to any action against the Tribe or be deemed a waiver of any of the rights, privileges, or immunities of the Tribe;

h. Any recovery against the Tribal business entity shall be limited to the assets of the Tribal business entity or such portion of the assets of the Tribal business entity authorized in the waiver or consent; and

i. The Tribe shall not be liable for the payment or performance of any of the obligations of the Tribal business entity and no recourse shall be had or allowed against any assets or revenues of the Tribe in order to satisfy the obligations of the Tribal business entity, including assets of the Tribe leased, loaned, or otherwise assigned without transfer of title to the Tribal business entity for its use.

2. Notwithstanding any law to the contrary, a purported waiver of sovereign immunity or consent to be sued in any court or

resolve disputes by any means or in any tribunal shall not be valid and shall be void unless it complies with the provisions of this Section.

3. Notwithstanding the provisions of this Section, a Tribal business entity may specifically grant a limited waiver of its immunity from suit for participation in a federal program to the extent and in the manner required by federal regulations governing such program.

Section 14-4-8. Management.

1. Except in the case of a partnership, a Tribal business entity formed pursuant to the laws of the Tribe where the Tribe or a Tribal governmental entity is an owner shall be managed by a board of directors in the manner described in the Tribal business entity's public organizational documents in accordance with the following:

a. The qualifications, number, terms, and method for selecting and removing directors of the Tribal business entity shall be specified in the Tribal business entity's public organizational documents, subject to requirements set forth in this Chapter; and

b. Notwithstanding any provision to the contrary in its organizational documents, the Tribal Council shall have the power to appoint and remove the directors of all Tribal business entities wholly owned by the Tribe, provided that the public organizational documents may modify or limit the appointment and removal of directors serving in an ex-officio capacity.

2. A subsidiary of a Tribal business entity at any level formed pursuant to the laws of the Tribe may be managed by the owner or a manager as designated in the subsidiary's public organizational documents in accordance with the following:

a. If the subsidiary is managed by the owner, the subsidiary shall have one or more persons exercising the functions of a chief executive officer; and

b. If the subsidiary is managed by a manager, the subsidiary's public organizational documents shall set forth the qualifications, number, terms, and method for selecting and removing such managers.

3. The board of directors of any Tribal business entity which has a board of directors shall be composed of members of the Tribal Council, members of the Tribe, and/or individuals experienced in business and Tribal government.

4. In addition to any other requirements set forth in its public organizational documents, the directors of a Tribal business entity shall meet the following requirements, provided that the public organizational documents may provide different requirements for directors serving in an ex-officio capacity:

a. Be at least twenty-five (25) years of age;

b. Possess at least a bachelor's degree or posses a high school diploma or a equivalency diploma plus at least five (5) years of business, financial, legal, government contracting, or industry experience;

c. Not have been convicted or pled guilty or no contest to any felony in any jurisdiction;

d. Not have been convicted of, or pled guilty or no contest to, or otherwise found or admitted to committing any crime or civil violation in any jurisdiction involving tax evasion, tax fraud, theft, or embezzlement, of moral turpitude, or against the Tribe;

e. Be willing and able to perform the director's duties in compliance with the laws of the Tribe;

f. Not be an employee of the Tribal business entity or any of its subsidiaries, provided that an employee may be selected as a director on the condition the employee shall resign as an employee upon commencement of service as a director; and

g. Submit to a background investigation for purposes of determining the director's qualifications for appointment.

5. The owner's determination as to whether an individual is qualified to be a director of a Tribal business entity, including whether the conviction, pleading guilty or no contest to, or admission to committing a particular crime or civil violation disqualifies an individual under this Section, shall be final and not subject to appeal, review, challenge, or other action in any court or tribunal, including the Tribal Court.

6. Except as otherwise expressly provided in its public organizational documents, a director of a Tribal business entity may be removed with or without cause by the owner. For purposes of this subsection, "cause" shall include:

a. Breach of a fiduciary duty;

b. Conviction or pleading guilty or no contest to a felony in any jurisdiction;

c. Conviction or pleading guilty or no contest to any misdemeanor or violation of a law of the Tribe, including the provisions of this Title, that, in the sole determination of the owner, adversely affects the Tribal business entity or such director's ability to perform his or her duties;

d. Adjudication as incapacitated to manage his or her own affairs by a court of competent jurisdiction;

e. Theft, embezzlement, conversion, or misappropriation of funds of a Tribal business entity or other acts of dishonesty with respect to a Tribal business entity;

f. Gross negligence, fraud, deceit, or intentional misconduct that has a material adverse effect on the Tribal business entity;

g. Misconduct, including insubordination, related to the duties and performance as a director;

h. Dissatisfaction with the performance of the director or the Tribal business entity; or

i. The happening of any event which would have made the director ineligible for appointment if the event had occurred prior to appointment.

7. Unless otherwise expressly provided in the public organizational documents of a Tribal business entity:

a. No person who has served as a director may appeal or challenge his or her removal in any court or tribunal, including the Tribal Court; and

b. The owner's decision to remove a director of a Tribal business entity shall be solely within the discretion and determination of the owner and shall not be subject to

appeal, review, challenge, or other action in any court or tribunal, including the Tribal Court.

8. All managers and officers of Tribal business entities owe fiduciary duties to the Tribal business entity and the owner. In addition to any other requirements of a business entity governing the conduct of its business, carrying on its operations, and having and exercising its powers, a Tribal business entity and its managers and officers, as part of their fiduciary duties, shall consider the effects of any action or inaction on the interests of the Tribe and its members and not take any action or fail to act on any matter which would be detrimental to the interests of the Tribe and its members.

9. Unless otherwise provided in its organizational documents, a director of a Tribal business entity may resign by delivering a written resignation to the board of directors or owner and shall be effective upon receipt, unless the resignation states otherwise.

10. For purposes of this Section, "owner" includes the Tribal Council, a board, commission, or other body overseeing a Tribal governmental entity, and board of directors of a Tribal business entity acting as the representative of or on behalf of the owner of the Tribal business entity.

11. Notwithstanding any law to the contrary, a Tribal business entity shall not lend any money to or guarantee the personal debts or obligations of any manager, director, officer, or employee of the Tribal business entity under any circumstances.

Section 14-4-9. Voting of Owners.

1. The ownership interests in all Tribal business entities where the Tribe is an owner and any action which the Tribe is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter with respect to such Tribal business entities shall be voted in accordance with the Tribal Council's procedures for voting and passing motions or resolutions.

2. The ownership interests in a Tribal business entity in which a Tribal governmental entity is an owner or a subsidiary of a Tribal business entity at any level and any action which the owner is required or permitted to take with respect to any vote, approval, consent, appointment, direction, or other matter with

respect to such Tribal business entities shall be voted as provided in the subsidiary's public organizational documents.

3. Notwithstanding anything to the contrary in the organizational documents of a Tribal business entity, the affirmative vote, approval, or consent of the owner shall be required for any Tribal business entity to do any of the following:

a. Adopt, amend, restate, or revoke the Tribal business entity's public organizational documents;

b. Issue an interest in the Tribal business entity to any person;

c. Except in the case of a mortgage, pledge, or other grant a security interest, sell, exchange, or otherwise dispose of all or substantially all of the assets of the Tribal business entity;

d. Merge the Tribal business entity with another entity;

e. Allow the acquisition of any interest in the Tribal business entity by any person;

f. Convert the Tribal business entity into another form of business entity;

g. Domesticate the Tribal business entity in any jurisdiction other than the Tribe;

h. Divide the Tribal business entity;

i. Dissolve the Tribal business entity;

j. Establish or form any subsidiary of the Tribal business entity under the laws of any jurisdiction other than the Tribe;

k. Allow the Tribal business entity to accept any additional contribution for an owner or other investment in the business entity; or

l. Authorize a manager or other person to do any act on behalf of the Tribal business entity that contravenes its organizational documents.

Section 14-4-10. Meetings of Owner.

1. Unless otherwise provided in its public organizational documents, each Tribal business entity in which the Tribe is an owner shall hold an annual meeting of the owner at such time and place designated in the public organizational documents of the Tribal business entity or, if not stated therein, by the Tribal Council for any purpose and the board of directors of the Tribal business entity, if such board exists, shall attend the annual meeting.

2. Unless otherwise provided in its public organizational documents or prohibited by a law of the Tribe other than this Title, the Tribal Council, acting as owner, may call special meetings of the owner for any purpose and may require that the board of directors of a Tribal business entity in which the Tribe is an owner, if such board exists, attend the special meeting.

Section 14-4-11. Manager as Agent. No board of directors or other manager of a Tribal business entity shall have the authority to bind the Tribe in any manner, provided that the Tribe's interest as an owner may be bound by such board of directors or other manager as provided in the laws of the Tribe other than this Chapter or the public organizational documents of the Tribal business entity.

Section 14-4-12. Liability to Third Parties.

1. Notwithstanding any provision of any law or its organizational documents to the contrary:

a. A debt, obligation, or other liability of a Tribal business entity, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the Tribal business entity and may only be enforced, to the extent permitted by law, against the assets or revenues of the Tribal business entity;

b. The Tribe is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a Tribal business entity solely by reason of being or acting as an owner; and

c. No recourse shall be had or allowed against any assets or revenues of the Tribe in order to satisfy the debts, obligations, or other liabilities of a Tribal business entity, including assets of the Tribe leased, loaned, or

otherwise assigned without transfer of title to the Tribal business entity for its use; and

d. The failure of a Tribal business entity to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on the Tribe for a debt, obligation, or other liability of the Tribal business entity.

2. Notwithstanding any provision of law or its organizational documents to the contrary, no Tribal business entity shall have the power to pledge or encumber the assets or revenues of the Tribe. The Tribe, as owner, may pledge, encumber, or consent to recourse against the assets or revenues of the Tribe if and only if such pledge, encumbrance, or consent is contained in a written resolution of the Tribal Council specifically identifying both:

a. The assets or revenues pledged, encumbered, or subject to recourse; and

b. The specific debt, obligation, or liability of the Tribal business entity for which such assets or revenues are pledged, encumbered, or subject to recourse.

3. The Tribe is not a proper party to a proceeding by or against a Tribal business entity solely by reason of being an owner, except if the action is brought by the Tribe.

4. This Section applies regardless of the type of business entity of the Tribal business entity and regardless of the dissolution of the Tribal business entity.

Section 14-4-13. Property of Tribal Business Entities.

1. Except where the title to such property is retained by or in the name of the Tribe, all property transferred to a Tribal business entity is property of the Tribal business entity and not the Tribe.

2. Except as provided otherwise in this Section or law of the Tribe other than this Chapter:

a. All property acquired by a Tribal business entity in its name is property of the Tribal business entity and not the Tribe; and

b. Property acquired with funds of a Tribal business entity is presumed to be property of the Tribal business entity.

3. Except as otherwise provided in its public organizational documents, whenever a Tribal business entity purchases lands or otherwise acquires or obtains title to lands located within the territory of the Tribe:

a. Such lands may be purchased, acquired, or obtained in the name of the Tribe or in the name of the Tribal business entity, provided that the Tribal Council may direct in whose name a particular piece or parcel of land shall be purchased, acquired, or obtained;

b. Any such lands purchased, acquired, or obtained in the name of the Tribe shall be property of the Tribe and not the Tribal business entity regardless of the source of funds used to acquire such lands;

c. Any such lands purchased, acquired, or obtained in the name of the Tribe shall be deemed assigned to the Tribal business entity for its exclusive use and management in accordance with the laws of the Tribe for the purposes of the Tribal business entity;

d. Unless the Tribal Council directs otherwise, the Tribal business entity shall pay, be responsible for, and indemnify the Tribe for the payment of any such lands purchased, acquired, or obtained in the name of the Tribe and any taxes, assessments, or other fees related to any such lands purchased, acquired, or obtained in the name of the Tribe or their purchase, acquisition, or obtainment unless and until the Tribal business entity relinquishes the assignment and use of such lands to the Tribe;

e. Notwithstanding that any lands of the Tribal business entity are acquired in the name of the Tribe pursuant to this subsection, unless the Tribal Council directs otherwise, if funds of the Tribal business entity are used to purchase, acquire, or obtain the lands, the Tribal business entity shall have the authority to sell, transfer, or otherwise alienate any such lands not held in trust for the Tribe by the United States or otherwise subject to a restriction against alienation and retain any income or revenues from such sale, transfer, or alienation.

Section 14-4-14. Interest in Business Entities.

1. All interests in any Tribal business entity shall be held by and for the Tribe or, in the case of a subsidiary of a Tribal business entity at any level, by the parent Tribal business entity. No individual member of the Tribe shall have any personal ownership interest in any Tribal business entity, whether by virtue of such person's status as a member of the Tribe, as an officer of the Tribe or its government, or otherwise.

2. No ownership interest of the Tribe in any Tribal business entity may be alienated or encumbered, expressly or by operation of law, unless expressly approved by a duly adopted resolution of the Tribal Council.

3. No ownership interest in any subsidiary of a Tribal business entity at any level may be alienated or encumbered, expressly or by operation of law, unless expressly approved by a duly adopted resolution of the board of directors of the parent Tribal business entity.

Section 14-4-15. Reports. In addition to any reports required by the laws of the Tribe or the organizational documents of a Tribal business entity, the board of directors of each Tribal business entity in which the Tribe is an owner shall submit the following information to the Tribal Council:

1. Promptly after such statements are furnished to the board of directors, copies of any periodic financial statements, including monthly or quarterly balance sheets, profit and loss statements, and cash flow statements, as may be prepared in the ordinary course of business;

2. Within one hundred twenty (120) days after the close of each fiscal year, a full report of the activities of the Tribal business entity;

3. Within one hundred twenty (120) days after the close of each fiscal year, a proposed annual plan for the following fiscal year, including any proposed funding from the Tribe or anticipated distributions to the Tribe; and

4. Unless otherwise provided in its public organizational documents, such other reports from time to time as reasonably requested by the Tribal Council.

Section 14-4-16. Audits. In addition to any rights of inspection provided in the laws of the Tribe to owners of business entities and in the public organizational documents of a Tribal business entity, the Tribal Council may, at any time, by process set forth in such law of the Tribe or the public organizational documents, require that any Tribal business entity be audited by an independent auditor hired by the Tribe who shall have the absolute right to require access to all of the Tribal business entity's records and documents necessary for such an audit.

Section 14-4-17. Distributions.

1. Subject to the Tribe's ultimate ownership right to all income generated by Tribal business entities, a Tribal business entity wholly owned by the Tribe shall distribute its net income to the Tribe as set forth in a dividend plan adopted in accordance with the Tribal business entity's public organizational documents and approved by the Tribal Council, except that a Tribal business entity may retain reserves necessary to carry on its business in a reasonably prudent manner and as recommended by the board of directors, subject to any additional limitations set forth in the laws of the Tribe governing the Tribal business entity and its public organizational documents.

2. Subject to the Tribe's or Tribal governmental entity's ultimate ownership right to all income generated by Tribal business entities owned by a Tribal governmental entity, a Tribal business entity wholly owned by a Tribal governmental entity shall distribute its net income to the Tribe or Tribal governmental entity as set forth in a dividend plan adopted in accordance with the Tribal business entity's public organizational documents and approved by the owner, except that the Tribal business entity may retain reserves necessary to carry on its business in a reasonably prudent manner and as recommended by the board of directors, subject to any additional limitations set forth in the laws of the Tribe governing the Tribal business entity and its public organizational documents.

3. Subject to the parent Tribal business entity's ultimate ownership right to all income generated by its subsidiaries, a subsidiary of a Tribal business entity shall distribute its net income to the parent Tribal business entity as set forth in a dividend plan adopted in accordance with its public organizational documents and duly approved by its parent Tribal business entity, except that a subsidiary may retain reserves necessary to carry on the subsidiary's business in a reasonably prudent manner and as recommended by its board of directors or other manager, subject to

any additional limitations set forth in the laws of the Tribe governing the subsidiary and its public organizational documents.

4. When any income or assets of a Tribal business entity are distributed or otherwise transferred to the Tribe, Tribal governmental entity, or, in the case of a subsidiary, its parent Tribal business entity, such income and assets shall cease being income or assets of the Tribal business entity and shall become income and assets of the Tribe, Tribal governmental entity, or, in the case of subsidiary, its parent Tribal business entity, and shall not be subject to any attachment or other process which may reach the income or assets of the Tribal business entity.

Section 14-4-18. Actions By Owner.

1. The Tribe or Tribal governmental entity, as owner of any Tribal business entity, or the parent Tribal business entity, acting as owner of any of its subsidiaries, may bring a civil action against the Tribal business entity to:

a. Enjoin temporarily or permanently any action of the Tribal business entity that:

i. Is outside the authority of the Tribal business entity;

ii. Has caused or could cause material harm to the assets of the Tribal business entity, the Tribe, or owner if no immediate action is taken; or

iii. Is otherwise unlawful; or

b. Require the distribution of the Tribal business entity's surplus net income to the extent permitted by its public organizational documents, this Chapter, or other law of the Tribe governing the Tribal business entity.

2. The filing of any action against a Tribal business entity pursuant to this Section must be authorized by the Tribe or Tribal governmental entity as owner or, in the case of a subsidiary, the parent Tribal business entity in the manner provided in this Chapter for voting of the owner, provided that the request for consideration of the proposed court action may be made by any member of the Tribal Council, the board, commission, or other body of the Tribal governmental entity that is an owner, or, in the case of a subsidiary, any member of the board of directors of the parent Tribal business entity.

3. In any action brought under this Section, the Tribal Court may, based on a preponderance of the evidence:

a. Issue a declaratory judgment, temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief pursuant to and in accordance with the laws of the Tribe governing the same, except that no bond, obligation, or other security shall be required from the Tribe, Tribal governmental entity, or, in the case of an action against a subsidiary, parent Tribal business entity; or

b. Order that funds of the Tribal business entity be distributed to the extent permitted by its public organizational documents, this Chapter, or other law of the Tribe governing the Tribal business entity.

4. An action against Tribal business entity pursuant to this Section by the Tribe, a Tribal governmental entity, or a parent Tribal business entity acting as owner shall not act as a waiver of the Tribe's, the Tribal governmental entity's, or the parent Tribal business entity's sovereign immunity from suit of any kind nor otherwise authorize a suit of any kind, including a countersuit or counterclaim by the Tribal business entity, its board of directors or other manager, or its officers.

5. Nothing contained herein shall be construed as authorizing actions of any kind whatsoever against the Tribe.

CHAPTER 5
TRADE NAMES

Section 14-5-1. Requirement of Trade Name. A person shall not transact business in the territory of the Tribe under a name other than the true name of the person unless an effective statement of trade name is on file in the records of the Office of the Secretary.

Section 14-5-2. Application.

1. A person or business entity may deliver to the Office of the Secretary for filing, in accordance with this Title, a statement of trade name for any name other than the true name of the person or business entity under which the person or business entity transacts business or contemplates transacting business in the territory of the Tribe.

2. A statement of trade name shall state:

a. The true name of the applicant;

b. In the case of an applicant that is a business entity, the form of the business entity and the jurisdiction under whose law it is organized;

c. If the applicant is a foreign business entity, whether the applicant is registered to transact business in the territory of the Tribe in accordance with this Title;

d. The applicant's address of its principal office;

e. The trade name, other than the true name of the applicant, under which the applicant transacts business or contemplates transacting business in the territory of the Tribe sought to be registered;

f. A brief description of the kind of business transacted or contemplated to be transacted in the territory of the Tribe under the name;

g. The true name and address of the individual filing the statement; and

h. Such other information as the Office of the Secretary of state may require.

3. A single trade name may be registered on each statement submitted under this Section.

Section 14-5-3. Issuance of Certificate.

1. Upon filing of a statement of trade name in compliance with this Chapter and a determination that the trade name may be registered under the requirements of this Section, the Office of the Secretary shall issue a certificate of registration. The certificate shall show the name and business address of the applicant, the trade name registered, the date of registration, and the term of registration.

2. The Office of the Secretary shall not file an application for the registration of any trade name or register a trade name if:

a. It contains any term the inclusion of which would violate any law of the Tribe;

b. It is not distinguishable from:

i. Any other trade name currently registered with the Office of the Secretary; and

ii. The name of any other domestic business entity or qualified foreign business entity, unless the applicant is the business entity with such indistinguishable name;

c. It contains any immoral, deceptive, or scandalous matter;

d. Unless the applicant is the Tribe or a Tribal business entity or the applicant files with the Office of the Secretary a resolution of the Tribal Council consenting to the use of the name of the Tribe and complies with any restrictions contained in such resolution, it disparages or falsely suggests a connection with the Tribe; or

e. If the applicant is a foreign business entity, the applicant is not registered to transact business in the territory of the Tribe in accordance with this Title.

Section 14-5-4. Term of Registration.

1. Registration of a trade name under this Chapter is effective for a term of one (1) year from the date of registration, except that a trade name registered by the Tribe or a Tribal business entity shall be effective in perpetuity or until voluntarily cancelled by the Tribe or Tribal business entity.

2. Upon application filed within sixty (60) days prior to the expiration of a trade name, the registration may be renewed by filing a statement of renewal which states:

a. The true name of the person holding the registration of the trade name;

b. The applicant’s address of its principal office;

c. The trade name to be renewed;

d. A brief description of the kind of business transacted or contemplated to be transacted in the territory of the Tribe under the name;

e. The true name and address of the individual filing the statement; and

f. Such other information as the Office of the Secretary of state may require.

3. The Office of the Secretary shall notify registrants within the sixty (60) days before the expiration of registration of trade name of the necessity of renewal by sending such notification in writing to the last known address of the registrant.

Section 14-5-5. Transfer and Assignment.

1. Any trade name registered under this Chapter and its registration may be assigned and transferred by filing a statement of transfer with the Office of the Secretary.

2. A statement of transfer shall state:

a. The true name and principal address of the current trade name registrant transferring and assigning the trade name;

b. The true name and principal address of the assignee;

c. The trade name transferred and assigned;

d. A brief description of the kind of business transacted or contemplated to be transacted in the territory of the Tribe under the name once transferred and assigned;

e. The true name and address of the individual filing the statement; and

f. Such other information as the Office of the Secretary of state may require.

3. Upon the filing of a statement of transfer pursuant to this Section, the Office of the Secretary shall issue a new certificate of registration in the name of the assignee for the remainder of the term of the registration of the trade name.

Section 14-5-6. Exclusive Rights.

1. The registration of a trade name prior to the filing of public organizational documents of a business entity shall give to the holder of the registered trade name exclusive right to the use of such name.

2. Nothing in this Chapter shall adversely affect the rights or the enforcement of rights in trade names acquired in good faith at any time under the common law of the Tribe.

Section 14-5-7. Cancellation.

1. The Office of the Secretary shall cancel a trade name registration if:

a. The Office of the Secretary receives a voluntary request for cancellation from the registrant or the assignee of record;

b. The registration is not renewed in accordance with this Chapter;

c. If the registrant is a foreign business entity, the registrant's registration to transact business in the territory of the Tribe is cancelled or revoked;

d. The registrant is a business entity which has been dissolved at least six (6) months prior to cancellation;

e. A court of competent jurisdiction orders the cancellation on any grounds; or

f. The registration was obtained fraudulently by containing false or misleading information.

2. The Office of the Secretary shall release a trade name for use pursuant to this Chapter after the trade name's registration has been cancelled.

CHAPTER 6
FOREIGN BUSINESS ENTITIES

Section 14-6-1. Governing Law.

1. The law of the jurisdiction of formation of a foreign business entity governs:

a. The internal affairs of the foreign business entity; and

b. The liability that a person has as an owner, director, officer, or manager for a debt, obligation, or liability of the foreign business entity.

2. A foreign business entity is not precluded from registering to do business in the territory of the Tribe because of any difference between the law of its jurisdiction of formation and the laws of the Tribe.

3. Registration of a foreign business entity to do business in the territory of the Tribe does not:

a. Grant any rights and privileges greater than a domestic business entity; or

b. Authorize the foreign business entity to engage in any activities and affairs or exercise any power that a domestic business entity may not engage in or exercise in the territory of the Tribe.

4. This Section applies even if a foreign business entity fails to register under this Chapter.

Section 14-6-2. Registration.

1. A foreign business entity may not do business in the territory of the Tribe until it registers with the Office of the Secretary under this Chapter.

2. A foreign business entity doing business in the territory of the Tribe may not maintain an action or proceeding in the territory of the Tribe or regarding a business transaction in the territory of the Tribe or with the Tribe or its members, including in the Tribal Court, unless it is registered to do business in the territory of the Tribe.

3. No waiver of sovereign immunity by the Tribe, consent to jurisdiction in any court or tribunal, including the Tribal Court, or agreement to arbitrate or otherwise submit a dispute to arbitration asserted or claimed by, or purportedly granted in favor of, a foreign business entity doing business in the territory of

the Tribe or with the Tribe or its members shall be valid or enforceable unless the foreign business entity is registered to do business in the territory of the Tribe.

4. Neither the successor to a foreign business entity that does business in the territory of the Tribe without registering under this Chapter nor the assignee of a cause of action arising out of that business may maintain an action or proceeding based on that cause of action in the territory of the Tribe, including the Tribal Court, unless the foreign business entity or its successor or assignee is registered to do business in the territory of the Tribe.

5. The Tribal Court shall dismiss any action or proceeding maintained by a foreign business entity or any successor or assignee thereof which is not registered under this Chapter, provided that the Tribal Court may stay such action or proceeding until the foreign business entity, successor, or assignee is registered pursuant to this Title if the foreign business entity, successor, or assignee requests such a stay and represents that it will obtain such registration.

6. The failure of a foreign business entity to register to do business in the territory of the Tribe does not:

a. Impair the validity of a contract or act of the foreign business entity or its title to any property in the territory of the Tribe;

b. Affect the right of any person to maintain an action or proceeding against the foreign business entity; or

c. Preclude the foreign business entity from defending an action or proceeding in the territory of the Tribe, including the Tribal Court.

7. A limitation on the liability of an owner, officer, director, or manager of a foreign business entity is not waived solely because the foreign business entity does business in the territory of the Tribe without registering to do business in the territory of the Tribe.

8. The provisions of this Section shall supersede any contrary provision of any contract or agreement and no provision of a contract or agreement which purports to exempt or avoid the provisions of this Section shall be valid, including a provision of a contract or agreement providing for:

a. A particular law to govern the contract or agreement;

b. A particular law to be utilized for the construction or interpretation of the contract or agreement; or

c. The resolution of disputes in a particular court or jurisdiction or using a particular method of dispute resolution, including arbitration.

Section 14-6-3. Registration Statement.

1. To register to do business in the territory of the Tribe, a foreign business entity must deliver a foreign registration statement to the Office of the Secretary for filing. The statement must state:

a. The name of the foreign business entity and, if the name does not comply with the requirements of this Title, an alternate name adopted pursuant to this Chapter;

b. That the foreign business entity is a foreign business entity and the type of business entity;

c. The foreign business entity's jurisdiction of formation;

d. The date of formation of the foreign business entity in its jurisdiction of formation;

e. A statement that the foreign business entity is in good standing in its jurisdiction of formation;

f. The street and mailing addresses of the foreign business entity's principal office and, if the law of the foreign business entity's jurisdiction of formation requires the foreign business entity to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

g. The name and street and mailing addresses of the foreign business entity's registered agent in the territory of the Tribe.

2. A qualified foreign business entity shall deliver to the Office of the Secretary for filing an amendment to its foreign registration statement if there is a change in:

a. The name of the foreign business entity;

b. The foreign business entity's jurisdiction of formation;

c. An address required by subsection 1 of this Section; or

d. The name or address of the foreign business entity's registered agent in the territory of the Tribe.

Section 14-6-4. Activities Not Constituting Doing Business.

1. For purposes of this Chapter, activities of a foreign business entity which do not constitute doing business in the territory of the Tribe include:

a. Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;

b. Carrying on any activity concerning its internal affairs, including holding meetings of its owners or manager;

c. Maintaining accounts in financial institutions;

d. Maintaining offices or agencies for the transfer, exchange, and registration of securities of the foreign business entity or maintaining trustees or depositories with respect to those securities;

e. Selling through independent contractors;

f. Soliciting or obtaining orders by any means if the orders require acceptance outside the territory of the Tribe before they become contracts;

g. Creating or acquiring indebtedness, mortgages, or security interests in property;

h. Securing or collecting debts or enforcing mortgages or security interests in property securing the debts, and holding, protecting, or maintaining property;

i. Except with respect to claiming or asserting a waiver of sovereign immunity by the Tribe, consent to jurisdiction in a court or tribunal, including the Tribal Court, or agreement to arbitrate or submit a dispute to arbitration, conducting an isolated transaction that is completed within thirty (30) days or less and is not in the course of similar transactions; and

j. Owning, without more, property.

2. A person does not do business in the territory of the Tribe solely by being an owner or manager of a foreign business entity that does business in the territory of the Tribe.

3. This Section does not apply in determining the contacts or activities that may subject a foreign business entity to service of process, taxation, or regulation under the laws of the Tribe other than this Chapter.

Section 14-6-5. Noncomplying Name.

1. A foreign business entity whose name does not comply with this Title may not register to do business in the territory of the Tribe until it adopts, for the purpose of doing business in the territory of the Tribe, an alternate name that complies with this Title. A foreign business entity that registers under an alternate name under this subsection need not comply with the trade name provisions of this Title. After registering to do business in the territory of the Tribe with an alternate name, a foreign business entity shall do business in the territory of the Tribe under:

a. The alternate name;

b. The foreign business entity's name, with the addition of its jurisdiction of formation; or

c. A trade name the foreign business entity is authorized to use under this Title.

2. If a qualified foreign business entity changes its name to one that does not comply with this Title, it may not do business in the territory of the Tribe until it complies with this Section by amending its registration to adopt an alternate name that complies with this Title.

Section 14-6-6. Withdrawal of Registration.

1. A qualified foreign business entity may withdraw its registration by delivering a statement of withdrawal to the Office of the Secretary for filing. The statement of withdrawal must state:

a. The name of the foreign business entity and its jurisdiction of formation;

b. That the foreign business entity is not doing business in the territory of the Tribe and that it withdraws its registration to do business in the territory of the Tribe;

c. That the foreign business entity revokes the authority of its registered agent to accept service on its behalf in the territory of the Tribe; and

d. An address to which service of process may be made on the foreign business entity for any action or proceeding based on a cause of action arising during the time the foreign business entity was registered to do business in the territory of the Tribe.

2. After the withdrawal of the registration of a foreign business entity, service of process in any action or proceeding based on a cause of action arising during the time the foreign business entity was registered to do business in the territory of the Tribe may be made on the address provided under subsection 1 of this Section or pursuant to Chapter 2 of this Title.

3. A qualified foreign business entity that converts to a domestic business entity whose formation requires delivery of a record to the Office of the Secretary for filing is deemed to have withdrawn its registration on the effective date of the conversion.

4. Withdrawal of registration under this Section does not affect a determination of the contacts or activities that may subject a foreign business entity to service of process, taxation, or regulation under the laws of the Tribe.

Section 14-6-7. Transfer of Registration.

1. When a qualified foreign business entity has merged into a foreign business entity that is not registered to do business in the territory of the Tribe or has converted to a foreign business entity required to register with the Office of the Secretary to do

business in the territory of the Tribe, the foreign business entity shall deliver to the Office of the Secretary for filing an application for transfer of registration. The application must state:

a. The name of the qualified foreign business entity before the merger or conversion;

b. The type of entity of the qualified foreign business entity before the merger or conversion and its jurisdiction of formation;

c. The name of the applicant foreign business entity into which the foreign business entity has merged or to which it has been converted and, if the name does not comply with this Title, an alternate name adopted pursuant to this Chapter;

d. The type of entity of the applicant foreign business entity and its jurisdiction of formation;

e. The street and mailing addresses of the principal office of the applicant foreign business entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

f. The name and street and mailing addresses of the foreign business entity's registered agent in the territory of the Tribe.

2. When an application for transfer of registration takes effect, the registration of the foreign business entity to do business in the territory of the Tribe is transferred without interruption to the foreign business entity into which the foreign business entity has merged or to which it has been converted.

Section 14-6-8. Termination of Registration.

1. The Office of the Secretary may terminate the registration of a qualified foreign business entity if:

a. The foreign business entity does not pay, not later than sixty (60) days after the due date, any fee, tax, interest, or penalty required to be paid to the Office of the Secretary under this Title or law other than this Title;

b. The foreign business entity does not deliver to the Office of the Secretary for filing, not later than sixty (60) days after the due date, an annual report required under this Title;

c. The foreign business entity does not have a registered agent as required by this Title;

d. The foreign business entity does not deliver to the Office of the Secretary for filing a statement of change pursuant to this Title not later than thirty (30) days after a change has occurred in the name or address of the registered agent;

e. The foreign business entity obtained its registration through fraud;

f. The Office of the Secretary receives an order from the Tribal Court terminating the registration; or

g. The Office of the Secretary receives a certificate from an official having custody of records pertaining to the foreign business entity in its jurisdiction of formation stating that it has been dissolved, is no longer in good standing in that jurisdiction, or ceased to exist.

2. The Office of the Secretary may terminate the registration of a qualified foreign business entity by:

a. Filing a notice of termination in the records of the Office of the Secretary; and

b. Delivering a copy of the notice to the foreign business entity's registered agent or, if the foreign business entity does not have a registered agent, to the foreign business entity's principal office.

3. A notice of termination must state:

a. The effective date of the termination, which must be at least thirty (30) days after the date the Office of the Secretary delivers the copy; and

b. The grounds for termination under this Section.

4. A foreign business entity may seek judicial review of a termination of its registration by the Office of the Secretary in the Tribal Court in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days after service of the notice of termination;

b. No new or additional information or evidence may be introduced, but the matter shall be heard on the information provided to and in the records of the Office of the Secretary;

c. The Tribal Court shall uphold all factual findings of the Office of the Secretary unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Office of the Secretary;

d. In reviewing legal conclusions reached by the Office of the Secretary, the Tribal Court shall give proper weight to the Office of the Secretary's interpretation of this Title and other laws of the Tribe administered by the Office of the Secretary;

e. The Tribal Court may affirm, reverse, modify, or vacate and remand the Office of the Secretary's termination of registration, but shall affirm the denial unless the Tribal Court concludes that the denial is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion; or

iv. Otherwise contrary to the laws of the Tribe.

5. The authority of a qualified foreign business entity to do business in the territory of the Tribe ceases on the effective date of the notice of termination, unless before that date the foreign business entity cures each ground for termination stated in the notice. If the foreign business entity cures each ground, the Office of the Secretary shall file a record so stating.

6. Revocation of a foreign business entity’s registration does not terminate the authority of its registered agent.

Section 14-6-9. Judicial Termination of Registration.

1. The Tribal Court may order the termination of the registration of a qualified foreign business entity in a proceeding initiated by the Tribal Attorney, if the business entity:

a. Obtained its registration through fraud;

b. Has continued to exceed or abuse the authority conferred upon it by the laws of the Tribe; or

c. Has repeatedly conducted its business, carried on its operations, or exercised its powers in the territory of the Tribe in a manner that has caused significant harm to the interests of persons that are materially affected by the conduct of the business entity and the business entity has not undertaken measures to address the causes of such misconduct.

2. This Section shall not apply to a qualified foreign business entity in which the Tribe is an owner.

3. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe.

Section 14-6-10. Violation of Chapter.

1. A foreign business entity that does business in the territory of the Tribe without registering to do business in the territory of the Tribe shall be subject to a civil fine for each year or any part thereof during which it did business in the territory of the Tribe without registering in an amount equal to one hundred fifty percent (150%) of all fees that the foreign business entity would have been required to pay under this Title had it registered to do business in the territory of the Tribe or $5,000.00, whichever is more. The Office of the Secretary shall not file a registration of a foreign business entity which owes amounts under this subsection until the foreign business entity pays such amounts in full.

2. In addition to any other consequences for failing to register to do business in the territory of the Tribe or other remedies provided under the laws of the Tribe, the Tribal Attorney may maintain an action to enjoin a foreign business entity from doing business in the territory of the Tribe in violation of this Chapter.

CHAPTER 7
MERGER

Section 14-7-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Merging entity" means a business entity that is a party to a merger and exists immediately before the merger becomes effective.

2. "Surviving entity" means the entity that continues in existence after or is created by a merger.

Section 14-7-2. Merger Authorized.

1. Unless otherwise provided in the organizational documents of a business entity, by complying with this Chapter, one or more domestic business entities may merge with one or more domestic or foreign business entities.

2. A foreign business entity may be a merging entity in a merger under this Chapter or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign business entity's jurisdiction of formation.

Section 14-7-3. Plan of Merger.

1. A domestic business entity may become a party to a merger under this Chapter by approving a plan of merger. The plan must be in writing and contain:

a. As to each merging entity, its name, jurisdiction of formation, and type of entity;

b. If the surviving entity is to be created in the merger, a statement to that effect and its name, jurisdiction of formation, and type of entity;

c. The manner of converting the ownership interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

d. If the surviving entity exists before the merger, any proposed amendments to its organizational documents, if any;

e. If the surviving entity is to be created in the merger, its proposed public organizational documents, if any, and the full text of its proposed private organizational documents;

f. The other terms and conditions of the merger; and

g. Any other provision required by the law of a merging entity's jurisdiction of formation or the organic documents of a merging entity.

2. A plan of merger may contain any other provision not prohibited by law.

Section 14-7-4. Approval of Merger.

1. A plan of merger is not effective unless it has been approved by a domestic merging entity:

a. In accordance with the requirements, if any, in the laws of the Tribe governing the merging entity and its organizational documents for approval of a merger; or

b. If neither the laws of the Tribe governing the merging entity nor its organizational documents provide for approval of a merger, then by all of the owners of the merging entity entitled to vote on or consent to any matter or, if there are no such owners, then by all of the managers of the merging entity.

2. A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign business entity in accordance with the law of the foreign business entity's jurisdiction of formation.

3. Upon approval of a merger, the merging entity shall notify its owners of the approval and of the effective date of the merger.

Section 14-7-5. Amendment or Abandonment of Merger.

1. A plan of merger may be amended only with the consent of each party to the plan of merger except as otherwise provided in the plan.

2. A domestic merging entity may approve an amendment to a plan of merger:

a. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

b. By the owners or managers of the merging entity in the manner provided in the plan, but an owner that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

i. The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the owners of any party to the plan;

ii. The organizational documents, if any, of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the owners of the surviving entity under the law of its jurisdiction of formation; or

iii. Any other terms or conditions of the plan if the change would adversely affect the owner in any material respect.

3. After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging business entity may abandon the plan in the same manner as the plan was approved.

4. If a plan of merger is abandoned after a statement of merger have been delivered to the Office of the Secretary for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the Office of the Secretary for filing before the statement of

merger become effective. The statement of abandonment takes effect on filing and the merger is abandoned and does not become effective. The statement of abandonment must contain:

a. The name of each party to the plan of merger;

b. The date on which the statement of merger was filed by the Office of the Secretary; and

c. A statement that the merger has been abandoned in accordance with this Section.

Section 14-7-6. Statement of Merger.

1. A statement of merger must be signed by each merging entity and delivered to the Office of the Secretary for filing.

2. A statement of merger must contain:

a. The name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;

b. The name, jurisdiction of formation, and type of entity of the surviving entity;

c. If the statement of merger is not to be effective upon filing, the later date and time on which it will become effective pursuant to this Title;

d. A statement that the merger was approved by each domestic merging entity, if any, in accordance with this Chapter and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;

e. If the surviving entity exists before the merger and is a domestic business entity, any amendment to its public organizational documents approved as part of the plan of merger;

f. If the surviving entity is created by the merger and is a domestic business entity, its public organizational documents, as an attachment;

g. A statement as to whether the surviving entity is a Tribal business entity and, if so, a statement as to whether

the surviving entity enjoys the Tribe's sovereign immunity; and

h. If the surviving entity is a foreign business entity that is not a qualified foreign business entity, a mailing address to which the Office of the Secretary may send any process served on the Office of the Secretary pursuant to this Title.

3. A statement of merger may contain any other provision not prohibited by law.

4. A plan of merger that is signed by all the merging entities and meets all the requirements of subsection 2 of this Section may be delivered to the Office of the Secretary for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this Chapter to a statement of merger refer to the plan of merger filed under this subsection.

5. If the surviving entity is a domestic business entity, its organizational documents, if any, must satisfy the requirements of the laws of the Tribe, except that the organizational documents are deemed to be signed by means of the signing of the statement of merger.

6. If the surviving entity is a domestic business entity, a merger becomes effective when the statement of merger is effective. If the surviving entity is a foreign business entity, the merger becomes effective on the later of:

a. The date and time provided by the law of the jurisdiction of formation of the surviving entity; or

b. When the statement of merger is effective.

Section 14-7-7. Effect of Merger.

1. When a merger becomes effective:

a. The surviving entity continues or comes into existence;

b. Each merging entity that is not the surviving entity ceases to exist;

c. All property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;

d. All debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;

e. Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

f. If the surviving entity exists before the merger:

i. All its property continues to be vested in it without transfer, reversion, or impairment;

ii. It remains subject to all its debts, obligations, and other liabilities;

iii. All its rights, privileges, immunities, powers, and purposes continue to be vested in it; and

iv. Its organizational documents, if any, are amended to the extent provided in the statement of merger;

g. The name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

h. If the surviving entity is created by the merger, its organizational documents are effective; and

i. The ownership interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those ownership interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under the laws of the Tribe and the merging entity's law of jurisdiction of formation.

2. Except as otherwise provided in the law of the jurisdiction of formation or organizational documents of a merging entity, the merger does not give rise to any rights that an owner, manager, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.

3. When a merger becomes effective, a foreign business entity that is the surviving entity may be served with process in the territory of the Tribe for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging entity.

4. When a merger becomes effective, the registration to do business in the territory of the Tribe of any foreign merging entity that is not the surviving entity is canceled.

Section 14-7-8. Ineffectiveness of Merger Due to Foreign Law.

1. If a statement of merger is filed with the Office of the Secretary involving a foreign business entity and the merger is not authorized by the law of the relevant foreign jurisdiction as required by this Chapter, the merger is ineffective.

2. A statement of ineffectiveness of merger must be signed on behalf of each business entity which signed the statement of merger and must be delivered for filing with the Office of the Secretary to reflect that ineffectiveness in the public record.

3. The statement of ineffectiveness of merger must contain:

a. The name of each business entity that attempted the merger;

b. The date on which the statement of merger was filed; and

c. A statement that the merger was ineffective because it was not authorized by the law of the relevant foreign jurisdiction.

4. The business entities that attempted the merger are both:

a. Responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted merger unless the business entities establish that the obligation was not incurred in good faith; and

b. Deemed to have appointed the Office of the Secretary as the agent of each business entity for service of process for any action arising under this Section unless the

business entity is a domestic business entity or a qualified foreign business entity.

5. If they were acting in good faith, the business entities that attempted the merger and their respective owners, managers, or other representatives are not civilly or criminally liable and may not be found guilty in connection with an ineffective merger under any laws of the Tribe pertaining to:

a. The filing of a false or otherwise misleading or inaccurate document;

b. The making of a false or otherwise misleading or inaccurate statement; or

c. Any similar matter.

CHAPTER 8
INTEREST EXCHANGE

Section 14-8-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Acquired entity" means the business entity with one or more interests acquired in an interest exchange.

2. "Acquiring entity" means the entity that acquires one or more interests of the acquired entity in an interest exchange.

3. "Interest" means an ownership interest or management interest in a business entity.

Section 14-8-2. Interest Exchange Authorized.

1. Unless otherwise provided in the organizational documents of a business entity, by complying with this Chapter:

a. A domestic business entity may acquire the interests of another domestic or foreign business entity in exchange for interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing; or

b. Interests of a domestic business entity may be acquired by another domestic or foreign business entity in

exchange for interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing.

2. A foreign business entity may be an acquiring entity or acquired entity in an interest exchange under this Chapter if the interest exchange is authorized by the law of the foreign business entity's jurisdiction of formation.

Section 14-8-3. Plan of Interest Exchange.

1. A domestic business entity may be the acquired entity in an interest exchange under this Chapter by approving a plan of interest exchange. The plan must be in writing and contain:

a. The name of the acquired entity;

b. The name, jurisdiction of formation, and type of entity of the acquiring entity;

c. The manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

d. Any proposed amendments to the organizational documents of the acquired entity;

e. The other terms and conditions of the interest exchange; and

f. Any other provision required by the laws of the Tribe or the organizational documents of the acquired entity.

2. In addition to the requirements of this Section , a plan of interest exchange may contain any other provision not prohibited by law.

Section 14-8-4. Approval of Interest Exchange.

1. A plan of interest exchange is not effective unless it has been approved by a domestic acquired entity as provided in its organizational documents and the laws of the Tribe governing the acquired entity or, if not provided therein, a majority of the owners of the acquired entity.

2. A plan of interest exchange is not effective unless it has been approved by a domestic acquired entity:

a. In accordance with the requirements, if any, in the laws of the Tribe governing the acquired entity and its organizational documents for approval of an interest exchange;

b. If neither the laws of the Tribe governing the acquired entity nor its organizational documents provide for approval of an interest exchange, in accordance with the requirements, if any, in the laws of the Tribe governing the acquired entity or its organizational documents for approval of a merger, as if the interest exchange were a merger; or

c. If neither the laws of the Tribe governing the acquired entity nor its organizational documents provide for approval of an interest exchange or a merger, then by all of the owners of the merging entity entitled to vote on or consent to any matter or, if there are no such owners, then by all of the managers of the acquired entity.

3. An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign acquired entity in accordance with the law of the foreign acquired entity's jurisdiction of formation.

4. Except as otherwise provided in the laws of acquiring entity's jurisdiction of formation or its organizational documents, the owners of the acquiring entity are not required to approve the interest exchange.

5. Upon approval of an interest exchange, the acquired entity shall notify its owners of the approval and of the effective date of the interest exchange.

Section 14-8-5. Amendment or Abandonment of Interest Exchange.

1. A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

2. A domestic acquired entity may approve an amendment to a plan of interest exchange:

a. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

b. In the manner provided in the plan, but an owner that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

i. The amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the owners under the plan;

ii. The organizational documents of the acquired entity that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the owners of the acquired entity under the laws of the Tribe governing the acquired entity or its organizational documents; or

iii. Any other terms or conditions of the plan, if the change would adversely affect the owner in any material respect.

3. After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired entity may abandon the plan in the same manner as the plan was approved.

4. If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the Office of the Secretary for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired entity, must be delivered to the Office of the Secretary for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

a. The name of the acquired entity;

b. The date on which the statement of interest exchange was filed with the Office of the Secretary; and

c. A statement that the interest exchange has been abandoned in accordance with this Section.

Section 14-8-6. Statement of Interest Exchange.

1. A statement of interest exchange must be signed by a domestic acquired entity and delivered to the Office of the Secretary for filing.

2. A statement of interest exchange must contain:

a. The name of the acquired entity;

b. A statement as to whether the acquired entity is a Tribal business entity;

c. The name, jurisdiction of formation, and type of entity of the acquiring entity;

d. A statement as to whether the acquiring entity is a Tribal business entity; and

e. If the statement of interest exchange is not to be effective upon filing, the later date and time on which it will become effective pursuant to this Title;

f. A statement that the plan of interest exchange was approved by the acquired entity in accordance with this Chapter; and

g. Any amendments to the acquired entity's organizational documents approved as part of the plan of interest exchange.

3. A statement of interest exchange may contain any other provision not prohibited by law.

4. A plan of interest exchange that is signed by a domestic acquired entity and meets all the requirements of subsection 2 of this Section may be delivered to the Office of the Secretary for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this Chapter to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

5. An interest exchange becomes effective when the statement of interest exchange is effective.

Section 14-8-7. Effect of Interest Exchange.

1. When an interest exchange in which the acquired entity is a domestic business entity becomes effective:

a. The interests in the acquired entity which are the subject of the interest exchange are converted, and the owners or managers holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under the laws of the Tribe;

b. The acquiring entity becomes the interest holder of the interests in the acquired entity stated in the plan of interest exchange to be acquired by the acquiring entity; and

c. The organizational documents of the acquired entity are amended to the extent provided in the statement of interest exchange.

2. Except as otherwise provided in the organizational documents of an acquired entity, the interest exchange does not give rise to any rights that an owner, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired entity.

Section 14-8-8. Ineffectiveness of Interest Exchange Due to Foreign Law.

1. If a statement of interest exchange is filed with the Office of the Secretary involving a foreign business entity and the interest exchange is not authorized by the law of the relevant foreign jurisdiction as required by this Chapter, the interest exchange is ineffective.

2. A statement of ineffectiveness of interest exchange must be signed on behalf of the domestic acquired entity which signed the statement of interest exchange and must be delivered for filing with the Office of the Secretary to reflect that ineffectiveness in the public record.

3. The statement of ineffectiveness of interest exchange must contain each of the following:

a. The name of the domestic acquired entity that attempted the interest exchange;

b. The date on which the statement of interest exchange was filed; and

c. A statement that the interest exchange was ineffective because it was not authorized by the law of the relevant foreign jurisdiction.

4. The domestic acquired entity that attempted the interest exchange is responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted interest exchange unless the acquired entity establishes that the obligation was not incurred in good faith.

5. If they were acting in good faith, the domestic acquired entity that attempted the interest exchange and its owners, managers, or other representatives are not civilly or criminally liable and may not be found guilty in connection with an ineffective merger under any laws of the Tribe pertaining to:

a. The filing of a false or otherwise misleading or inaccurate document;

b. The making of a false or otherwise misleading or inaccurate statement; or

c. Any similar matter.

CHAPTER 9
CONVERSION

Section 14-9-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Converted entity" means the converting entity as it continues in existence after a conversion.

2. "Converting entity" means the domestic business entity that approves a plan of conversion pursuant to this Chapter or the foreign business entity that approves a conversion pursuant to the law of its jurisdiction of formation.

Section 14-9-2. Conversion Authorized.

1. By complying with this Chapter, a domestic business entity may become either of the following:

a. A domestic business entity of a different type; or

b. A foreign business entity of a different type if the conversion is authorized by the law of the foreign jurisdiction.

2. A foreign business entity may become a domestic business entity of a different type under this Chapter if the conversion is authorized by the law of the foreign business entity's jurisdiction of formation.

Section 14-9-3. Plan of Conversion.

1. A domestic business entity may convert to a different type of business entity under this Chapter by approving a plan of conversion. The plan must be in writing and contain:

a. The name of the converting entity;

b. The name, jurisdiction of formation, and type of business entity of the converted entity;

c. The manner of converting the ownership interests in the converting entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

d. The proposed organizational documents of the converted entity;

e. The other terms and conditions of the conversion; and

f. Any other provision required by the laws of the Tribe or the organizational documents of the converting entity.

2. A plan of conversion may contain any other provision not prohibited by law.

Section 14-9-4. Approval of Conversion.

1. A plan of conversion is not effective unless it has been approved by a domestic converting entity:

a. In accordance with the requirements, if any, in the laws of the Tribe governing the converting entity and its organizational documents for approval of a conversion; or

b. If neither the laws of the Tribe governing the converting entity nor its organizational documents provide for approval of a conversion, in accordance with the requirements, if any, in the laws of the Tribe governing the converting entity or its organizational documents for approval of a merger, as if the conversion were a merger; or

c. If neither the laws of the Tribe governing the converting entity nor its organizational documents provide for approval of a conversion or a merger, then by all of the owners of the converting entity entitled to vote on or consent to any matter or, if there are no such owners, then by all of the managers of the converting entity.

2. A conversion of a foreign converting entity is not effective unless it is approved by the foreign business entity in accordance with the law of the foreign business entity's jurisdiction of formation.

3. Upon approval of a conversion, the converting entity shall notify its owners of the approval and of the effective date of the conversion.

Section 14-9-5. Amendment or Abandonment of Conversion.

1. A plan of conversion of a domestic converting entity may be amended either:

a. In the same manner as the plan was approved if the plan does not provide for the manner in which it may be amended;

b. By the managers or owners of the converting entity in the manner provided in the plan except that an owner that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change any of the following:

i. The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing, to be received by any of the interest holders of the domestic converting entity under the plan;

ii. The organizational documents of the domestic converted entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the owners of the domesticated converted entity under the laws of the Tribe governing the converted entity or its organizational documents; or

iii. Any other terms or conditions of the plan if the change would adversely affect the owner in any material respect.

2. After a plan of conversion has been approved by a domestic converting entity and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting entity may abandon the plan in the same manner as the plan was approved.

3. If a plan of conversion is abandoned after a statement of conversion has been delivered to the Office of the Secretary for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the Office of the Secretary for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

a. The name of the converting entity;

b. The date on which the statement of conversion was filed with the Office of the Secretary; and

c. A statement that the conversion has been abandoned in accordance with this Section.

Section 14-9-6. Statement of Conversion.

1. A statement of conversion must be signed by the converting entity and delivered to the Office of the Secretary for filing.

2. A statement of conversion must contain:

a. The name, jurisdiction of formation, and type of entity of the converting entity;

b. A statement as to whether the converting entity is a Tribal business entity and, if so, a statement as to whether the converting entity enjoys the Tribe's sovereign immunity;

c. The name, jurisdiction of formation, and type of entity of the converted entity;

d. If the converting entity is a Tribal business entity, a statement as to whether the converted entity enjoys the Tribe's sovereign immunity;

e. If the converting entity is a domestic business entity, a statement that the plan of conversion was approved in accordance with this Chapter or, if the converting entity is a foreign business entity, a statement that the conversion was approved by the foreign converting entity in accordance with the law of its jurisdiction of formation;

f. If the converted entity is a domestic business entity, its public organizational documents, as an attachment; and

g. If the converted entity is a foreign business entity, a mailing address to which the Office of the Secretary may send any process served on the Office of the Secretary pursuant to this Chapter.

3. A statement of conversion may contain any other provision not prohibited by law.

4. A plan of conversion that is signed by a domestic converting entity and meets all the requirements of subsection 2 of this Section may be delivered to the Office of the Secretary for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this Chapter to a statement of conversion refer to the plan of conversion filed under this subsection.

5. If the converted entity is a domestic business entity, its organizational documents, if any, must satisfy the requirements of the laws of the Tribe, except that the

organizational documents are deemed to be signed by means of the signing of the statement of conversion.

6. If the converted entity is a domestic business entity, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:

a. The date and time provided by the law of the jurisdiction of formation of the converted entity; or

b. When the statement of conversion is effective.

Section 14-9-7. Effect of Conversion.

1. When a conversion becomes effective:

a. The converted entity is:

i. Organized under and subject to the law of the jurisdiction of formation of the converted entity; and

ii. The same entity without interruption as the converting entity;

b. All property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

c. All debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

d. Except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

e. The name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

f. If the converted entity is a domestic business entity, its public organizational documents are effective and binding on its owners;

g. If the converted entity is to be a qualified foreign business entity, the documents it filed to become a qualified foreign business entity are effective simultaneously;

h. The private organizational documents of the converted entity, if any, approved as part of the plan of conversion are effective and are binding; and

i. The ownership interests in the converting entity are converted, and the owners of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under the laws of the Tribe.

2. Except as otherwise provided in the organizational documents of a domestic converting entity, the conversion does not give rise to any rights that an owner, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

3. When a conversion becomes effective, a foreign business entity that is the converted entity may be served with process in the territory of the Tribe for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in this Title.

4. If the converting entity is a qualified foreign business entity, its registration to do business in the territory of the Tribe is canceled when the conversion becomes effective.

5. A conversion does not require the business entity to wind up its affairs and does not constitute or cause the dissolution of the business entity.

Section 14-9-8. Ineffectiveness of Conversion Due to Foreign Law.

1. If a statement of conversion is filed with the Office of the Secretary involving a foreign business entity but the conversion is not authorized by the law of the relevant foreign jurisdiction as required by this Chapter, the conversion is ineffective.

2. A statement of ineffectiveness of conversion must be signed on behalf of the business entity which signed the statement of conversion and must be delivered for filing with the Office of the Secretary to reflect that ineffectiveness in the public record.

3. The statement of ineffectiveness of conversion must contain:

a. The name of the business entity that attempted the conversion;

b. The date on which the statement of conversion was filed; and

c. A statement that the conversion was ineffective because it was not authorized by the law of the relevant foreign jurisdiction.

4. The business entity that attempted the conversion is both:

a. Responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted conversion, unless the business entity establishes that the obligation was not incurred in good faith; and

b. Deemed to have appointed the Office of the Secretary as its agent for service of process for any action arising under this Section unless the business entity is a domestic business entity or a qualified foreign business entity.

5. If they were acting in good faith, the business entity that attempted the conversion and its owners, managers, or other representatives are not civilly or criminally liable and may not be found guilty in connection with an ineffective conversion under any laws of the Tribe pertaining to:

a. The filing of a false or otherwise misleading or inaccurate document;

b. The making of a false or otherwise misleading or inaccurate statement; or

c. Any similar matter.

CHAPTER 10
DOMESTICATION

Section 14-10-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Domesticated entity" means the domesticating business entity as it continues in existence after a domestication.

2. "Domesticating entity" means the domestic business entity that approves a plan of domestication pursuant to this Chapter or the foreign business entity that approves a domestication pursuant to the law of its jurisdiction of formation.

Section 14-10-2. Domestication Authorized.

1. By complying with this Chapter, a domestic business entity may become a foreign business entity of the same type if the domestication is authorized by the law of the foreign jurisdiction.

2. A foreign business entity may become a domestic business entity of the same type under this Chapter if the domestication is authorized by the law of the foreign business entity's jurisdiction of formation.

Section 14-10-3. Plan of Domestication.

1. A domestic business entity may become a foreign business entity in a domestication by approving a plan of domestication. The plan must be in writing and contain:

a. The name and type of the domesticating entity;

b. The name and jurisdiction of formation of the domesticated entity;

c. The manner of converting the ownership interests in the domesticating entity into interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing;

d. The proposed public organizational documents of the domesticated entity;

e. The other terms and conditions of the domestication, if any; and

f. Any other provision required by the laws of the Tribe or the organizational documents of the domesticating entity.

2. A plan of domestication may contain any other provision not prohibited by law.

Section 14-10-4. Approval of Domestication.

1. A plan of domestication is not effective unless it has been approved by a domestic domesticating entity:

a. In accordance with the requirements, if any, in the laws of the Tribe governing the domesticating entity and its organizational documents for approval of a domestication; or

b. If neither the laws of the Tribe governing the domesticating entity nor its organizational documents provide for approval of a domestication, in accordance with the requirements, if any, in the laws of the Tribe governing the domesticating entity or its organizational documents for approval of a merger, as if the domestication were a merger; or

c. If neither the laws of the Tribe governing the domesticating entity nor its organizational documents provide for approval of a domestication or a merger, then by all of the owners of the domesticating entity entitled to vote on or consent to any matter or, if there are no such owners, then by all of the managers of the domesticating entity.

2. A domestication of a foreign domesticating entity is not effective unless it is approved by the foreign business entity in accordance with the law of the foreign business entity's jurisdiction of formation.

3. Upon approval of a domestication, the domesticating entity shall notify its owners of the approval and of the effective date of the domestication.

Section 14-10-5. Amendment or Abandonment of Domestication.

1. A plan of domestication of a domestic domesticating entity may be amended either:

a. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended;

b. By the managers or owners of the business entity in the manner provided in the plan, except that an owner that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change any of the following:

i. The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing, to be received by any of the owners of the domesticating entity under the plan;

ii. The organizational documents of the domestic domesticated entity that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the owners of the domestic domesticated entity under the laws of the Tribe governing the domesticated entity or its organizational documents; or

iii. Any other terms or conditions of the plan if the change would adversely affect the owner in any material respect.

2. After a plan of domestication has been approved by a domestic domesticating entity and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating entity may abandon the plan in the same manner as the plan was approved.

3. If a plan of domestication is abandoned after a statement of domestication has been delivered to the Office of the Secretary for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating entity, must be delivered to the Office of the Secretary for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

a. The name of the domestic domesticating entity;

b. The date on which the statement of domestication was filed; and

c. A statement that the domestication has been abandoned in accordance with this Section.

Section 14-10-6. Statement of Domestication.

1. A statement of domestication must be signed by the domesticating entity and delivered to the Office of the Secretary for filing.

2. A statement of domestication must contain:

a. The name, jurisdiction of formation, and type of the domesticating entity;

b. A statement as to whether the domesticating entity is a Tribal business entity and, if so, a statement as to whether the domesticating entity enjoys the Tribe's sovereign immunity;

c. The name and jurisdiction of formation of the domesticated entity;

d. If the domesticating entity is a Tribal business entity, a statement as to whether the domesticated entity enjoys the Tribe's sovereign immunity;

e. If the domesticating entity is a domestic business entity, a statement that the plan of domestication was approved in accordance with this Chapter or, if the domesticating entity is a foreign business entity, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation;

f. The public organizational documents of the domesticated entity, as an attachment;

g. If the domesticated entity is a foreign business entity that is required to register to do business in the territory of the Tribe, any documents required under this Title for it to register to do business in the territory of the Tribe, as an attachment; and

h. If the domesticated entity is a foreign business entity that is not required to register to do business in the territory of the Tribe, a mailing address to which the Office of the Secretary may send any process served on the Office of the Secretary pursuant to this Title.

3. A statement of domestication may contain any other provision not prohibited by law.

4. A plan of domestication that is signed by a domestic domesticating entity and meets all the requirements of subsection 2 of this Section may be delivered to the Office of the Secretary for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this Chapter to a statement of domestication refer to the plan of domestication filed under this subsection.

5. If the domesticated entity is a domestic business entity, its public organizational documents attached to the statement of domestication must satisfy the requirements of the laws of the Tribe, except that the public organizational documents are deemed to be signed by means of the signing of the statement of domestication.

6. If the domesticated entity is a domestic business entity, the domestication becomes effective when the statement of domestication is effective. In all other cases, the domestication becomes effective on the later of:

a. The date and time provided by the law of the jurisdiction of formation of the domesticated entity; or

b. When the statement of domestication is effective.

Section 14-10-7. Effect of Domestication.

1. When a domestication becomes effective:

a. The domesticated entity is:

i. Organized under and subject to the law of the jurisdiction of formation of the domesticated entity; and

ii. The same entity without interruption as the domesticating entity;

b. All property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

c. All debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

d. Except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

e. The name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

f. If the domesticated entity is a domestic business entity, its public organizational documents are effective and binding on its owners;

g. If the domesticated entity is to be a qualified foreign business entity, the documents it filed to become a qualified foreign business entity are effective simultaneously;

h. The private organizational documents of the domesticated entity, if any, approved as part of the plan of domestication are effective and are binding; and

i. The ownership interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the owners of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under the laws of the Tribe.

2. Except as otherwise provided in the law of the jurisdiction of formation or organizational documents of the domesticating entity, the domestication does not give rise to any rights that an owner, manager, or third party would have upon a dissolution, liquidation, or winding-up of the domesticating entity.

3. When a domestication becomes effective, a foreign business entity that is the domesticated entity may be served with

process in the territory of the Tribe for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in this Title.

4. If the domesticating entity is a qualified foreign business entity, its registration to do business in the territory of the Tribe is canceled when the domestication becomes effective.

5. A domestication does not require the business entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

Section 14-10-8. Ineffectiveness of Domestication Due to Foreign Law.

1. If a statement of domestication is filed with the Office of the Secretary involving a foreign business entity but the domestication is not authorized by the law of the relevant foreign jurisdiction as required by this Chapter, the domestication is ineffective.

2. A statement of ineffectiveness of domestication must be signed on behalf of the business entity which signed the statement of domestication and must be delivered for filing with the Office of the Secretary to reflect that ineffectiveness in the public record.

3. The statement of ineffectiveness of domestication must contain:

a. The name of the business entity that attempted the domestication;

b. The date on which the statement of domestication was filed; and

c. A statement that the domestication was ineffective because it was not authorized by the law of the relevant foreign jurisdiction.

4. The business entity that attempted the domestication is both:

a. Responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted domestication, unless the

business entity establishes that the obligation was not incurred in good faith; and

b. Deemed to have appointed the Office of the Secretary as its agent for service of process for any action arising under this Section unless the business entity is a domestic business entity or a qualified foreign business entity.

5. If they were acting in good faith, the business entity that attempted the domestication and its owners, managers, or other representatives are not civilly or criminally liable and may not be found guilty in connection with an ineffective domestication under any laws of the Tribe pertaining to:

a. The filing of a false or otherwise misleading or inaccurate document;

b. The making of a false or otherwise misleading or inaccurate statement; or

c. Any similar matter.

CHAPTER 11
DIVISION

Section 14-11-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Dividing entity" means the domestic business entity that approves a plan of division pursuant to this Chapter or the foreign business entity that approves a division pursuant to the law of its jurisdiction of formation and is also a resulting entity if the dividing entity survives the division.

2. "Resulting entity" means a business entity that continues in existence after, or is organized as a result of, a division and includes a dividing entity if the dividing entity survives the division.

Section 14-11-2. Division Authorized.

1. By complying with this Chapter, a domestic business entity may divide into either:

a. The dividing entity and one or more new entities, whether domestic or foreign; or

b. Two (2) or more new entities, whether domestic or foreign.

2. A foreign business entity may be created by the division of a domestic business entity under this Chapter only if the division is authorized by the law of the foreign business entity's jurisdiction of formation.

3. A domestic business entity may be created by the division of a foreign business entity under this Chapter only if the division is authorized by the law of the foreign business entity's jurisdiction of formation.

Section 14-11-3. Plan of Division.

1. A domestic business entity may divide under this Chapter by approving a plan of division. The plan must be in writing and contain:

a. The name and type of the dividing entity;

b. A statement as to whether the dividing entity will survive the division;

c. The name, jurisdiction of formation, and type of each new resulting entity;

d. The manner of all of the following:

i. Converting the ownership interests in the dividing entity into interests, securities, obligations, rights to acquire interests or securities, money, other property, or any combination of the foregoing;

ii. Allocating between or among the resulting entities the property of the dividing entity that will not be owned by all of the resulting entities as tenants in common pursuant to this Chapter and those obligations of the dividing entity as to which not all of the resulting entities will be liable jointly and severally pursuant to this Chapter;

iii. Distributing the ownership interests in the resulting entities created in the division;

e. The proposed public organizational documents of each new resulting entity;

f. The proposed public organizational documents, if any, of each new resulting entity and the full text of its proposed private organizational documents;

g. If the dividing entity will survive the division, any proposed amendments to its organizational documents;

h. The other terms and conditions of the division, if any; and

i. Any other provisions required by the laws of the Tribe or the organizational documents of the dividing entity.

2. A plan of division may contain any other provision not prohibited by law.

Section 14-11-4. Approval of Division.

1. A plan of division is not effective unless it has been approved by a domestic dividing entity:

a. In accordance with the requirements, if any, in the laws of the Tribe governing the dividing entity and its organizational documents for approval of a division; or

b. If neither the laws of the Tribe governing the dividing entity nor its organizational documents provide for approval of a division, in accordance with the requirements, if any, in the laws of the Tribe governing the dividing entity or its organizational documents for approval of a merger, as if the division were a merger; or

c. If neither the laws of the Tribe governing the dividing entity nor its organizational documents provide for approval of a division or a merger, then by all of the owners of the dividing entity entitled to vote on or consent to any matter or, if there are no such owners, then by all of the managers of the dividing entity.

2. A division of a foreign business entity is not effective unless it is approved by the foreign business entity in accordance with the law of the foreign business entity's jurisdiction of formation.

3. Upon approval of a division, the dividing entity shall notify its owners of the approval and of the effective date of the division.

Section 14-11-5. Amendment or Abandonment of Plan of Division.

1. A plan of division of a domestic dividing entity may be amended either:

a. In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended;

b. By the managers or owners of the business entity in the manner provided in the plan, except that an owner that was entitled to vote on or consent to approval of the division is entitled to vote on or consent to any amendment of the plan that will change any of the following:

i. The amount or kind of interests, securities, obligations, rights to acquire interests or securities, money or other property or any combination of the foregoing, to be received by any of the owners of the dividing entity under the plan;

ii. The organizational documents of any of the resulting entities that will be in effect immediately after the division becomes effective, except for changes that do not require approval of the owners of the applicable resulting entity under the laws of the jurisdiction of formation of the resulting entity or its organizational documents; or

iii. Any other terms or conditions of the plan, if the change would adversely affect the owner in any material respect.

2. After a plan of division has been approved by a domestic dividing entity and before a statement of division becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic dividing entity may abandon the plan in the same manner as the plan was approved.

3. If a statement of division has been delivered for filing with the Office of the Secretary, the plan of division may be abandoned only if the statement of division sets forth a delayed

effective date. A plan of division may be abandoned by delivering for filing with the Office of the Secretary on or before that delayed effective date a statement of abandonment, signed on behalf of the domestic dividing entity. The statement of abandonment takes effect on delivery for filing and the division is abandoned and does not become effective. The statement of abandonment must contain all of the following:

a. The name of the domestic dividing entity;

b. The date on which the statement of division was filed; and

c. A statement that the division has been abandoned in accordance with this Section.

Section 14-11-6. Statement of Division.

1. A statement of division must be signed on behalf of the dividing entity and delivered to the Office of the Secretary for filing:

a. For a division of a domestic business entity, for the domestic dividing entity and any domestic resulting entity; and

b. For a division of a foreign business entity that creates one or more domestic business entities, for each domestic resulting entity.

2. A statement of division must contain:

a. The name, jurisdiction of formation, and type of the dividing entity;

b. A statement as to whether the dividing entity is a Tribal business entity;

c. A statement as to whether the dividing entity will survive the division;

d. The name, jurisdiction of formation, and type of each resulting entity created by the division and, if a resulting entity is a domestic business entity or a qualified foreign business entity:

i. The street address of the resulting entity's known place of business in the territory of the Tribe; and

ii. The name and street address of the resulting entity's registered agent in the territory of the Tribe and, if required by this Title, a statement accepting the appointment signed by the registered agent attached to the statement of division;

e. A statement as to whether each resulting entity is a Tribal business entity and, if so, a statement as to whether the resulting entity enjoys the Tribe's sovereign immunity;

f. With respect to the effective date and time of the division:

i. If the dividing entity or at least one resulting entity is a domestic business entity and if the statement of division is not to be effective on delivery to the Office of the Secretary, the later date and time on which it will become effective, which may not be more than ninety (90) days after the date of delivery; or

ii. If neither the dividing entity nor any resulting entity is a domestic business entity and if the statement of division is not to be effective on the signing of the statement of division, the later date and time on which it will become effective.

g. If the dividing entity is a domestic business entity, a statement that the plan of division was approved in accordance with this Chapter or, if the dividing entity is a foreign business entity, a statement that the division was approved by the foreign dividing entity in accordance with the law of its jurisdiction of formation;

h. If the dividing entity is a domestic business entity and survives the division, any amendment to its public organizational documents approved as part of the plan of division, as an attachment, and the attachment is deemed to be delivered to the Office of the Secretary for filing;

i. For each domestic resulting entity created by the division, its public organizational documents as an

attachment, and the attachment is deemed to be delivered to the Office of the Secretary for filing;

j. For each foreign resulting entity that is required to be registered to do business in the territory of the Tribe, any documents that the laws of the Tribe require it to file to become registered to do business in the territory of the Tribe as an attachment, and the attachment is deemed to be delivered to the Office of the Secretary for filing; and

k. For each foreign resulting entity that is not required to be registered to do business in the territory of the Tribe, a mailing address to which the Office of the Secretary may send any process served on the Office of the Secretary pursuant to this Title.

3. A statement of division may contain any other provision not prohibited by law.

4. A plan of division that is signed by a domestic dividing entity and meets all the requirements of subsection 2 of this Section may be delivered to the Office of the Secretary for filing instead of a statement of division and on filing has the same effect. If a plan of division is filed as provided in this subsection, references in this Chapter to a statement of division refer to the plan of division filed under this subsection.

5. If a resulting entity created in the division is a domestic business entity, its public organizational documents or an amendment to its public organizational documents attached to the statement of division must satisfy the requirements of the laws of the Tribe, except that the public organizational documents or amendment are deemed to be signed by means of the signing of the statement of division.

6. If the dividing entity or at least one resulting entity is a domestic business entity, once a statement of division has been approved for filing by the Office of the Secretary, both the division and the statement of division are deemed to have become effective on the date and time of the delivery of the statement of division for filing or, if applicable, on the later date and time specified in the statement of division.

Section 14-11-7. Effect of Division.

1. When a division becomes effective:

a. If the dividing entity is to survive the division, the dividing entity continues to exist;

b. If the dividing entity is not to survive the division, the dividing entity ceases to exist;

c. The resulting entities created in the division come into existence;

d. As and to the extent specified in the plan of division, property of the dividing entity, including rights, privileges, immunities, and powers, is allocated to and vests in the resulting entities created in the division or continues to be vested in the dividing entity, in each case automatically and without assignment, reversion, or impairment;

e. Any property not allocated by the plan of division, including rights, privileges, immunities, and powers:

i. If the dividing entity survives the division, remains vested in the dividing entity;

ii. If the dividing entity does not survive the division, is allocated to and vests equally in the resulting entities as tenants in common, in each case automatically and without assignment, reversion, or impairment;

f. Any pending action or proceeding to which the dividing entity is a party at the effective time of the division continues and the name of a new resulting entity to which a cause of action is allocated as provided in this Section may be substituted for the name of the dividing entity or added in that action or proceeding;

g. All obligations of the dividing entity are allocated between or among the resulting entities as provided in this Chapter;

h. If the dividing entity survives the division, its organizational documents, if any, are amended if and to the extent provided in the statement of division; and

i. The ownership interests in the dividing entity that are to be converted in the division are converted and the owners of those ownership interests are entitled only to the

rights provided to them under the plan of division and to any appraisal rights they have under the laws of the Tribe.

2. Except as otherwise provided in the law of the jurisdiction of formation or organizational documents of the dividing entity, the division does not give rise to any rights that an owner, manager, or third party would have upon a dissolution, liquidation, or winding-up of the dividing entity.

3. When a division becomes effective, a foreign business entity that is a resulting entity may be served with process in the territory of the Tribe for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in this Title.

4. If the dividing entity is a qualified foreign business entity, its authority, registration, or other qualification to do business in the territory of the Tribe is canceled when the division becomes effective if the foreign business entity does not survive the division.

Section 14-11-8. Allocation of Obligations.

1. Except as provided in this Section, when a division becomes effective, each resulting entity is liable, jointly and severally, with the other resulting entities for the obligations of the dividing entity that existed immediately before the effectiveness of the division, and all those obligations of the dividing entity are automatically obligations of each resulting entity without assignment, assumption, or delegation.

2. A resulting entity is not liable for an obligation of the dividing entity if and to the extent:

a. The obligee has consented in writing to the obligations being allocated to, or continuing to be the obligation of, one or more of the other resulting entities and the plan of division states that the obligation is being allocated to, or will continue to be the obligation of, those entities, or those entities have otherwise expressly assumed the obligation;

b. A court or other tribunal of competent jurisdiction or a governmental agency having jurisdiction as to the matter has issued an order, finding, rule, regulation, or other ruling that has become final and non-appealable and in which the obligation is deemed to be allocated to, or to continue

to be the obligation of, one or more of the other resulting entities;

c. Recourse regarding the obligation is, by contract or by law, limited to an asset of one or more of the other resulting entities; or

d. Recourse regarding the obligation is, by contract or by law, limited to one or more of the other resulting entities.

3. A resulting entity may enter into agreements or other arrangements for purposes of mitigating risks associated with the entity's liability for an obligation of the dividing entity. The agreements or arrangements may be entered into with one or more of the other resulting entities or with third parties. The agreements or arrangements may include indemnification, contribution, guaranty, insurance, offset, loan, investment, or any other lawful means of dealing with the risks associated with the liability for the obligation.

4. Unless the obligee has otherwise agreed or consented, liens, security interests, and other encumbrances on the property of the dividing entity are not impaired by the division regardless of:

a. Whether that property has become the property of a resulting entity that is not the dividing entity;

b. The dividing entity is one of the resulting entities; and

c. Any otherwise enforceable allocation of obligations of the dividing entity.

5. If the dividing entity is bound by a security agreement and the security agreement provides that the security interest attaches to after-acquired collateral, each resulting entity is bound by the security agreement unless the secured party has otherwise agreed or consented.

6. For purposes of and notwithstanding any provision of the law of the jurisdiction of formation of the dividing entity or any resulting entity, the division is deemed not to be a dividend or other distribution by the dividing entity or any resulting entity.

Section 14-11-9. Ineffectiveness of Division Due to Foreign Law.

1. If a statement of division is filed with the Office of the Secretary involving a foreign business entity but the division is not authorized by the law of the relevant foreign jurisdiction as required by this Chapter, the division is ineffective.

2. A statement of ineffectiveness of division must be signed on behalf of the business entity which signed the statement of division and must be delivered for filing with the Office of the Secretary to reflect that ineffectiveness in the public record.

3. The statement of ineffectiveness of division must contain:

a. The name of the entity that attempted the division;

b. The date on which the statement of division was filed; and

c. A statement that the division was ineffective because it was not authorized by the law of the relevant foreign jurisdiction.

4. The business entity that attempted the division is both:

a. Responsible to any other person for any obligation incurred by that person that arises out of or relates to the ineffectiveness of the attempted division, unless the business entity establishes that the obligation was not incurred in good faith; and

b. Deemed to have appointed the Office of the Secretary as its agent for service of process for any action arising under this Section unless the business entity is a domestic business entity or a qualified foreign business entity.

5. If they were acting in good faith, the business entity that attempted the division and its owners, managers, or other representatives are not civilly or criminally liable and may not be found guilty in connection with an ineffective division under any laws of the Tribe pertaining to:

a. The filing of a false or otherwise misleading or inaccurate document;

b. The making of a false or otherwise misleading or inaccurate statement; or

c. Any similar matter.

CHAPTER 12
DISSOLUTION

Section 14-12-1. Dissolution. Except as otherwise provided in this Chapter, a business entity is dissolved and its activities must be wound up:

1. Upon the occurrence of an event or at a time specified in its organizational documents;

2. Upon the action of a majority of the organizers or initial managers of a business entity that has not yet begun business activity or the conduct of its affairs;

3. A majority of the managers of a nonprofit business entity that does not have any members;

4. In the case of a partnership for a definite term or particular undertaking, the expiration of the term or the completion of the undertaking;

5. Upon the written consent of all owners of the business entity;

6. Upon the vote of the number of owners specified in its organizational documents or, if none is specified, a vote of the majority of ownership interests in the business entity;

7. Except for a nonprofit business entity without members, unless before the end of the period at least one person becomes an owner in accordance with the laws of the Tribe governing the business entity or its organizational documents, the passage of one hundred eighty (180) consecutive days during which:

a. In the case of a business entity that is not a partnership, the business entity has no owners; or

b. In the case of a business entity that is a partnership, the partnership has only one (1) partner.

8. Unless the illegality is cured within ninety (90) days, upon the occurrence of an event that makes it unlawful for all or substantially all of the business of the business entity to be continued;

9. Entry of a decree of judicial dissolution under this Chapter; or

10. The signing and filing of a statement of administrative dissolution by the Office of the Secretary under this Chapter.

Section 14-12-2. Judicial Dissolution. The Tribal Court may dissolve a domestic business entity or order any action that under the circumstances is appropriate and equitable:

1. In a proceeding initiated by the Tribal Attorney, if the business entity:

a. Obtained its organizational documents through fraud;

b. Has continued to exceed or abuse the authority conferred upon it by the laws of the Tribe; or

c. Has engaged in repeated, egregious, or illegal misconduct that has caused significant harm to the interests of persons that are materially affected by the conduct of the business entity and the business entity has not undertaken measures to address the causes of such misconduct; or

2. In a proceeding initiated by an owner, if:

a. It is not reasonably practicable to carry on the business of the business entity;

b. The business entity is not acting in conformity with its organizational documents;

c. The business entity has repeatedly conducted its business, carried on its operations, or exercised its powers in a manner that has caused significant harm to the interests of persons that are materially affected by the conduct of the business entity and the business entity has not undertaken measures to address the causes of such misconduct;

d. The managers, if the business entity has managers, are deadlocked in the management of the business entity's

affairs, the owners are unable to break the deadlock, and irreparable injury to the business entity is occurring or is threatened because of the deadlock;

e. The managers, if the business entity has managers, the owners, or those in control of the business entity have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

f. The owners are deadlocked in voting power and have failed to elect successors to managers, if the business entity has managers, whose terms have expired for two consecutive periods during which annual meetings of the owners were held or were to be held; or

g. The assets of the business entity are being misapplied or wasted.

Section 14-12-3. Administrative Dissolution.

1. The Office of the Secretary may commence a proceeding to dissolve a domestic business entity administratively if the business entity does not:

a. Pay any fee, tax, interest, or penalty required to be paid to the Office of the Secretary not later than sixty (60) days after it is due;

b. Deliver an annual report to the Office of the Secretary not later than sixty (60) days after it is due;

c. Have a registered agent in the territory of the Tribe for sixty (60) consecutive days;

d. Have a principal address in the territory of the Tribe for at least sixty (60) consecutive days; or

e. Notify the Office of the Secretary within sixty (60) days after its registered agent or principal address has changed or its registered agent has resigned.

2. If the Office of the Secretary determines that one or more grounds exist for administratively dissolving a domestic business entity, the Office of the Secretary shall serve the business entity with written notice of the Office of the Secretary's determination by delivering the notice to the business entity's registered agent or, if the business entity does not have

a registered agent or the registered agent's address is invalid, to the business entity's principal office or known place of business.

3. If a business entity, not later than sixty (60) days after service of notice under this Section, does not cure or demonstrate to the satisfaction of the Office of the Secretary the nonexistence of each ground determined by the Office of the Secretary, the Office of the Secretary shall administratively dissolve the business entity by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The Office of the Secretary shall file the statement and serve a copy on the business entity by delivering the notice to the business entity's registered agent or, if the business entity does not have a registered agent or the registered agent's address is invalid, to the business entity's principal office or known place of business.

4. A business entity that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under this Chapter or to apply for reinstatement under this Section.

5. The administrative dissolution of a business entity does not terminate the authority of its registered agent.

6. A business entity that is administratively dissolved under this Section may apply to the Office of the Secretary for reinstatement not later than two (2) years after the effective date of dissolution. The application for reinstatement must state:

a. The name of the business entity at the time of its administrative dissolution and, if needed, a different name that satisfies the provisions of this Title;

b. The address of the principal office of the business entity and the name and street and mailing addresses of its registered agent;

c. The effective date of the business entity's administrative dissolution; and

d. That the grounds for dissolution did not exist or have been cured.

7. To be reinstated, a business entity must pay all fees, taxes, interest, and penalties that were due to the Office of the Secretary at the time of the business entity's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the Office of the Secretary while the business entity was administratively dissolved.

8. If the Office of the Secretary determines that an application for reinstatement under this Section contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the Office the Secretary have been made, the Office of the Secretary shall:

a. Cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the Office of the Secretary's determination and the effective date of reinstatement; and

b. File the statement of reinstatement and serve a copy on the business entity by delivering the statement to the business entity's registered agent.

9. When reinstatement under this Section is effective the following rules apply:

a. The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution;

b. The business entity resumes carrying on its activities and affairs as if the administrative dissolution had not occurred; and

c. The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

10. If the Office of the Secretary denies a business entity's application for reinstatement following administrative dissolution, the Office of the Secretary shall serve the business entity with written notice that explains the reasons for the denial. A business entity may seek judicial review of denial of reinstatement in the Tribal Court in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days after service of the notice of denial;

b. No new or additional information or evidence may be introduced, but the matter shall be heard on the information provided to and in the records of the Office of the Secretary;

c. The Tribal Court shall uphold all factual findings of the Office of the Secretary unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Office of the Secretary;

d. In reviewing legal conclusions reached by the Office of the Secretary, the Tribal Court shall give proper weight to the Office of the Secretary's interpretation of this Title and other laws of the Tribe administered by the Office of the Secretary;

e. The Tribal Court may affirm, reverse, modify, or vacate and remand the Office of the Secretary's denial of reinstatement, but shall affirm the denial unless the Tribal Court concludes that the denial is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion; or

iv. Otherwise contrary to the laws of the Tribe.

Section 14-12-4. Rescinding Dissolution.

1. A business entity may rescind its dissolution, unless a statement of dissolution applicable to the business entity is effective, a court has entered an order dissolving the business entity, or the Office of the Secretary has dissolved the business entity.

2. Rescinding dissolution under this Section requires:

a. Either:

i. Authorization in the same manner as the dissolution was authorized unless that authorization permitted revocation by other means, in which event the revocation may be accomplished by such other means; or

ii. The affirmative vote or consent of each owner;

b. If a statement of dissolution applicable to the business entity has been filed by the Office of the Secretary but has not become effective, the delivery to the Office of the Secretary for filing of a statement of withdrawal applicable to the statement of dissolution; and

c. If a statement of dissolution applicable to the business entity is effective, the delivery to the Office of the Secretary for filing of a statement of recision stating the name of the business entity and that dissolution has been rescinded under this Section.

3. If a business entity rescinds its dissolution:

a. The business entity resumes carrying on its activities and affairs as if dissolution had never occurred;

b. Subject to subparagraph c of this subsection, any liability incurred by the business entity after the dissolution and before the rescission is effective is determined as if dissolution had never occurred; and

c. The rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

Section 14-12-5. Statement of Dissolution.

1. A business entity that has dissolved or is about to dissolve may deliver to the Office of the Secretary for filing a statement of dissolution that states:

a. The name of the business entity;

b. The date of filing of its initial public organizational documents;

c. Whether the business entity is a Tribal business entity;

d. The basis under this Chapter for dissolution;

e. The date the business entity dissolved or will dissolve; and

f. Any other information the business entity considers relevant.

2. A person has notice of a business entity's dissolution on the later of:

a. Ninety (90) days after a statement of dissolution is filed; or

b. The effective date stated in the statement of dissolution.

3. A business entity is dissolved on the effective date of its statement of dissolution.

Section 14-12-6. Effect of Dissolution.

1. A dissolved business entity continues its existence but shall not carry on any business except that business appropriate to wind up and liquidate its business and affairs, including:

a. Collecting its assets;

b. Disposing of its properties that will not be distributed in kind to its owners;

c. Discharging or making provisions for discharging its liabilities;

d. Distributing its remaining property among its owners according to their ownership interests;

e. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution of a business entity does not:

a. Transfer title to the business entity's property;

b. Prevent transfer of its ownership interests, although the authorization to dissolve may provide for closing the business entity's ownership transfer records;

c. Subject its manager or officers to standards of conduct different from those prescribed in the laws of the Tribe governing the business entity;

d. Alter the liability of an owner;

e. Change quorum or voting requirements for its owners or managers, change provisions for selection, resignation, or removal of its managers or officers, or both, or change provisions for amending its organizational documents;

f. Prevent commencement of a civil, criminal, administrative, investigatory, or other proceeding by or against the business entity or any of its owners, managers, or officers or affect applicable statutes of limitation;

g. Abate or suspend a civil, criminal, administrative, investigatory, or other proceeding pending by or against the business entity or any of its owners, managers, or officers on the effective date of dissolution; or

h. Terminate the authority of the registered agent of the business entity.

Section 14-12-7. Distribution of Assets and Winding Up.

1. A dissolved business entity shall wind up its activities and affairs and continues after dissolution only for the purpose of winding up.

2. A dissolved business entity may be wound up by any of the following:

a. The managers, if the business entity has managers, or owners who had authority to manage the business entity before dissolution;

b. In a judicial dissolution, the person designated by the court; or

c. A person appointed by the Tribal Court in a proceeding to appoint a person to wind up the business entity brought pursuant to this Section.

3. In winding up its activities and affairs, the person winding up the affairs of the business entity:

a. Shall discharge the business entity’s debts, obligations, or other liabilities, settle and close the business entity’s activities, and marshal and distribute the assets of the business entity; and

b. May:

i. Deliver to the Office of the Secretary for filing a statement of dissolution stating the name of the business entity and that the business entity is dissolved;

ii. Preserve the business entity's activities, affairs, and property as a going concern for a reasonable time;

iii. Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

iv. Transfer the business entity's property;

v. Settle disputes by mediation or arbitration;

vi. Deliver to the Office of the Secretary for filing a statement of termination stating the name of the business entity and that the business entity is terminated; and

vii. Perform other acts necessary or appropriate to the winding up.

4. After dissolution and upon application of a business entity, an owner, or a holder of financial rights, the Tribal Court may order judicial supervision of the winding up of the business entity, including the appointment of a person to wind up the business entity's activities, if:

a. After a reasonable time, the business entity has not wound up its activities; or

b. The applicant establishes other good cause.

5. If a person is appointed by the Tribal Court pursuant to this Section to wind up the activities of a business entity, the business entity shall promptly deliver to the Office of the Secretary for filing an amendment to the public organizational documents to reflect the appointment.

6. Upon the winding up of a business entity, the assets shall be distributed in the following order:

a. To creditors, including to the extent permitted by law, owners and former owners in satisfaction of liabilities of the business entity;

b. Unless otherwise provided in the public organizational documents, to owners and former owners in satisfaction of liabilities for distributions;

c. Unless otherwise provided in the public organizational documents, to owners and former owners first for the return of any contributions in proportion to their respective values and, thereafter, in proportion to their respective rights to share in distributions from the business entity before dissolution; and

d. In the case of a nonprofit business entity, to such persons, societies, organizations, or business entities, whether for profit or not, engaged in activities which will, as nearly as possible, accomplish the general purpose of the dissolving business entity.

7. Property held in trust or otherwise dedicated to a charitable purpose may not be diverted from its purpose by the dissolution of a business entity.

8. Except for reasonable compensation for services rendered, a person who is a member of a nonprofit business entity may not receive a direct or indirect financial benefit in connection with the dissolution of the business entity unless the person is a nonprofit business entity, a charitable trust, government entity, or another entity that has a charitable purpose.

Section 14-12-8. Known Claims Against Dissolved Business Entity.

1. Except as otherwise provided in this Section, a dissolved business entity may give notice of a known claim under this Section, which has the effect provided in this Section.

2. A dissolved business entity may notify its known claimants in writing of the dissolution. The notice must:

a. Specify the information required to be included in a claim;

b. State that a claim must be in writing and provide a mailing address to which the claim is to be sent;

c. State the deadline for receipt of a claim, which may not be less than one hundred twenty (120) days after the date the notice is received by the claimant; and

d. State that the claim will be barred if not received by the deadline.

3. A claim against a dissolved business entity is barred if the requirements of notice of this Section are met and:

a. The claim is not received by the specified deadline; or

b. If the claim is timely received but rejected by the business entity:

i. The business entity notifies the claimant in writing that the claim is rejected and will be barred unless the claimant commences an action against the business entity to enforce the claim not later than ninety (90) days after the claimant receives the notice; and

ii. The claimant does not commence the required action within the time provided after the claimant receives the notice.

4. This Section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on the effective date of dissolution is contingent.

Section 14-12-9. Other Claims Against Dissolved Business Entity.

1. A dissolved business entity may publish notice of its dissolution and request persons having claims against the business entity to present them in accordance with the notice.

2. A notice authorized under this Section must:

a. Be published at least once in a newspaper of general circulation in the service area of the Tribe in which the dissolved business entity's principal office is located or, if the principal office is not located in the territory of the Tribe, in the service area of the Tribe in which the office of the business entity's registered agent is or was last located;

b. Describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

c. State that a claim against the business entity is barred unless an action to enforce the claim is commenced not later than three (3) years after publication of the notice.

3. If a dissolved business entity publishes a notice in accordance with this Section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the business entity not later than three (3) years after the publication date of the notice:

a. A claimant that did not receive written notice of a known claim under this Chapter;

b. A claimant whose claim was timely sent to the business entity but not acted on; and

c. A claimant whose claim is contingent at or based on an event occurring after the effective date of dissolution.

4. A claim not barred under this Chapter may be enforced:

a. Against a dissolved business entity, to the extent of its undistributed assets; and

b. If the assets of the business entity have been distributed after dissolution, against an owner, other than the Tribe, to the extent of that owner's proportionate share of the claim or the assets distributed to the owner after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the owner after dissolution.

Section 14-12-10. Statement of Termination.

1. A dissolved business entity that has completed winding up may deliver to the Office of the Secretary for filing a statement of termination that states:

a. The name of the business entity;

b. The date of filing of its initial public organizational documents; and

c. That the business entity is terminated.

2. The filing of a statement of termination does not itself terminate the business entity.

Section 14-12-11. Actions Involving Tribal Business Entities.

1. If the Tribe is an owner of a business entity:

a. Any action to dissolve the business entity, to seek judicial supervision of winding up the business entity, or otherwise involving the dissolution of the business entity must be brought in the Tribal Court unless explicitly provided otherwise in the business entity's organizational documents approved by the owners;

b. No member of the Tribe or other individual may bring an action for or on behalf of the Tribe as owner to dissolve the business entity, to seek judicial supervision of winding up the business entity, or otherwise involving the dissolution of the business entity; and

c. Only the Tribal Council may authorize an action by the Tribe as owner to dissolve the business entity, to seek judicial supervision of winding up the business entity, or otherwise involving the dissolution of the business entity.

2. Nothing in this Chapter shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any Tribal business entity.

Approved 12/6/10
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PONCA TRIBE OF NEBRASKA
TITLE XV
LIMITED LIABILITY COMPANIES

CHAPTER 1
GENERAL PROVISIONS

Section 15-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Articles of organization" means the articles required under this Title to organize and establish a limited liability company and includes the articles as amended or restated.

2. "Contribution" means property or a benefit that is provided by a person to a limited liability company to become an owner or in the person's capacity as an owner.

3. "Distribution" means a direct or indirect transfer of money or other property from a limited liability company to or for the benefit of its owners or in the person's capacity as an owner, but does not include:

   a. Amounts constituting reasonable compensation for present or past service; or

   b. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

4. "Foreign limited liability company" means an unincorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a limited liability company if the unincorporated entity were formed under the laws of the Tribe.

5. "Limited liability company" means, except when used in the phrase foreign limited liability company, an entity that is formed under this Title or that becomes subject to this Title.

6. "Majority in interest of the owners" means, at any particular time, one or more owners that hold a majority of the interests in the limited liability company, disregarding any interests held by persons that are not owners or not to be counted with respect to the matter at issue at that particular time.

7. "Majority of the owners" means, at any particular time, the majority of the owners of a limited liability company regardless of how many interests each owner holds in the limited liability company.

8. "Manager" means a person designated to manage a limited liability company under the articles of organization and/or operating agreement.

9. "Manager-managed limited liability company" means a limited liability company where management is vested in a manager.

10. "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in writing, or any combination thereof, of all the owners of a limited liability company concerning the conduct of the business of the limited liability company and its relationships with its owners and includes the agreement as amended or restated.

11. "Organizer" means a person that acts to form a limited liability company.

12. "Owner" means a person that both:

a. Has become an owner of a limited liability company or was an owner when the limited liability company became subject to this Title; and

b. Has not dissociated under this Title.

13. "Owner-managed limited liability company" means a limited liability company where management is vested in one or more of the owners and not in any manager.

14. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 15-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all limited liability companies.

2. This Title shall apply to all limited liability companies to which Title XIV of this Code applies.

Section 15-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 15-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
FORMATION

Section 15-2-1. Formation.

1. One or more persons at least the age of majority may act as organizers to form a limited liability company by delivering to the Office of the Secretary for filing the articles of organization.

2. A limited liability company shall have one or more owners. The organizers of a limited liability company need not be owners at the time of organization or thereafter.

3. A limited liability company is formed when the articles of organization become effective and at least one person has become an owner.

4. The Office of the Secretary's filing of the articles of organization of a limited liability company is conclusive proof that the limited liability company is organized and formed under this Title.

Section 15-2-2. Articles of Organization.

1. The articles of organization must state all of the following:

   a. A statement that the limited liability company is organized under this Title;

   b. The name of the limited liability company that complies with the laws of the Tribe;

c. The principal address, which may be the same as the mailing address of the limited liability company's registered agent;

d. The name and street and mailing addresses in the territory of the Tribe of the limited liability company's registered agent;

e. If management of the limited liability company is vested in a manager, a statement to that effect;

f. The name and address of each person organizing the limited liability company;

g. Whether the limited liability company is a Tribal business entity; and

h. If the limited liability company is a Tribal business entity, whether the limited liability company enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of organization shall be signed by all organizers.

3. The articles of organization may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 15-2-3. Amendment or Restatement of Articles.

1. Articles of organization may be amended or restated at any time.

2. To amend its articles of organization, a limited liability company must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the limited liability company;

b. The date of filing of its initial articles of organization; and

c. The text of the amendment.

3. To restate its articles of organization, a limited liability company must deliver to the Office of the Secretary for filing a restatement of the articles, designated as such in its heading.

4. The articles of organization shall be amended if there is a statement in the articles that was false or erroneous when it was made.

5. If an owner or manager of a limited liability company knows that any information in a filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the owner or manager shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 15-2-4. Operating Agreement.

1. Except as otherwise provided in this Section, the operating agreement governs:

a. Relations among the owners as owners and between the owners and the limited liability company;

b. The rights and duties under this Title of a person in the capacity of manager;

c. The activities and affairs of the limited liability company and the conduct of those activities and affairs; and

d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not provide for a matter described in subsection 1 of this Section, this Title and any other law of the Tribe applicable to the limited liability company governs the matter.

3. A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

4. A person that becomes an owner of a limited liability company is deemed to assent to the operating agreement.

5. Two or more persons intending to become the initial owners of a limited liability company may make an agreement providing that, upon the formation of the limited liability company, the agreement will become the operating agreement. One person intending to become the initial owner of a limited liability company may assent to terms providing that, upon the formation of the limited liability company, the terms will become the operating agreement.

CHAPTER 3
OWNERS AND MANAGERS

Section 15-3-1. Admission of Owners.

1. Upon formation of a limited liability company, a person becomes an owner:

a. As agreed upon the formation of the limited liability company; or

b. Unless the articles of organization or operating agreement provide otherwise, by acquiring an interest in the limited liability company.

2. After the formation of a limited liability company, a person becomes an owner:

a. As provided in the operating agreement;

b. As the result of a merger, interest exchange, conversion, or domestication;

c. With the affirmative vote or consent of all the owners;

d. Unless the articles of organization or operating agreement provide otherwise, by acquiring an interest in the limited liability company; or

e. If the person acquires an interest in the limited liability company by assignment, as provided in the operating agreement or this Title.

3. A person may become an owner of a limited liability company without:

a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the limited liability company.

Section 15-3-2. Dissociation.

1. A person ceases to be an owner of a limited liability company and is dissociated as an owner when:

a. Unless the operating agreement provides that the person does not have the power to voluntarily withdraw, the person voluntarily withdraws as an owner and the limited liability company knows or has notice of the person's express will to withdraw as an owner, provided the person may designate a date of withdrawal as owner;

b. An event stated in the operating agreement as causing the person's dissociation occurs;

c. The person is expelled as an owner pursuant to the operating agreement or this Title or other law of the Tribe applicable to the limited liability company;

d. The person is expelled as an owner by the affirmative vote or consent of all the other owners if:

i. It is unlawful to carry on the limited liability company's activities and affairs with the person as an owner; or

ii. There has been a transfer of all the person's transferable interest in the limited liability company, other than a transfer for security purposes;

e. Unless provided otherwise in the operating agreement or by the written consent of all owners, the person:

i. Becomes a debtor in bankruptcy;

ii. Signs an assignment for the benefit of creditors; or

iii. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

f. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked;

iv. Had its right to conduct business suspended in its jurisdiction of formation; or

v. Has been liquidated;

g. If the person is a trust or estate, the trust's or estate's entire transferable interest in the limited liability company is distributed;

h. On application by the limited liability company or an owner in an action brought in Tribal Court, the person is expelled as an owner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited liability company's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement, this Title, other law of the Tribe applicable to the limited liability company, or a duty or obligation to the limited liability company; or

iii. Has engaged or is engaging in conduct relating to the limited liability company's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as an owner;

i. Unless provided otherwise in the operating agreement or by the written consent of all owners, in the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as an owner under this Title or the operating agreement;

j. In the case of a person that is not an individual, the existence of the person terminates;

k. The limited liability company participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The limited liability company does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be an owner; or

l. The limited liability company dissolves and completes winding up.

2. The operating agreement may provide for other events which result in a person ceasing to be an owner of the limited liability company.

3. Unless otherwise provided in the operating agreement, upon notice of a merger, interest exchange, conversion, or division of the limited liability company, an owner who did not vote in favor of the merger, interest exchange, conversion, or division may, within twenty (20) days after receipt of the notice, voluntarily dissociate from the limited liability company under this Section and receive any distribution and value for the owner's interest to which the owner would otherwise be entitled upon dissociation under this Title.

4. If a person is dissociated as an owner:

a. The person's right to participate as an owner in the management and conduct of the limited liability company's activities and affairs terminates;

b. The person's duties and obligations as an owner end with regard to matters arising and events occurring after the person's dissociation; and

c. Subject to the provisions of this Chapter and any other law of the Tribe applicable to the limited liability company, any transferable interest owned by the person in the person's capacity as an owner immediately before dissociation is owned by the person solely as a transferee.

5. In addition to pursuing any remedies otherwise available under the operating agreement or applicable law, if a person has the power to withdraw as an owner, but the withdrawal is a breach of the operating agreement, the limited liability company may offset the damages against the amount otherwise distributable to the owner.

6. A person's dissociation as an owner does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other owners which the person incurred while an owner.

7. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as owner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 15-3-3. Management.

1. A limited liability company is an owner-managed limited liability company unless the articles or organization or operating agreement vests management in one or more managers.

2. Subject to the provisions of this Title and the operating agreement, in an owner-managed limited liability company, the following rules apply:

a. Except as expressly provided in this Title, the management and conduct of the limited liability company are vested in the owners;

b. Each owner has equal rights in the management and conduct of the limited liability company's activities and affairs;

c. A difference arising among owners as to a matter in the ordinary course of the activities and affairs of the limited liability company may be decided by a majority of the owners; and

d. The affirmative vote or consent of all the owners is required to undertake an act outside the ordinary course of the activities and affairs of the limited liability company.

3. Subject to the provisions of this Title and the operating agreement, in a manager-managed limited liability company, the following rules apply:

a. Except as expressly provided in this Title, any matter relating to the activities and affairs of the limited liability company is decided exclusively by the manager or, if there is more than one manager, by a majority of the managers;

b. Each manager has equal rights in the management and conduct of the limited liability company's activities and affairs;

c. The affirmative vote or consent of all owners is required to undertake an act outside the ordinary course of the limited liability company's activities and affairs;

d. The manager or managers shall be designated, appointed, elected, removed, or replaced by a vote of a majority of the owners;

e. A manager remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies;

f. A person need not be an owner or an individual to be a manager; and

g. A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or owners which the person incurred while a manager.

4. An action requiring the vote or consent of owners under this Title may be taken without a meeting, and an owner that is not the Tribe may appoint a proxy or other agent to vote, consent, or otherwise act for the owner by signing an appointing record, personally or by the owner's agent.

5. The dissolution of a limited liability company does not affect the applicability of this Section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as an owner and a manager.

6. An owner is not entitled to remuneration for services performed for an owner-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

Section 15-3-4. Voting of Owners.

1. Unless otherwise provided in the operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, an affirmative vote, approval, or consent shall be required to decide any matter connected with the business of a limited liability company as follows:

a. In an owner-managed limited liability company, a majority in interest of the owners; and

b. In an manager-managed limited liability company, more than fifty percent (50%) of the managers.

2. Unless otherwise provided in the operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, the affirmative vote, approval, or consent of all owners shall be required to do any of the following:

a. Amend the articles of organization;

b. Issue an interest in the limited liability company to any person;

c. Adopt, amend, or revoke the operating agreement;

d. Allow the limited liability company to accept any additional contribution from an owner;

e. Allow a partial redemption of an interest in the limited liability company;

f. Value contributions of owners; or

g. Authorize a manager, owner, or other person to do any act on behalf of the limited liability company that contravenes the articles of organization or operating agreement.

3. Unless otherwise provided in the operating agreement, if any owner is precluded from voting with respect to a given matter, the interests in the limited liability company which the owner would otherwise have been entitled to vote shall be excluded from the total interests in the limited liability company for purposes of determining the majority in interest of the owners.

4. Unless otherwise provided in its operating agreement, this Title, or other law of the Tribe applicable to the limited liability company, if all or part of an interest in a limited liability company is assigned, the assigning owner shall be considered the owner of the assigned interest for purposes of determining the majority of interests in the limited liability company until the assignee of the interest becomes an owner.

Section 15-3-5. Action by Written Consent.

1. Unless the articles of organization or operating agreement require that action be taken only at an owners' meeting, any action that may be taken by the owners may be taken without a meeting if each owner entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by an owner in writing at any time before the limited liability company receives a consent from each owner entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 15-3-6. Duties of Owners and Managers.

1. All owners and managers owe to the limited liability company and the owners fiduciary duties.

2. The fiduciary duties of an owner or manager include:

a. To act in a manner the owner or manager reasonably believes to be in the best interests of the limited liability company;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other owners or managers information not already known by them but known by the owner or manager to be material to the discharge of the decision-making or oversight functions of the owners or managers, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the limited liability company and hold as trustee for it any property, profit, or benefit derived by the owner or manager:

i. In the conduct or winding up of the limited liability company's activities and affairs;

ii. From a use by the owner or manager of the limited liability company's property; or

iii. From the appropriation of a limited liability company opportunity;

e. To refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities and affairs as or on behalf of a person having an interest adverse to the limited liability company;

f. To refrain from competing with the limited liability company in the conduct of the limited liability company's activities and affairs before the dissolution of the limited liability company;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the limited liability company or its owners in connection

with a matter in which the owner or manager has a material conflict of interest; and

i. To refrain from a transaction from which the owner or manager may derive an improper personal profit.

3. All owners and managers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the limited liability company, or the operating agreement consistently with the contractual obligation of good faith and fair dealing.

4. All the owners of a limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

5. Every owner and manager shall account to the limited liability company and hold as trustee for it any improper personal profit derived by that owner or manager without the consent of a majority of the disinterested owners or managers from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the limited liability company; and

b. A use by an owner or manager of the property of the limited liability company, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as an owner or manager.

6. A limited liability company's operating agreement or other private organizational documents may impose duties on its owners and managers that are in addition to, but not in abrogation of, those provided in this Section.

Section 15-3-7. Owner or Manager as Agent. Subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, the following rules apply:

1. In an owner-managed limited liability company:

a. Each owner is an agent of the limited liability company for the purpose of its business, but not of any of the other owners; and

b. The act of any owner, including the execution in the name of the limited liability company of an instrument for apparently carrying on the ordinary course of business of the limited liability company, binds the limited liability company in the particular matter unless the person with whom the owner is dealing knows or should know that the owner has no authority to act in the matter.

2. If the Tribe is an owner of a limited liability company, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

3. In a manager-managed limited liability company:

a. No owner, solely by being an owner, is an agent of the limited liability company or of the other owners;

b. Each manager is an agent of the limited liability company for the purpose of its business, but not for the owners; and

c. The act of any manager, including the execution in the name of the limited liability company of an instrument for apparently carrying on the ordinary course of business of the limited liability company, binds the limited liability company in the particular matter unless:

i. The manager in fact has no authority to act for the limited liability company in the matter; and

ii. The person with whom the manager is dealing knows or should know that the manager has no authority to act in the matter.

4. No act of an owner or manager that is not apparently authorized for carrying on the ordinary course of business of the limited liability company shall bind the limited liability company unless the act is in fact authorized at the time of the transaction or ratified thereafter.

Section 15-3-8. Representations of Owner or Manager.

1. In an owner-managed limited liability company, an admission or representation made by an owner concerning the business of a limited liability company within the scope of the owner's actual authority may be used as evidence against the limited liability company in any legal proceeding.

2. In a manager-managed limited liability company:

a. An admission or representation made by a manager concerning the business of a limited liability company within the scope of the manager's authority may be used as evidence against the limited liability company in any legal proceeding; and

b. The admission or representation of any owner, acting solely in the owner's capacity as an owner, is not evidence against the limited liability company in any legal proceeding.

Section 15-3-9. Knowledge of Owner or Manager.

1. In an owner-managed limited liability company, the following operates as notice to or knowledge of the limited liability company:

a. Notice to any owner of any matter relating to the business of the limited liability company;

b. Knowledge of any owner acting in the particular matter acquired while an owner or known by the person at the time of becoming an owner; and

c. Knowledge of any owner who reasonably could and should have communicated it to the acting owner.

2. In a manager-managed limited liability company:

a. The following operates as notice to or knowledge of the limited liability company:

i. Notice to any manager of any matter relating to the business of the limited liability company;

ii. Knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager; and

iii. Knowledge of any other manager who reasonably could and should have communicated it to the acting manager; and

b. Notice to or knowledge of any owner while the owner is acting solely in the capacity of an owner is not notice to or knowledge of the limited liability company.

Section 15-3-10. Rights to Information and Records.

1. On reasonable request, an owner may inspect and during regular business hours copy, at the owner's expense, any record maintained by the limited liability company regarding the limited liability company's activities, affairs, financial condition, and other circumstances, unless otherwise provided in the operating agreement or this Title.

2. The limited liability company shall furnish to each owner or the owner's legal representative:

a. Without demand, any true and full information concerning the limited liability company's activities, affairs, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the owner's rights and duties under the operating agreement or this Title; and

b. On demand, any other true and full information concerning the limited liability company's activities, affairs, financial condition, and other circumstances.

Section 15-3-11. Direct Action by Owner.

1. An owner may maintain a direct action against another owner, a manager, or the limited liability company to enforce the owner's rights and protect the owner's interests, including rights and interests under the operating agreement or this Title or arising independently of the ownership relationship.

2. An owner maintaining an action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Section 15-3-12. Derivative Actions.

1. An owner may maintain a derivative action to enforce a right of a limited liability company if:

a. Unless such a demand would be futile, the owner first makes a demand on the other owners or managers

requesting that they cause the limited liability company to bring an action to enforce the right; and

b. The owners or managers do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the owners or managers; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a limited liability company may be maintained only by a person that is an owner at the time the action is commenced and:

a. Was an owner when the conduct giving rise to the action occurred; or

b. Whose status as an owner devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was an owner at the time of the conduct.

4. If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be owners. A special litigation committee may be appointed by the

affirmative vote or consent of a majority of the owners or managers not named as parties in the proceeding or, if all owners or managers are named as parties, a majority of all the owners or managers.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the committee;

c. Be settled on terms approved by the committee; or

d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.

10. Unless the limited liability company is a Tribal business entity and the plaintiff is not the Tribe or a Tribal

business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the limited liability company.

CHAPTER 4
DEALING WITH LIMITED LIABILITY COMPANY

Section 15-4-1. Nature of Limited Liability Company. A limited liability company is an entity distinct from its owners.

Section 15-4-2. Interests in Limited Liability Company.

1. An interest in a limited liability company is personal property.

2. Unless otherwise provided in its operating agreement:

a. An interest in a limited liability company is assignable in whole or in part;

b. An assignment of an interest in a limited liability company entitles the assignee to receive only the distributions and share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest;

c. An assignment of an interest in a limited liability company does not dissolve the limited liability company;

d. Unless and until the assignee becomes an owner, the assignment of an interest in a limited liability company does not entitle the assignee to participate in the management or exercise the rights of an owner;

e. Unless and until the assignee of an interest in a limited liability company becomes an owner, the assignor continues to be an owner; and

f. The assignor of an interest in a limited liability company is not released from any personal liability as an owner solely as a result of the assignment.

3. Unless otherwise provided in the operating agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of an owner's interest in a limited liability

company is only an assignment and shall not cause the owner to cease to have the power to exercise any rights or powers of an owner.

4. An owner's personal representative, administrator, guardian, conservator, trustee, successor, or other legal representative shall have all the rights of an assignee of the owner's interest if:

a. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as an owner under this Title or the operating agreement; or

b. In the case of a trust, estate, or entity, the trust, estate, or entity is dissolved or terminated.

5. Unless otherwise provided in the operating agreement or this Title, an assignee of an interest in a limited liability company may become an owner only if the other owners unanimously consent.

6. An assignee of an interest in a limited liability company who becomes an owner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the operating agreement, this Title, and other laws of the Tribe applicable to the limited liability company.

7. Unless otherwise provided in the operating agreement, an assignor of an interest in a limited liability company is not released from any liability to the limited liability company without the written consent of all the owners, whether or not the assignee becomes an owner.

Section 15-4-3. Charging Ownership Interest.

1. On application to a court having valid jurisdiction over an owner and the subject matter by a judgment creditor of the owner, such court may enter a charging order against the transferable interest in the limited liability company of the

owner, other than an owner which is the Tribe, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the owner's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the owner. The judgment creditor has only the rights of an assignee of the owner's interest.

3. At any time before foreclosure under this Section, the owner whose transferable interest is subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a limited liability company or one or more owners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

5. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest of the owner. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become an owner, and has only the rights of an assignee of the owner's interest.

6. If a court orders foreclosure of a charging order lien against the sole owner of a limited liability company:

a. The court shall confirm the sale;

b. The purchaser at the sale obtains the owner's entire interest, not only the owner's transferable interest;

c. The purchaser thereby becomes an owner; and

d. The person whose interest was subject to the foreclosed charging order is dissociated as an owner.

7. This Section shall not be construed to deprive any owner of the benefit of any exemption of an interest in a limited liability company that may exist under applicable law.

8. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against an owner may satisfy the judgment from the owner's transferable interest.

9. In no event shall the Tribe's interest in a limited liability company be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 15-4-4. Property of Limited Liability Company.

1. Property may be acquired, held, and conveyed in the name of a limited liability company.

2. All property originally transferred to or acquired by a limited liability company is property of the limited liability company and not the owners individually.

3. Property acquired with funds of a limited liability company is presumed to be property of the limited liability company.

4. Subject to any limitations in its operating agreement or this Title, the property of a limited liability company may be transferred:

a. In an owner-managed limited liability company, by an instrument executed by any owner in the name of the limited liability company; and

b. In a manager-managed limited liability company, by an instrument executed by a manager in the name of the limited liability company.

Section 15-4-5. Liability to Third Parties.

1. A debt, obligation, or other liability of a limited liability company, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the limited liability company. This subsection applies regardless of the dissolution of the limited liability company.

2. An owner or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the limited liability

company solely by reason of being or acting as an owner or manager. This subsection applies regardless of the dissolution of the limited liability company.

3. The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on an owner or manager for an act, debt, obligation, or other liability of the limited liability company.

Section 15-4-6. Parties to Actions. An owner of a limited liability company is not a proper party to a proceeding by or against a limited liability company solely by reason of being an owner, except if:

1. The object of the proceeding is to enforce an owner's right against or liability to the limited liability company; or

2. The action is brought by an owner under this Title.

Section 15-4-7. Authority to Sue.

1. Unless otherwise provided in its operating agreement, an action on behalf of a limited liability company may be brought in the name of the limited liability company by:

a. One or more owners, if authorized by a majority in interest of the owners excluding the vote of any owner who has an interest in the outcome of the action that is adverse to the interests of the limited liability company; or

b. In a manager-managed limited liability company, one or more managers, unless otherwise directed by a majority in interest of the owners, excluding any owner who has an interest in the outcome of the action that is adverse to the interests of the limited liability company.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as owner.

Section 15-4-8. Records.

1. A limited liability company shall keep at its principal place of business all of the following:

a. A list, in alphabetical order, of each past and present owner and, if applicable, manager;

b. A copy of its articles of organization and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any articles were executed;

c. A copy of its operating agreement and all amendments thereto and restatements thereof;

d. A copy of all other organizational documents of the limited liability company, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof; and

e. A record of all matters referred to in this Title or other law of the Tribe applicable to the limited liability company as maintained in such records which are not otherwise specified in the operating agreement.

2. Failure of a limited liability company to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

CHAPTER 5
CONTRIBUTIONS AND DISTRIBUTIONS

Section 15-5-1. Contributions.

1. A contribution may consist of money or property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer money or property to, perform services for, or provide another benefit to the limited liability company.

2. The value of an owner's contribution shall be determined in the manner provided in the operating agreement. If the operating agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority in interest of the owners and be properly reflected in the records and information kept by the limited liability company under this Title. The value of contributions so determined shall be binding and conclusive on the limited liability company and its owners.

3. An obligation of a person to make a contribution to a limited liability company is not enforceable unless specified in writing signed by the person. A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, termination, or other inability to perform personally.

4. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.

5. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the owners. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation to make a contribution without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

Section 15-5-2. Allocation of Profits and Losses.

1. The profits and losses of a limited liability company shall be allocated among the owners in the manner provided in its operating agreement.

2. If the owners do not enter into an operating agreement or the operating agreement does not provide for allocation of profits and losses, profits and losses shall be allocated on the basis of value of the contributions made by each owner.

Section 15-5-3. Distributions Generally.

1. Except as provided in this Chapter, an owner is entitled to receive distributions from a limited liability company before the owner's dissociation from the limited liability company and before its dissolution and winding up:

a. To the extent and at the times or upon the events specified in the operating agreement; or

b. To the extent and at the times determined by the owners or managers.

2. An owner's dissociation does not entitle the person to a distribution.

3. Unless otherwise provided in the operating agreement, a person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in the laws of the Tribe, a limited liability company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions. Unless otherwise provided in the operating agreement, a person may not be compelled to accept a distribution of any asset in kind except for a liquidating distribution made proportionately.

4. Distributions of money or other assets of a limited liability company shall be allocated among the owners as provided in the operating agreement or, if the operating agreement does not provide for allocation of distributions, on the basis of the value of the contributions made by each owner.

5. If an owner becomes entitled to receive a distribution, the owner has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the limited liability company's obligation to make a distribution is subject to offset for any amount owed to the limited liability company by the owner or a person dissociated as an owner on whose account the distribution is made. Nothing in this subsection shall limit any other remedy available to an owner under any other provision of applicable law or the operating agreement.

Section 15-5-4. Distributions Upon Partial Redemption. Except as provided in this Chapter, upon the distribution in partial liquidation of an owner's interest, the redeeming owner is entitled to receive:

1. The amount to which the owner is entitled under the operating agreement; and

2. If not otherwise provided in the operating agreement, the fair value of the redeemed interest based on the owner's right to share in distributions from the limited liability company.

Section 15-5-5. Distribution Upon Dissociation. Except as otherwise provided in this Chapter, upon an event of dissociation of an owner that does not cause dissolution of the limited liability company, the dissociating owner is entitled to receive:

1. Any distribution to which the owner is entitled under the operating agreement; and

2. If not otherwise provided in the operating agreement, the fair market value of the owner's interest in the limited liability company based on the owner's rights to share in distributions from the limited liability company.

Section 15-5-6. Limitations on Distributions.

1. A limited liability company may not declare or make a distribution if, after the distribution:

a. The limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities and affairs; or

b. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the operating agreement provides otherwise, the amount that would be needed to satisfy the preferential rights, if any, of owners upon dissolution and winding up.

2. A limited liability company may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. A limited liability company's indebtedness to an owner incurred by reason of a distribution made in accordance with this Section is equivalent to the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This subsection does not affect the validity or priority of a security interest in a limited liability company's property that is created to secure the indebtedness to the owner.

Section 15-5-7. Liability for Improper Distributions.

1. An owner that is not the Tribe or a manager who votes or assents to a distribution in violation of this Chapter or the operating agreement is personally liable to the limited liability

company for the amount of the excess distribution, subject to contribution from all other managers or owners participating in such action.

2. To the extent the operating agreement expressly relieves an owner of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other owners, the liability stated in this Section applies to the other owners and not the owner relieved of the authority and responsibility.

3. An owner or manager who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other owner or manager who could be held liable under this Section for the unlawful distribution; and

b. Each owner for the amount the owner accepted knowing the distribution was made in violation of this Chapter or the operating agreement.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than two (2) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Approved 2/18/12
Resolution 12-06

Revised 7/26/22
Resolution 22-48

PONCA TRIBE OF NEBRASKA
TITLE XVI
LIQUOR CONTROL

CHAPTER 1
GENERAL PROVISIONS

Section 16-1-1. Authority. This Title is enacted by the Tribal Council:

1. Pursuant to and in accordance with Article V, Section 1(j), (l), (o), and (p) of the Constitution;

2. Pursuant to and in accordance with federal statutes and other laws, including the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. § 1161, which provide a federal legal basis for the Tribe to regulate liquor on Tribal lands; and

3. In conformity with applicable state laws.

Section 16-1-2. Purpose. The Tribe wishes to exercise its sovereignty and federal delegated authority to control liquor on Tribal lands and, therefore, the purpose of this Title is:

1. To control liquor manufacturing, distribution, sale, and possession on Tribal lands;

2. To establish procedures for the licensing of the manufacture, distribution, and sale of liquor on Tribal lands; and

3. To otherwise regulate the manufacture, distribution, sale, and consumption of liquor.

Section 16-1-3. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form, but excludes denatured alcohol or wood alcohol.

2. "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and includes, but is not limited to, beer,

ale, malt liquor, stout, lager beer, porter, near beer, flavored malt beverage, and hard cider.

3. "Board" means the Ponca Tribe of Nebraska Liquor Control Board.

4. "Board member" means a member of the Board.

5. "Brewer" means any person engaged in the business of manufacturing beer.

6. "Consume" means knowingly and intentionally drinking or otherwise ingesting.

7. "Distiller" means any person engaged in the business of distilling or manufacturing spirits.

8. "Distribute" means to acquire, purchase, store, introduce, import, export, sell, offer for sale, deliver, transport, give away, offer to give away, or otherwise possess liquor for resale or further processing, or otherwise introduce, import, export, sell, resell, offer for sale or resale, deliver, transport, give away, or offer to give away liquor to a retailer.

9. "Liquor" means alcohol, beer, spirits, wine, all other fermented, spirituous, vinous, or malt liquors, or combinations thereof and mixed liquor, a part of which is fermented, spirituous, vinous, malt liquor, or otherwise intoxicating, and includes every liquid, solid, semi-solid, or other substance, patented or not, containing alcohol, beer, spirits, or wine and all preparations or mixtures of liquor capable of human consumption.

10. "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any liquor and includes blending, but does not include the mixing or other preparation of drinks for serving for consumption on the premises where sold, sampled, or given away.

11. "Manufacturer" means any person engaged in the manufacture or other preparation of liquor in any form whatsoever, including brewers, distillers, and wineries, but does not include the mixing or other preparation of drinks for consumption on the premises where sold, sampled, or given away.

12. "On-sale" means the sale of liquor for consumption upon the premises where sold or given away and includes the mixing or

other preparation of drinks for serving for consumption on the premises where sold or given away.

13. "Off-sale" means the sale of liquor for consumption off the premises where sold or given away.

14. "Retailer" means any person who acquires liquor from a wholesaler or otherwise sells, offers for sale, distributes, gives away, or offers to give away any liquor from any location or facility for any purpose other than resale or further processing.

15. "Retail sale" means any sale made for any purpose other than for resale or further processing.

16. "Sale" means the transfer of ownership of, title to, or possession of goods for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of goods is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

17. "Sampling" means consumption on the premises of a licensee of not more than five (5) samples of one (1) fluid ounce or less of liquor by the same person in a twenty-four (24) hour period.

18. "Sell" means to solicit or receive an order for a sale, make or consummate a sale, or keep or expose for sale and includes intending to sell and keeping with intent to sell.

19. "Spirits" means any beverage which contains alcohol obtained by distillation, whether mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

20. "Tribal lands" means:

a. All lands held in trust by the United States for the benefit of the Tribe or its members;

b. All fee lands owned by the Tribe and located within one or more of the Tribe's service areas as defined by Public Law 101-484 and any amendments thereto; and

c. All lands of the Tribe or its members defined as Indian country by 18 U.S.C. § 1151, including dependent Indian communities.

21. "Wholesaler" means any person who distributes or is engaged in distributing of liquor.

22. "Wine" means any alcoholic beverage obtained by fermentation of fruits, vegetables, or other agricultural products containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

23. "Winery" means any person engaged in the business of producing or manufacturing wine.

Section 16-1-4. Consent to Jurisdiction.

1. This Title shall apply to any person who:

a. Resides or is located on Tribal lands;

b. Conducts business or engages in a business transaction on Tribal lands, with another person located on Tribal lands, or with the Tribe;

c. Enters into a consensual relationship with Tribe or its members;

d. Acts under Tribal authority; or

e. Enters Tribal lands.

2. Any person to whom this Title applies shall be deemed to have consented to the following:

a. To be bound by the terms of this Title;

b. To the exercise of jurisdiction of the Liquor Board over him or her; and

c. To the exercise of jurisdiction by the Tribal Court over him or her in an action arising under this Title.

Section 16-1-5. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials, or employees for any damages which

may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 16-1-6. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 16-1-7. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

CHAPTER 2
LIQUOR CONTROL BOARD

Section 16-2-1. Establishment.

1. There is hereby established a liquor control board to be known as the Ponca Tribe of Nebraska Liquor Control Board as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Board may employ such other personnel and employees as may be required for the proper discharge of its duties under this Title, provided that, to the maximum extent feasible, the Board shall first use personnel and employees of the Tribal administration as authorized in this Chapter.

Section 16-2-2. Composition. The Board shall consist of five (5) members as follows:

1. One (1) Tribal Council member designated by the Tribal Council, who shall serve as the Chairperson of the Board; and

2. Four (4) individuals who shall be appointed by the Tribal Council.

Section 16-2-3. Qualifications. To be qualified to be appointed a Board member, a person shall:

1. Be at least the age of majority;

2. Have no conflicts of interest, as defined in this Chapter;

3. Not have been convicted of any felony or any crime involving or related to alcohol or drugs in any court of any jurisdiction in the five (5) years prior to appointment unless pardoned and fully restored of his or her civil rights by the proper authorities prior to appointment;

4. Be willing and able to comply with the ethical duties of Board members, as defined in this Chapter;

5. Be willing and able to perform the Board's duties in compliance with the laws of the Tribe;

6. Have or acquire knowledge of this Title;

7. Have the time available to actively fulfill the duties of a Board member; and

8. Be willing to receive orientation and training regarding the duties of the Board.

Section 16-2-4. Term of Office.

1. The Tribal Council member designated by the Tribal Council to serve on the Board shall hold office until he or she no longer holds office on the Tribal Council regardless of whether there is a successor in the office, but a former Tribal Council member designated by the Tribal Council to serve on the Board may be appointed to another position on the Board in accordance with this Chapter.

2. Upon the selection of the initial Board members, the Tribal Council shall choose from the members other than the Tribal Council member designated by the Tribal Council to serve on the Board, by lot, one (1) Board member who will serve an initial term of one (1) year, one Board member who will serve an initial term of two (2) years, and two (2) Board members who will serve an initial term of three (3) years. Thereafter, the term of office for Board members shall be three (3) years.

3. Except as otherwise provided herein, each Board member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

Section 16-2-5. Compensation. Board members shall be compensated at a rate set by the Tribal Council. In addition, Board members shall be paid for mileage for every Board meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

Section 16-2-6. Resignation and Removal.

1. Any Board member may resign from his or her position by delivering a written resignation to the Tribal Council.

2. Any Board member who is a Tribal Council member designated by the Tribal Council to serve on the Board shall automatically be removed from the Board upon the Tribal Council member's resignation or removal from the Tribal Council.

3. The Tribal Council may, by majority vote, remove a Board member for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty;

c. Malfeasance or misfeasance in the handling of liquor control matters;

d. Acceptance or solicitation of bribes;

e. Violation of the ethical duties or conflict of interest provisions of this Chapter;

f. Unexcused absence from three (3) or more consecutive Board meetings;

g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the Board member ineligible for appointment if the event had occurred prior to appointment.

4. The Tribal Council's decision to remove a Board member shall be final and not subject to challenge, review, or appeal.

Section 16-2-7. Vacancies. In the event of a vacancy on the Board, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of

the Board member being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 16-2-8. Officers.

1. The Chairperson of the Board shall call and preside over Board meetings. The Chairperson shall report to the Tribal Council as required.

2. The Board shall elect from its members a Secretary at its first meeting in each calendar year or at the next meeting of the Board if a vacancy occurs in the office of Secretary.

3. The Secretary shall be responsible for assuring the timely and proper production, distribution, and storage of all written records of the Board, including administrative and financial documents. The Secretary shall keep minutes of all meetings of the Board and shall keep informed about the Board's expenditures and budget.

Section 16-2-9. Ethics and Conflicts.

1. No person may be appointed to the Board who:

a. Is employed by, an officer of, or has a private ownership interest, whether direct or indirect, in any entity or organization that is a retailer, wholesaler, brewer, distiller, winery, or other manufacturer;

b. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Board; or

c. Has a similar interest that would necessarily conflict with the impartial performance of a Board member's duties.

2. The Tribal Council's determination whether an applicant for the Board is barred from appointment by a conflict of interest shall be final and not subject to challenge, review, or appeal.

3. Board members shall:

a. Not accept or request any gift, gratuity, compensation, employment, or other thing of value from any manufacturer, wholesaler, retailer, holder, or applicant for a liquor license, or other person subject to this Title;

b. Avoid the appearance of impropriety;

c. Not act in an official capacity when a matter before the Board directly and specifically affects a Board member's own interests or the interests of his or her immediate family;

d. Not attempt to exceed the authority granted to Board members by this Title;

e. Recognize that the authority delegated by this Title is to the Board as a whole, not to individual Board members and, accordingly, the powers of the Board may only be exercised by the Board acting through the procedures established by this Title;

f. Not take action on behalf of the Board unless authorized to do so by the Board;

g. Not involve the Board in any controversy outside the Board's duties; and

h. Hold all confidential information revealed during the course of Board business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Board business.

Section 16-2-10. Recusal.

1. No Board member shall participate in any action or decision by the Board directly involving:

a. Himself or herself;

b. A member of his or her immediate family;

c. Any person, business, or other entity of which he or she or a member of his or her immediate family is an employee;

d. Any business or other entity in which he or she or a member of his or her immediate family has a substantial ownership interest; or

e. Any business or other entity with which he or she or a member of his or her immediate family has a substantial contractual relationship.

2. Nothing in this Section shall preclude a Board member from participating in any action or decision by the Board which:

a. Generally affects a class of persons, regardless of whether the Board member or a member of his or her immediate family is a member of the affected class; and

b. Affects the Tribe, an economic enterprise of the Tribe, or a person or entity in a contractual relationship with the Tribe or an economic enterprise of the Tribe, regardless of whether the Board member is also a member of the Tribe.

3. A Board member may voluntarily recuse himself or herself and decline to participate in any action or decision by the Board when the Board member, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias; or

b. That there would be an appearance that he or she could not act fairly or without bias.

Section 16-2-11. Quorum. Three (3) Board members shall constitute a quorum for conducting business.

Section 16-2-12. Meetings.

1. The Board may hold meetings as it deems necessary.

2. The Chairperson of the Board shall have the authority to call a meeting of the Board as he or she sees fit upon forty-eight (48) hours written notice. Written notice to a Board member may be dispensed with as to any Board member who is actually present at the meeting at the time it convenes.

3. The Board may conduct a meeting exclusively by telephone, video conference, or other electronic means provided that the notice of the Board meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

4. All decisions of the Board shall be made by a majority vote of the Board members attending the meeting, provided a quorum is present, unless otherwise provided in this Title.

5. Matters dealing with personnel or other confidential matters shall be conducted in executive session and shall not be open to the public.

Section 16-2-13. Powers and Duties of Board. The power, authority, and duties of the Board shall be as follows:

1. To administer, implement, and enforce this Title;

2. To make recommendations to the Tribal Council concerning amendments to this Title;

3. To set fees for applications, licenses, and renewal of licenses as provided in this Title;

4. To receive applications for and issue to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, and retailers in accordance with this Title and the rules and regulations of the Board;

5. To obtain information and conduct background investigations to determine the suitability of an applicant for a liquor license;

6. To bring legal action in the name of the Tribe to enforce this Title;

7. To inspect any premises where liquor is manufactured, distributed, or sold as provided in this Title;

8. To conduct an audit to inspect any licensee’s records and books as provided in this Title;

9. To conduct hearings and hear appeals authorized by this Title, provided the Board shall have no authority to declare any portion of this Title or other law of the Tribe invalid for any reason;

10. In the conduct of any hearing or audit, to issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath at any hearing conducted by the Board;

11. To examine, under oath, either orally or in writing, any person with respect to any matter subject of this Title;

12. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states as necessary to implement and enforce this Title;

13. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

14. To utilize or adopt forms from other appropriate jurisdictions to use as its own so long as such forms meet the requirements of the laws of the Tribe for which such forms are utilized;

15. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title;

16. To delegate any of its power, authority, and duties to an individual Board member or other personnel or employee of the Board, provided that the Board shall not delegate its power to promulgate rules and regulations or to conduct hearings and hear appeals; and

17. To perform all other duties delegated or assigned to the Board by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 16-2-14. Obtaining Information.

1. The Board may request such information relevant and material to the enforcement of this Title from any and all persons who:

a. Are engaged in the introduction, sale, distribution, or possession of liquor on Tribal lands or with the Tribe; or

b. Are otherwise subject to the jurisdiction of the Tribe.

2. Upon a written request, such persons shall provide the information requested by the Board. The Board may issue a subpoena as provided in this Chapter or request the Court to issue a

subpoena or other order, including ex parte without a hearing, to obtain the information required to be provided under this Section.

Section 16-2-15. Investigative Authority.

1. For the purpose of enforcing the provisions of this Title, the Board shall have the authority to inspect property during regular business hours, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry of the Board, and to make a permanent record of the proceeding.

2. For the purpose of accomplishing the authority granted in this Section, the Board shall have the power to issue subpoenas and summons requiring attendance and testimony of witnesses and production of papers or other things at any hearing held pursuant to this Title.

3. If a person fails to comply with a subpoena issued by the Board, the Board may apply to the Tribal Court for issuance of an order to show cause which directs that the person against whom the subpoena was issued shall comply with the subpoena within ten (10) business days or show cause why he or she should not be held in contempt of court in accordance with the laws of the Tribe. The Tribal Court shall issue the order to show cause without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or was not properly served in accordance with this Section.

4. Any subpoena, summons, or notice issued by the Board shall be served in the manner provided for service of the same in the rules of procedure governing civil actions in Tribal Court.

Section 16-2-16. Rules and Regulations. The Board shall promulgate rules and regulations, not inconsistent with this Title and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Board including, but not limited to:

1. Internal operational procedures;

2. The forms to be used for purposes of this Title;

3. Procedures for conducting investigations and inspections;

4. Procedures for all hearings conducted by the Board;

5. Conditions of sanitation of premises of licensees of the Board; and

6. Protection of the due process rights of all persons subject to the enforcement of this Title by the Board.

Section 16-2-17. Board Seal.

1. The Board shall acquire an official seal which shall be used on all original and/or certified copies of all documents of the Board to evidence their authenticity.

2. The seal of the Board shall:

a. Be circular in shape;

b. Contain the words "Ponca Tribe of Nebraska" around the top edge;

c. Contain the words "Liquor Control Board" around the bottom edge; and

d. Contain the words "Official seal" in the center.

3. The seal shall be secured at all times to prevent unauthorized use.

Section 16-2-18. Stamps and Licenses.

1. The Board shall provide for the form, size, color, and identifying characteristics of all licenses, permits, stamps, tags, receipts, or other instruments evidencing receipt of any license or payment of any fee administered by the Board or otherwise showing compliance with this Title.

2. Any instrument developed by the Board under this Section shall contain at least the following information:

a. The words "Ponca Tribe" or, if space allows, "Ponca Tribe of Nebraska;"

b. If space allows, the words "Liquor Control Board;"

c. If the instrument is a license or permit, an indication of the type of license or permit, its effective

dates, and the name and address of the person to whom it is issued; and

d. If the instrument is a receipt, an indication of what the receipt is for, any amount the receipt is for, and the name and address of the person to whom it is issued.

3. The Board shall provide for the manufacture, delivery, storage, and safeguarding of any instrument developed under this Section and shall safeguard such instruments against theft, counterfeiting, and improper use.

Section 16-2-19. Records of Board.

1. The Board shall create and maintain accurate and complete records which contain information and documents necessary for the proper and efficient operation of the Board, including, but not limited to:

a. All licenses, permits, and the like issued and any fees received for the same;

b. All fees and penalties imposed, due, and collected; and

c. Each and every official transaction, communication, or action of the Board.

2. The records of the Board shall be maintained at the office of the Board and shall not be removed from said office without the written authorization of the Board.

3. Except where provided otherwise in the laws of the Tribe, the records and other information of the Board shall be considered public records of the Board and shall be provided or made available for inspection during regular business hours upon proper written request to the Board and payment of any copying costs set by the Board, provided that confidential personal information appearing in such records is rendered unreadable prior to provision or inspection.

4. The records of the Board shall be subject to audit at any time at the direction of the Tribal Council, but not less than once each year.

Section 16-2-20. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Board may use the services, information, or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies, and others shall furnish such services, information, or records upon request of the Board; and

2. The Board may use personnel and employees of the Tribal administration as it would personnel and employees of the Board, provided the Board coordinates with and obtains approval from the Tribal administration.

CHAPTER 3
LIQUOR LICENSES

Section 16-3-1. License Required. No person may sell, distribute, or manufacture liquor on or to Tribal lands except as specifically authorized by a license issued in accordance with this Chapter and compliance with all other applicable laws governing the same.

Section 16-3-2. Exemptions. The following liquor and activities shall be exempt from the provisions of this Title, including the requirement of a liquor license:

1. Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopeia or dispensatory of the United States;

2. Wine or beer manufactured in a residence for consumption therein and not for sale;

3. Alcohol used or intended for use:

a. For scientific research or manufacturing products other than liquor;

b. By a physician, medical or dental clinic, or hospital;

c. In tinctures or toilet, medicinal, or antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for beverage purposes, such as cleaning compounds;

d. In food products known as flavoring extracts when manufactured and sold for cooking, culinary, or flavoring

purposes, and which are unfit for use for beverage purposes; or

e. By persons exempt from regulation in accordance with the laws of the United States;

4. Ethanol or ethyl alcohol for use as fuel; and

5. Liquor used in a bona fide religious ceremony.

Section 16-3-3. Liquor Licenses.

1. Licenses issued by the Board shall be of the following types:

a. Manufacturer license;

b. Wholesale license;

c. Retail license; and

d. Special event license.

2. Except for special event licenses, a license issued by the Board shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

3. Any person required to obtain a license under this Chapter who fails to obtain such license or who continues to manufacture, distribute, or sell liquor after such license has been revoked shall forfeit his or her right to manufacture, distribute, or sell liquor on or to Tribal lands until he or she complies with all of the provisions of this Title.

Section 16-3-4. Manufacturer License.

1. A person shall be required to first obtain a manufacturer license from the Board if such person:

a. Brews, distills, or otherwise manufactures liquor on Tribal lands; or

b. Otherwise is a manufacturer located on Tribal lands or to whom this Title applies.

2. If a person manufactures liquor at two or more separate places of business on Tribal lands, a separate manufacturer license shall be required for each place of business.

3. A manufacturer license shall allow, without the requirement of any other license under this Chapter:

a. The manufacture, distilling, brewing, and storage of liquor on Tribal lands;

b. The distribution of liquor brewed, distilled, or otherwise manufactured by the manufacturer to licensees on Tribal lands;

c. The distribution of liquor brewed, distilled, or otherwise manufactured by the manufacturer on or from the location on Tribal lands designated in the manufacturer license;

d. The purchase of liquor from licensed wholesalers and licensed manufacturers;

e. The sampling of liquor on the premises of the manufacturer, a licensed retailer, or licensed wholesaler by a licensee and his or her employees; and

f. The retail on-sale of liquor to individuals on the premises of the manufacturer.

4. The fees for a manufacturer license, including the renewal thereof, shall be set by the Board.

Section 16-3-5. Wholesale License.

1. A person shall be required to first obtain a wholesale license from the Board if such person:

a. Distributes liquor to Tribal lands or to any person on Tribal lands;

b. Distributes liquor from a location on Tribal lands;

c. Stores liquor on Tribal lands for the purpose or intent of distributing such liquor to any person; or

d. Otherwise is a wholesaler located on Tribal lands or to whom this Title applies.

2. If a person distributes liquor at two or more separate places of business on Tribal lands, a separate wholesale license shall be required for each place of business.

3. A wholesale license shall allow:

a. The distribution of liquor to licensees on Tribal lands;

b. The distribution of liquor on or from the location on Tribal lands designated in the wholesale license; and

c. The sampling of liquor on the premises of the wholesaler or a licensed retailer by a licensee and his or her employees.

4. The fees for a wholesale license, including the renewal thereof, shall be set by the Board.

Section 16-3-6. Retail License.

1. A person shall be required to first obtain a retail license from the Board if such person:

a. Engages in the retail sale of liquor on Tribal lands; or

b. Otherwise is a retailer located on Tribal lands or to whom this Title applies.

2. If a person makes sales or is a retailer at two or more separate places of business on Tribal lands, a separate retail license shall be required for each place of business.

3. A retail license shall allow:

a. The purchase of liquor for retail sale from licensed wholesalers and licensed manufacturers;

b. The sale at retail, offering for sale at retail, and giving away of liquor on the premises of the retailer specified in the retail license for use or consumption but not for resale in any form; and

c. If the license permits on-sales, the use or consumption of liquor, including sampling, on the premises of the retailer by customers of the retailer.

4. A retail license shall designate whether the licensee is permitted to make on-sales or off-sales, but shall not permit both.

5. The fees for a retail license, including the renewal thereof, shall be set by the Board.

Section 16-3-7. Special Event License.

1. A person shall be required to first obtain a special event license from the Board if such person engages in the retail sale of liquor on Tribal lands for a period of less than seven (7) consecutive days for an event.

2. If a person required to obtain a special event license makes sales at two or more separate locations or events on Tribal lands, a separate special event license shall be required for each location.

3. A special event license shall allow:

a. The purchase of liquor for retail sale from licensed wholesalers and licensed manufacturers;

b. The sale at retail, offering for sale at retail, and giving away of liquor for use or consumption on the premises of the event specified in the license, but not for resale in any form; and

c. The sampling of liquor on the premises of the event by customers of the licensee.

4. A special event license shall designate the precise day or period of days for which the license was issued and shall be valid only for such designated day or days.

5. The fees for a special event license shall be set by the Board.

6. The Board may provide by regulation for issuing special event licenses utilizing expedited applications and procedures exempt from the notice and hearing requirements of this Chapter to licensed retailers conducting on-sales, including caterers and the like, for the purpose of allowing such retailers to sell and offer

for sale liquor at events on premises other than the premises designated in the retail license.

Section 16-3-8. Registration of Salesmen.

1. No person may take or solicit orders for liquor from a retailer or wholesaler on Tribal lands without first registering with the Board and providing the following:

a. His or her name and address or equivalent information to identify the person or persons taking or soliciting such orders;

b. The name and address of his or her employer or principal; and

c. Such other information the Board may require.

2. There shall be no fee for registration under this Section, but registration shall require renewal each calendar year.

Section 16-3-9. Application for License.

1. Any person or entity desiring a license pursuant to this Chapter shall complete and file an application for the appropriate license with the Board and pay such application fee as may be set by the Board to defray the costs of processing the application.

2. In addition to any other items required by the Board, all applications for a license pursuant to this Chapter shall include the following:

a. The name, address, and telephone number of the applicant;

b. Any other names used by the applicant, including trade names;

c. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity and the jurisdiction where the applicant is organized or registered to conduct business;

d. The names, addresses, telephone numbers, and social security numbers of the applicant’s principals, which shall include the applicant’s officers, directors, managers,

owners, partners, and stockholders that own twenty-five percent (25%) or more of the applicant's business, and the ten (10) largest owners, partners, and stockholders of applicant's business regardless of percentage of stock owned;

e. The identity of all persons, other than principals, who have an economic interest in the applicant's business;

f. The federal tax identification number or social security number of the applicant;

g. The location where the applicant intends to sell, distribute, or manufacture liquor, as the case may be;

h. The type of application desired;

i. Whether the applicant will sell, distribute, or manufacture liquor;

j. Whether the applicant is licensed to sell, distribute, or manufacture liquor, as applicable, by the appropriate state within whose boundaries the applicant is geographically located;

k. Information on each liquor license which the applicant has held in any jurisdiction;

l. Whether the applicant or any of its principals have been convicted of or plead guilty to a felony or any criminal offense regarding liquor, including driving while intoxicated or under the influence of liquor;

m. Whether the applicant or any of its principals have had a liquor license revoked or suspended in any jurisdiction; and

n. Agreement by the applicant to comply with all applicable laws and all conditions of the license issued by the Board.

Section 16-3-10. Notice of Application.

1. Upon receipt of an application for a license, the Board shall issue a notice of the application which shall include:

a. The name of the applicant;

b. The location where the applicant intends to sell, distribute, or manufacture liquor;

c. The date the Board intends to consider the application, which shall be no sooner than thirty (30) days after the notice is posted in accordance with this Section;

d. Information on submitting comments on the application to the Board by mail or electronic means; and

e. A statement that comments on the application must be received no later than the day prior to the Board considering the application.

2. The notice of the application shall be posted at all Tribal governmental offices, the applicant's location if located on Tribal lands, on the Tribe's website for at least thirty (30) days and, if an edition of the Tribal newsletter will be released prior to consideration of the application, published in the Tribal newsletter.

3. Persons may submit comments on the application in the manner prescribed by the Board any time prior to the Board considering the application.

Section 16-3-11. Processing Application.

1. Upon receipt of an application for a license, the Board shall conduct or cause to be conducted a background investigation of the applicant and each of its principals. The background investigation shall include, at a minimum:

a. Verification of the applicant's business organization and registration status;

b. Verification of the applicant's state liquor license, its status, and any enforcement history; and

c. Conducting a criminal history check of the applicant and the applicant's principals.

2. The Board shall issue a license to an applicant only if it finds, after considering the application and any comments submitted by the public:

a. The applicant did not knowingly provide any false information to the Board regarding its application;

b. The applicant is or is expected to be licensed to sell, distribute, or manufacture liquor, as applicable, by the appropriate state within whose boundaries the applicant is geographically located;

c. If the applicant is a corporation or other entity, that it is organized under the laws of the Tribe or registered to conduct business in the territory of the Tribe in accordance with the laws of the Tribe governing the same;

d. Neither the applicant nor any of its principles has been convicted of or plead guilty to a felony or any criminal offense related to liquor in any jurisdiction, other than driving while intoxicated or under the influence of liquor;

e. Neither the applicant nor any of its principals has had a liquor license revoked in any jurisdiction in the previous two (2) years;

f. The requirements of this Title and the Board's rules and regulations have been met;

g. The applicant's capability, qualifications, and reliability are satisfactory; and

h. The best interests of the Tribe, its members, and the community as a whole will be served by the issuance of the license.

3. In reviewing an applicant's capability, qualifications, and reliability, the Board shall consider:

a. The character and reputation of the applicant;

b. The suitability of the physical premises of the applicant;

c. The plan of operation of the applicant; and

d. Any other relevant consideration.

4. In reviewing the interests of the Tribe, its members, and the community as a whole, the Board shall consider:

a. The need of the area to be served by the applicant;

b. The number of existing licensed businesses covering the area;

c. The desires of the community within the area to be served;

d. Any law enforcement problems which may arise because of the sale, distribution, or manufacture of liquor by the applicant; and

e. Any other relevant consideration.

5. The Board, in its discretion and upon notice to the applicant and the public, may conduct a hearing regarding any application. Such hearing shall be open to the public and any interested persons shall be permitted to present information, including witnesses and evidence, to the Board regarding the application.

6. If an applicant has not obtained a liquor license from the appropriate state within whose boundaries the applicant is located, the Board may approve the applicant's license conditioned upon the receipt of such state liquor license. If the Board conditionally approves a license pursuant to this subsection, the Board shall not issue a license to the applicant unless and until the applicant provides satisfactory proof that it has received a state liquor license.

7. The Board shall issue a decision on the application in writing. The Board's decision shall be served on the applicant and posted at all Tribal governmental offices and on the Tribe's website for at least fifteen (15) days and published in the next edition of the Tribal newsletter.

Section 16-3-12. Form of License.

1. Each license issued pursuant to this Chapter shall specify:

a. The name and address of the licensee;

b. The type of license issued;

c. The premises to which the license applies;

d. If the license is a manufacturer license, the type of liquor the licensee is permitted to manufacture, distill, brew, store, and sell; and

e. If the license is a retail license, whether it permits on-sales or off-sales with respect to the premises to which the license applies.

2. The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.

3. Licensees must pay all taxes assessed against it under the laws of the Tribe.

4. Licensees shall comply, as a condition of retaining such license, with all applicable laws of the Tribe and with all requests of the Board for inspection, examination, and audit permitted under this Title.

5. Notwithstanding anything else in the laws of the Tribe, a license issued pursuant to this Chapter constitutes only a permit to the licensee to conduct the activities permitted by the license for the duration of the license and shall not be construed or deemed to constitute a property or other vested right of any kind or give rise to a legal entitlement to a license for any future period of time.

Section 16-3-13. Renewal of License.

1. A licensee may renew its license by filing an application for renewal with the Board and paying such renewal application fee as may be set by the Board to defray the costs of processing the application.

2. The renewal application shall identify any changes in information required on the licensee's application for a license since the issuance of the license or previous renewal, whichever is later, or the applicant shall certify that no such information has changed.

3. A license issued pursuant to this Chapter shall be automatically renewed upon submission of a renewal application and payment of the applicable annual license fee, unless:

a. Information required on the application for a license has changed in such a manner that it makes the licensee ineligible for a license under this Chapter; or

b. The Board determines in writing that renewal would not be in the best interests of the Tribe, its members, or the community as a whole.

Section 16-3-14. Transfer and Modification of License.

1. No license issued pursuant to this Chapter may be assigned or transferred to any other person or entity.

2. Any change in ownership of the licensee that constitutes more than fifty percent (50%) of the ownership interest in a licensee shall require the issuance of a new license in accordance with this Chapter.

3. A licensee may request a change in the name and/or address of the licensee or a change in location of the premises to which the license applies by applying with the Board for a modification of the license in accordance with this Section and paying such fee as may be set by the Board to defray the costs of processing the modification.

4. The Board shall approve a change in the address of the licensee upon request, provided the change in address is not a change in location. The Board shall approve a change in the name of the licensee provided that the name is not the name of an individual and the change is not the result of any change in more than fifty percent (50%) of the ownership interest in the licensee.

5. If a licensee requests a change in location, the Board shall issue and post a notice of the modification of location and permit public comment the same as an application for a new license. The Board shall approve a change in location only if it finds, after considering the application and any comments submitted by the public:

a. The applicant has obtained or is in the process of obtaining a license or modification for the new location from the appropriate state within whose boundaries the applicant is located, provided that the Board may approve the change in location conditioned upon the receipt of such state license or modification so long as the Board does not issue the modified license unless and until the applicant provides

satisfactory proof that it has received a state license or modification;

b. The physical premises of the new location is suitable for the license; and

c. The best interests of the Tribe, its members, and the community as a whole will be served by the modification of the location.

6. If the Board approves a modification of a license pursuant to this Section, the Board shall issue a modified license to the licensee reflecting the modified information. The modified license shall expire on the same date as the original license.

7. Any modification of a license not provided for in this Section shall require the issuance of a new license in accordance with this Chapter.

Section 16-3-15. Appeal. An applicant or licensee may request a formal conference regarding or file an appeal of a decision of the Board denying an application for a license or any renewal or modification thereof in accordance with the provisions of this Title governing appeals before the Board.

Section 16-3-16. Sale of Stock.

1. Upon revocation, non-renewal, or other termination of a license issued pursuant to this Chapter, a former licensee may dispose of any liquor in its stock within thirty (30) days of expiration of its former license by:

a. Selling such stock in whole or in part to a wholesaler or retailer licensed pursuant to this Chapter;

b. Selling such stock in whole or in part to a wholesaler or retailer located outside Tribal lands and authorized to purchase such liquor;

c. Moving such stock in whole or in part outside Tribal lands to a location where such liquor is authorized to be stored or held; or

d. Destroying such liquor under the supervision of the Board.

2. The Board may grant a former licensee an additional twenty (20) days to sell or otherwise dispose of its stock upon the former licensee showing good cause for such extension and no failure in due diligence to make such disposal.

3. Any liquor remaining in the possession of a former licensee and not disposed of in accordance with this Section shall be treated as contraband in accordance with this Title.

4. A former licensee shall submit to the Board a complete report of the disposition of all stock pursuant to this Section.

Section 16-3-17. Duty to Keep Records. Every licensee shall keep and maintain accurate records of the purchase and sale of liquor, including books of account, invoices, and bills. Such records shall be maintained for a period of at least two (2) years.

Section 16-3-18. Operation of Licensed Premises.

1. No licensee may reseal, reuse, or refill any package that contains or contained liquor.

2. No retail licensee may lock, or permit the locking of, the entrances to the licensed premises until all persons other than the licensee and its employees have left.

3. No licensee may change the name of its licensed premises without first obtaining a modification of its license as provided in this Chapter.

4. A licensee shall conduct its business in a decent, orderly, and respectable manner and shall not permit loitering by intoxicated persons, rowdiness, undue noise, or any other disturbance offensive to the residents near the location of the licensee.

5. A retail licensee shall demand satisfactory evidence of a person's age upon such person's attempt to purchase any liquor from the retail licensee if such person appears to the retail licensee to be under the age of twenty-one (21) and shall refuse to sell liquor to any such person who fails or refuses to produce such satisfactory evidence. Satisfactory evidence of age shall include:

a. A driver's license or identification card validly issued by any state department of motor vehicles;

b. A United States active duty military identification;

c. A passport validly issued by any jurisdiction; and

d. Identification card issued by a federally recognized tribe which includes a photograph and date of birth.

Section 16-3-19. Insurance.

1. Licensees and their employees are liable for injuries or damage to property resulting from their negligent or reckless acts and omissions, whether in the operation of the licensed premises or in their violation of this Title.

2. All manufacturers and retailers conducting on-sales shall maintain insurance coverage insuring against liability under this Section in an amount required by rules and regulations of the Board or, if not provided therein, in the amount of at least $1,000,000.00 for bodily injury to any one (1) person, $500,000.00 for any one (1) accident or personal injury, and $100,000.00 for property damage.

CHAPTER 4
ENFORCEMENT AND VIOLATIONS

Section 16-4-1. Complaints.

1. Allegations of a violation of this Title shall be presented to the Board by submitting a complaint with such allegation in writing to the Chairperson of the Board or his or her designee.

2. A complaint may be submitted by any Board member or member of the public who believes that a person has committed a violation of this Title.

3. A complaint shall specify the person against whom the allegation is being made and the conduct that is alleged to be in violation of this Title.

4. Upon receipt of a complaint pursuant to this Section, the Board shall review the complaint to determine if the allegations made fall within the scope of this Title and whether,

assuming the facts alleged are true, said facts would constitute a violation of this Title.

5. If the Board determines that the allegations do not fall within the scope of this Title or do not allege facts which, if true, would constitute a violation of this Title, the Board shall provide written notice to the complainant which shall state that:

a. The Board received the complaint;

b. The Board has reviewed the complaint in accordance with the provisions of this Chapter;

c. The Board has determined that the allegations do not fall within the scope of this Title and/or do not allege facts which would constitute a violation of this Title; and

d. The matter is closed.

6. If the Board determines that the allegations fall within the scope of this Title and allege facts which, if true, would constitute a violation of this Title, the Board shall make or cause to be made a preliminary investigation of the allegations in the complaint and, if there is reason to believe the allegations in the complaint, the Board shall issue a notice of violation as provided in this Chapter.

Section 16-4-2. Examination and Audit.

1. The Board may examine and audit any licensee for the purpose of enforcing this Title.

2. In conducting an examination and audit pursuant to this Section, the Board may:

a. Examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry upon reasonable notice:

i. During normal business hours;

ii. At any other time agreed to by the person having possession, custody, or care for such data; or

iii. At any time pursuant to an order of the Tribal Court;

b. Summon the licensee, any officer, employee, or agent of the licensee, or any person having possession, custody, or care of the books of account containing entries relating to the business of the licensee or required to perform the act, or any other person the Board may deem proper, to appear before the Board at the time and place named in the summons and to produce such books, records, papers, maps, documents, or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry; and

c. Take testimony of any person, under oath, as may be relevant or material to the inquiry.

Section 16-4-3. Notice of Violation.

1. If the Board has reason to believe that a violation of this Title has occurred, the Board shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title alleged to have been violated;

b. The Board will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner provided for service of a summons in the rules of procedure governing civil actions in Tribal Court.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Board shall consider any written

response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Board may:

a. Close the notice of violation if satisfied by the accused's response; or

b. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this Title occurred, the Board shall determine an appropriate sanction for such violation as provided in this Chapter, including civil fine, license suspension or revocation, or both, and impose such sanction in accordance with the provisions of this Chapter.

7. Written notice shall be provided of the Board's decision under this Section.

Section 16-4-4. Formal Conference.

1. Within thirty (30) days of service of a decision of the Board, a person subject of the decision may request a conference with the Board to seek a review and redetermination of the decision.

2. A request for a conference shall:

a. Be made in writing to the Board or its designee;

b. Identify the decision of the Board;

c. Declare the redetermination sought; and

d. Include a complete statement of the facts relied on.

3. The Board, after an initial inquiry, may deny the request for a conference and direct the person to proceed to an appeal in accordance with this Chapter.

4. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the conference.

5. The Board may confer with the person by phone or in person, or may require the submission of additional written

material and will issue a written decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

6. After the Board issues its decision, the person may appeal the matters in dispute as provided in this Chapter. The person may request a stay of the decision within ten (10) days after issuance of the decision, provided the request is based upon an intention to request a hearing.

7. If no appeal is made within the time allowed, the decision from a formal conference is final and is not subject to any appeal before the Board or in any court.

Section 16-4-5. Appeal.

1. Within thirty (30) days of service of a decision of the Board or issuance of a decision from a formal conference, a party aggrieved by the decision may file an appeal with the Board.

2. A request for appeal shall:

a. Be made in writing to the Board;

b. Identify the decision of the Board;

c. Identify any conference decision;

d. Declare the redetermination sought; and

e. Include a complete statement of the facts relied on.

3. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the appeal.

4. The Board shall conduct a hearing on the applicant's appeal and take testimony and examine documentary evidence as necessary to determine the appeal.

5. After hearing an appeal, the Board shall issue a decision. The decision of the Board on an appeal under this Section shall be the final decision of the Board, provided that the Board shall have been deemed to have issued a final decision denying an appeal if the Board:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

6. The Board may permit or require, pursuant to the rules and regulations of the Board, one or more levels of review by its employees or delegates in addition and prior to appeal to the Board, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

7. The failure to file an appeal pursuant to this Section shall not prevent the aggrieved party from defending any action brought by the Board against the party in Tribal Court.

Section 16-4-6. Judicial Review.

1. If a party is aggrieved by a final decision of the Board on appeal, the party may challenge the decision by filing a petition requesting judicial review of the Board's decision in the Tribal Court.

2. Judicial review of the Board's decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Board's decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Board;

c. No new or additional issues may be raised and only issues raised before the Board may be heard regardless of the Board's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Board unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Board;

e. In reviewing legal conclusions reached by the Board, the Tribal Court shall give proper weight to the

Board's interpretation of this Title and any rules and regulations of the Board;

f. The Tribal Court shall affirm any determination by the Board that the issuance, renewal, or modification of a license is not in the best interests of the Tribe, its members, or the community as a whole unless such determination is clearly arbitrary and capricious;

g. The Tribal Court may affirm, reverse, modify, or vacate and remand the Board's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Board is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion;

iv. Beyond the Board's authority; or

v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Board if the person filing the action has not exhausted all administrative remedies before the Board, including an appeal to the Board.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a party except for affirming, reversing, modifying or vacating and remanding the decision of the Board.

5. The Tribal Court's jurisdiction to review a final decision of the Board shall be exclusive and a final decision of the Board shall not be subject to appeal, review, challenge, or other action in any court or tribunal except as provided in this Section.

Section 16-4-7. Storage, Sale, and Manufacture Violations.

1. It shall be a violation of this Title:

a. To introduce, store, possess, sell, offer for sale, distribute, transport, or manufacture liquor without first

obtaining all necessary licenses or in any manner not authorized by this Title;

b. To store, sell, offer for sale, distribute, transport, or manufacture liquor in violation of any provision of this Title or the terms of a license issued pursuant to this Title;

c. To deliver liquor to a manufacturer, wholesaler, or retailer at any place other than the premises described in the license of such manufacturer, wholesaler, or retailer;

d. For any manufacturer, wholesaler, or retailer to keep or store any liquor at any place other than on the premises where such manufacturer, wholesaler, or retailer is authorized to operate and except as otherwise provided in this Title;

e. For any retailer to make or solicit orders for the delivery of liquor from any person unless such person is registered as a salesman in accordance with this Title;

f. For any wholesaler or manufacturer to take or solicit orders for the delivery of liquor through any person unless such person is registered as a salesman in accordance with this Title;

g. For any retailer to have any interest in the property or business of a manufacturer or wholesaler, provided the following shall not be an interest in the property or business of a retailer, manufacturer, or wholesaler:

i. The Tribe's ownership or other interest in lands or property;

ii. The Tribe's leasing, assignment, licensing, or other authorization of use or occupancy of lands or property or its status as a landlord, lessor, assignor, or licensor, even if the rent, fees, payment, or other consideration paid under any such lease, assignment, license, or other authorization is based on revenues of the tenant, lessee, assignee, licensee, or other user or occupant;

iii. The Tribe's ownership, operation, or establishment of a division, instrumentality, economic

enterprise, or other entity, even if the Tribe has a right to or receives revenues or distributions from, or assets of, such division, instrumentality, economic enterprise, or other entity; or

iv. The Tribe's regulatory or other governmental authority over a retailer, manufacturer, or wholesaler, including a lien or other encumbrance resulting from such regulatory or governmental authority.

h. For any licensee to neglect or refuse to produce or submit for inspection, examination, or audit any records lawfully requested by the Board in accordance with this Title;

i. For a retailer to obtain liquor in unbroken packages except from a manufacturer or wholesale licensee;

j. For a retailer or employee of a retailer to accept or give gifts of liquor in connection with its business, except for the sampling of liquor permitted in this Title;

k. For a manufacturer or retailer conducting on-sales to employ any person for the purpose of soliciting the purchase of liquor within the licensed premises on a percentage or commission basis;

l. For a manufacturer or retailer conducting on-sales to sell liquor without insurance coverage as required by this Title;

m. To knowingly employ a person under the age of majority in the sale, distribution, or manufacture of liquor;

n. For a manufacturer conducting on-sales, a retailer, or an employee of either to consume liquor or be intoxicated while selling liquor on the licensed premises;

o. For a manufacturer conducting on-sales or a retailer to sell liquor for anything other than cash, check, or credit or debit card transaction or to extend credit to any person, organization, or entity for the purchase of liquor;

p. For a retailer conducting off-sales or an employee of such a retailer to sell or give liquor in broken or refilled packages;

q. For a retailer conducting off-sales or an employee of such a retailer to permit the consumption of liquor on the retailer's premises;

r. For a retailer conducting on-sales or an employee of such a retailer to sell or give liquor for consumption off the retailer's premises;

s. To knowingly sell liquor to a person under the age of twenty-one (21) years;

t. For a manufacturer, retailer, or employee of either to sell or give any liquor to any person or permit the consumption of liquor on the licensed premises between the hours of two 2:00 a.m. and 6:00 a.m., provided that a manufacturer may sell or give liquor in unopened packages to wholesale and retail licensees during any hour; or

u. For a manufacturer or retailer conducting on-sales or an employee of either to sell or give liquor to an intoxicated person within the licensed premises.

2. If an act is a violation of this Title when committed by a licensee, retailer, wholesaler, manufacturer, or entity, the licensee, retailer, wholesaler, manufacturer, or entity is also liable if the act is committed by one of its employees or agents.

3. In addition to any other consequences for a violation of this Title, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to one thousand dollars ($1,000) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16-4-8. Violations by Public.

1. It shall be a violation of this Title for any person:

a. Who is under the age of twenty-one (21) years, to:

i. Purchase or attempt to purchase liquor except at the direction and under the supervision of the Board, its designee, or other law enforcement official for the

purpose of enforcing this Title or other applicable law governing liquor on Tribal lands;

ii. Consume or possess liquor except for possession as a part of employment to the extent permitted under this Title and any applicable state or federal law, consumption or possession as part of a bona fide religious ceremony, or consumption or possession in his or her permanent place of residence; or

iii. Attempt to purchase liquor through the use of false or altered identification which purports to show the person to be over the age of twenty-one (21) years;

b. To consume liquor from a broken package in a public place, other than licensed premises specified in a manufacturer license, a retailer license which allows on-sales, or a special event license; or

c. To transfer in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor, provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this subsection.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to one hundred dollars ($100) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16-4-9. Other Violations.

1. Any act or transaction which does not comply with any provision of this Title or any rule, regulation, order, or decision of the Board shall be a violation of this Title and deemed an act or transaction not in conformity with this Title.

2. In addition to any other consequences for a violation of this Title, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to five hundred

dollars ($500) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16-4-10. Reporting of Violations. The Board may report any violation of this Title to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Section 16-4-11. Revocation and Suspension of License.

1. The Board may summarily suspend for up to fifteen (15) days the license of any person upon a finding of imminent danger to the public welfare caused by the licensee or any act or omission of the licensee.

2. The Board, after at least ten (10) days notice and a full hearing, may revoke the license of any person for any of the following:

a. Repeatedly violating or permitting the violation of any provision of this Title or the rules and regulations of the Board;

b. Failure or refusal to pay all taxes imposed on the sale, distribution, or manufacture of liquor under the laws of the Tribe;

c. Misrepresentation of a material fact in the licensee's application for a license or any renewal thereof;

d. The occurrence of any event which would have made the licensee ineligible for a license if the event had occurred prior to the issuance of the license;

e. Failure to maintain insurance coverage as required by this Title for a continuous period of more than thirty (30) days;

f. Imminent danger to the public welfare caused by the licensee or any act or omission of the licensee which has not been corrected within a reasonable time after notice from the Board; or

g. Failure of the licensee to correct an unhealthy or unsafe condition on the licensed premises within a reasonable time after notice from the Board.

3. The Board may suspend the license of any licensee for a period not exceeding one-hundred eighty (180) days as an alternative to revoking the license if the Board is satisfied that the grounds giving rise to the revocation or the circumstances thereof are such that a suspension of the license would be adequate.

4. Any suspension of a license pursuant to this Section shall be effective twenty-four (24) hours after service of notice thereof upon the licensee. During any period of suspension of a license, the licensee shall have and exercise no rights or privileges whatsoever under the license.

5. After revocation of a license, the licensee's rights and privileges under such license shall terminate twenty-four (24) hours after service of notice thereof upon the licensee. Any licensee whose license is revoked shall not be granted any license under the provisions of this Title for a period of two (2) years from the date of revocation.

Section 16-4-12. Enjoining Business. In addition to any other remedies available to it, the Board may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Title requires a license for the conduct of such business, activity, or function or of any other unlawful business, activity, or function. The enjoining of any person pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 16-4-13. Seizure of Contraband.

1. In addition to any other remedies available to it, the Board, pursuant to an order issued by the Board, may seize any liquor possessed contrary to the terms of this Title, including liquor possessed for manufacture or sale, as contraband.

2. Upon seizure of any liquor pursuant to this Section, the Board shall inventory all items seized and leave a written copy of such inventory with the person from whom it was seized or, if such person cannot be found, posted at the place from which the liquor was seized.

3. Any person who claims an ownership interest, right of possession to, or other interest in liquor seized pursuant to this Section may request a formal conference regarding or file an appeal of the Board's seizure of such liquor in accordance with the provisions of this Chapter governing appeals before the Board.

4. Upon the expiration or conclusion of any appeal permitted under this Chapter of seizure of liquor pursuant to this Section, including permitted judicial review, such liquor shall be forfeited and all title and ownership interest in such liquor shall vest in the Tribe unless an appeal or judicial review returns such liquor to the person from whom it was seized or other person entitled thereto.

5. If necessary, the Board may file a complaint for forfeiture against any liquor seized pursuant to this Section in the Tribal Court. Upon the Board showing by a preponderance of the evidence that seized liquor is contraband under this Title, the Tribal Court shall enter an order that such liquor is forfeited and that all title and ownership interest in such liquor is vested in the Tribe.

6. Any liquor seized pursuant to this Section to which title has vested in the Tribe that is no longer required for evidence may be sold for the benefit of the Tribe or destroyed under the supervision of the Board.

Section 16-4-14. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a decision of the Board as provided in this Title, nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Board or any of its agents, officers, officials, personnel, or employees.

2. An action brought or taken by the Board, including without limitation the bringing of suit for the collection of fines or enjoining a business, activity, or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Board, including a suit for the collection of fines or the enjoining of a business, activity, or function of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity

of its economic enterprises in any action brought or taken by the Board against such economic enterprises.

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PONCA TRIBE OF NEBRASKA
TITLE XVII
ENVIRONMENT

CHAPTER 1
GENERAL PROVISIONS

Section 17-1-1. Purpose. The Tribe wishes to exercise its sovereignty and federal delegated authority to protect the environment within the territory of the Tribe and, therefore, the purpose of this Title is:

1. To protect the Tribe's rights reserved under treaties and the environment and natural resources within the territory of the Tribe;

2. To protect the Tribe and its members from adverse health effects resulting from contamination of the land, air, and water;

3. To prevent, reduce, minimize, and, where practicable, eliminate harm to the environment by fostering relationships to encourage and assist action by industry, public authorities, and the community aimed at pollution prevention, clean production and technologies, education, re-use and recycling of material and natural resources, and waste minimization;

4. To coordinated activities, policies, and programs necessary to prevent, reduce, minimize, or eliminate environmental harm and ensure effective environmental protection, restoration, and enhancement;

5. To coordinate with other governments to create appropriate intergovernmental arrangements promoting greater uniformity and effectiveness in environmental protection; and

6. To prevent potentially harmful activities and to progressively make environmental improvements.

Section 17-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Department" means the Ponca Tribe of Nebraska Environmental Protection Department.

2. "Environment" means any and all surface water, ground water, drinking water supply, land surface, subsurface, air, fish,

wildlife, plant life, and other biota within the territory of the Tribe or otherwise under the jurisdiction of the Tribe.

3. "Operator" means any person, other than the Tribe, who operates, controls, or has responsibility for the operation of a site, property, or activity.

4. "Owner" means any person, other than the Tribe, who alone, or jointly or severally with others, has legal title to any site, property, or activity or has care, charge, or control of any site, property, or activity as agent, executor, administrator, trustee, lessee, commercial lessee, or guardian of the estate of the holder of legal title, or is the contract purchaser of a site, property, or activity.

5. "Pollutant" means any element, substance, compound, or mixture, including disease-causing agents, which:

a. After release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause harm, death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformations in such organisms or their offspring; or

b. By itself or in connection with any other element, substance, compound, or mixture, will or tends to create a public nuisance or be detrimental or injurious to the public health, safety, or welfare, or harmful to the environment or domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses of the environment or livestock, wildlife, fish, or other biota;

c. Is considered or declared a pollutant, hazardous substance, hazardous waste, hazardous chemical substance, toxic substance, or otherwise dangerous or injurious to humans, wildlife, biota, or the environment by any law of the United States; or

d. Otherwise alters the physical, chemical, or biological properties of the environment, including change in temperature, taste, color, turbidity, silt, or odor.

Section 17-1-3. Territorial Jurisdiction.

1. The effective area of this Title shall extend to all waters and lands in the territory of the Tribe, including the air above and substances beneath all such lands and waters.

2. Where a person, whether by action or inaction, causes significant environmental harm to occur within the territory of the Tribe by conduct engaged outside the territory of the Tribe and the conduct would, if affecting the area within the territory of the Tribe, constitute a violation of this Title, the activity shall be considered in violation of this Title.

Section 17-1-4. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 17-1-5. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
ENVIRONMENTAL PROTECTION DEPARTMENT

Section 17-2-1. Establishment.

1. There is hereby established an Environmental Protection Department as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of an Environmental Manager and such other personnel and employees as may be required.

Section 17-2-2. General Authority. The Department shall have the following powers, duties, and responsibilities:

1. To administer, implement, and enforce this Title and enforce and assist in the enforcement of all laws of the Tribe relating to the protection and regulation of the environment;

2. To make recommendations to the Tribal Council concerning amendments to this Title and other laws of the Tribe protecting and regulating the environment;

3. To bring legal action in the name of the Tribe to enforce this Title;

4. To conduct investigations and gather information necessary for the enforcement of this Title and other laws of the Tribe protecting and regulating the environment;

5. To monitor, inspect, and ensure entities and persons covered by this Title are in compliance with this Title and other laws of the Tribe protecting and regulating the environment;

6. To obtain any information, including records and reports, from any owner or operator necessary to determine whether the owner or operator or any activity regulated pursuant to this Title is in compliance with this Title and other laws of the Tribe protecting and regulating the environment;

7. To conduct any independent monitoring or testing necessary to ensure compliance with this Title or other laws of the Tribe protecting and regulating the environment;

8. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States and the states as necessary to implement and enforce this Title or other laws of the Tribe protecting and regulating the environment;

9. To utilize or adopt forms, guidance, and other standards from other appropriate jurisdictions to use as its own so long as such forms, guidance, or other standards meet the requirements of the laws of the Tribe for which such forms, guidance, or other standards are utilized;

10. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title;

11. To perform all other duties delegated or assigned to the Department by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 17-2-3. Rules and Regulations. The Department may promulgate rules and regulations, not inconsistent with this Title

and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Department.

Section 17-2-4. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department may, subject to any laws or rules governing confidentiality of information, use the services, information, or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies, and others shall furnish such services, information or records upon request of the Department;

2. The Department may refer matters for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation, including any determinations therein, as its own, which shall then be treated as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation, including any determinations therein, made by another investigating agency or authority as its own and such investigation shall be treated as though conducted directly by the Department.

Section 17-2-5. Inspection Authority.

1. For the purpose of enforcing the provisions of this Title, the Department shall have the authority to enter and inspect any property, premises, or place during regular business hours in which a pollutant is reasonably believed to be located or in which relevant records may be located for the purpose of determining the compliance or noncompliance with any provision of this Title or any rule or regulation of the Department.

2. If entry or inspection pursuant to this Section is denied or not consented to, the Department may obtain from the Tribal Court a warrant to enter and inspect any such property, premises, or place prior to entry and inspection. The Tribal Court shall issue such warrants upon a showing that such entry and inspection is required to verify that the purposes of this Title are being carried out.

Section 17-2-6. Cease and Desist Orders.

1. If the Department determines that there exists a violation of any provision of this Title or any rule or regulation of the Department, the Department may issue a cease and desist order. Such order shall set forth:

a. The specific provisions of this Title or rule or regulation of the Department alleged to have been violated;

b. The facts alleged to constitute the violation; and

c. The time by which acts or practices complained of must be terminated.

2. In the event any person fails to comply with a cease and desist order, the Department may bring an action in the Tribal Court for a temporary restraining order, preliminary injunction, permanent injunction, or other appropriate relief to prevent any further or continued violation of such order.

3. In addition to any other consequences for a violation of this Title or rule or regulation of the Department, any person who fails to comply with any cease and desist order, including necessitating the enforcement of such order in Tribal Court, shall be subject to a civil fine of up to ten thousand dollars ($10,000) per day for each day during which such violation occurs.

Section 17-2-7. Notice of Violation.

1. If the Department has reason to believe that a violation of this Title or rule or regulation of the Department has occurred, the Department shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title or rule or regulation of the Department alleged to have been violated;

b. The Department will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner provided for service of a summons in the rules of procedure governing civil actions in Tribal Court.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Department shall consider any written response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Department may:

a. Close the notice of violation if satisfied by the accused's response; or

b. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this Title or rule or regulation of the Department has occurred, the Department shall determine an appropriate sanction for such violation as provided in this Title, including civil fine, cease and desist, cleanup, and/or remediation, and impose such sanction in accordance with the provisions of this Title.

7. Written notice shall be provided of the Department's decision under this Section.

Section 17-2-8. Appeal and Review. The Department may permit or require, pursuant to the rules and regulations of the Department, one or more levels of review of its orders and decisions by its employees or delegates, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

Section 17-2-9. Judicial Review.

1. If a party is aggrieved by any final order or decision of the Department, the party may challenge the final order or decision by filing a petition requesting judicial review of the order or decision in the Tribal Court.

2. Judicial review of the Department's order or decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Department's final order or decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Department;

c. No new or additional issues may be raised and only issues raised before the Department may be heard regardless of the Department's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Department unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Department;

e. In reviewing legal conclusions reached by the Department, the Tribal Court shall give proper weight to the Department's interpretation of this Title and any rules and regulations of the Department;

f. The Tribal Court may affirm, reverse, modify, or vacate and remand the Department's order or decision, but shall affirm the order or decision unless the Tribal Court concludes that the order or decision of the Department is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion;

iv. Beyond the Department's authority; or

v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Department if the person filing the action has not exhausted all administrative remedies before the Department.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any

remedy to a party except for affirming, reversing, modifying, or vacating and remanding the decision of the Department.

5. The Tribal Court's jurisdiction to review a final order or decision of the Department shall be exclusive and a final decision of the Department shall not be subject to appeal, review, challenge, or other action in any court or tribunal except as provided in this Section.

Section 17-2-10. Reporting of Violations. The Department may report any violation of this Title or other applicable law regulating or protecting the environment to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Section 17-2-11. Civil Penalties. In addition to any other consequences for a violation of this Title or rule or regulation of the Department, any person who violates any provision of this Title or any rule or regulation of the Department shall be subject to a civil fine of up to ten thousand dollars ($10,000) per day for each day during which such violation occurs.

Section 17-2-12. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a final order or decision of the Department as provided in this Chapter, nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Department or any of its agents, officers, officials, personnel or employees.

2. An action brought or taken by the Department, including without limitation, the bringing of suit for the collection of fines, enforcing an order, or enjoining an activity, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Department, including a suit for the collection of fines, enforcing an order, or enjoining an activity of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity of its economic enterprises in any action brought or taken by the Department against such economic enterprise.

CHAPTER 3
GENERAL ENVIRONMENTAL PROTECTION

Section 17-3-1. Protection of Environment Generally.

1. No person shall undertake any activity in the territory of the Tribe that will, or has the possibility to, pollute or harm the environment.

2. Every person shall take all reasonable measures to prevent or minimize any environmental harm from any activity conducted within the territory of the Tribe. In determining what measures are required to be taken under this subsection, regard shall be taken to, amongst other things:

a. The nature of the activity and the potential harm and the sensitivity of the receiving environment; and

b. The current state of technical knowledge and likelihood of successful application of the various measures that might be taken.

3. Where environmental harm can only be minimized through the application of reasonable and practical measures, the person causing the harm shall mitigate for the harm by replacing, restoring, or acquiring equivalent resources as those lost or potentially lost due to the harm.

Section 17-3-2. Waste Disposal. The storage, burial, or disposal of any pollutant within the territory of the Tribe is absolutely prohibited.

Section 17-3-3. Contamination of Sites.

1. For purposes of this Title, contamination exists at a site if:

a. One or more pollutants are present on or below the surface of the site in concentrations above the background concentrations, if any;

b. The pollutant has, at least in part, come to be present there as a result of an activity at the site or elsewhere; and

c. The presence of the pollutant has resulted in actual or potential harm to water, the environment, or the

health or safety of human beings, animals, plants, or wildlife that is not trivial, taking into account current or reasonable potential land uses.

2. For the purposes of this Title, a pollutant can result in harm regardless of whether:

a. The harm is a direct or indirect result of the presence of the pollutant; and

b. The harm results from the presence of the pollutant alone or the cumulative effects of the presence of the pollutant and other factors.

3. Contamination of a site is an environmental harm. Where contamination of a site exists due to a violation of the duty of reasonable care with respect to pollutants or other substances with the potential to pollute the environment and cause an environmental harm, contamination of a site shall be considered environmental negligence.

Section 17-3-4. Notice of Site Contamination. Any person who is an owner or operator where contamination of a site has occurred or is at substantial risk of occurring (other than a release expressly permitted by the Tribe or the United States) shall immediately notify the Department of such contamination as soon as he or she has knowledge of such contamination, but not more than twenty-four (24) hours from the time of knowing of the contamination. The Department shall convey the notification expeditiously to all appropriate departments and agencies of the Tribe and other governments.

Section 17-3-5. Clean Up of Contaminated Sites.

1. Whenever there is a contamination of a site or a substantial threat of contamination of a site, the Department is authorized to act to remove or arrange for the removal of such contamination and provide for remedial action relating to such site at any time.

2. Whenever the Department is authorized to act pursuant to this Section, the Department may undertake such investigations, monitoring, surveys, testing, and other information gathering as it deems necessary or appropriate to identify the existence and extent of the contamination, the source and nature of the contamination, the pollutants involved, and the extent of danger to the public health or welfare or to the environment. In

addition, the Department may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as it may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this Title.

Section 17-3-6. Clean-up Orders.

1. The Department may issue orders to any person to clean up any contamination at a site which he or his employee or agent has accidentally or purposely dumped, spilled, or otherwise deposited at the site.

2. In the event any person fails to comply with a clean-up order, the Department may bring an action in the Tribal Court for any appropriate relief to force such person to comply with the order.

3. In addition to any other consequences for a violation of this Title or rule or regulation of the Department, any person who fails to comply with a cleanup order, including necessitating the enforcement of such order in Tribal Court, shall be subject to a civil fine of up to ten thousand dollars ($10,000) per day for each day during which such violation occurs.

Section 17-3-7. Voluntary Cleanup Plans.

1. When the Department determines that removal and remedial action of a contaminated site will be done properly and promptly by the owner or operator or by any other responsible party, the Department may allow such person to carry out the removal and remedial action in accordance with this Section.

2. Any owner or operator may submit an application for the approval of a voluntary cleanup plan to the Department under the provisions of this Section.

3. A voluntary cleanup plan shall include:

a. An environmental assessment of the site which describes the contamination or risk of contamination on the site and the risk the contamination currently poses to public health and the environment and includes:

i. The legal description of the site and a map identifying the location and size of the site;

ii. The physical characteristics of the site and areas contiguous to the site, including the location of any surface water bodies and groundwater aquifers;

iii. The location of any wells located on the site or on areas within a one-half (1/2) mile radius of the site and a description of the use of those wells;

iv. The current and proposed use of on-site groundwater;

v. The operational history of the site and the current use of areas contiguous to the site;

vi. The present and proposed uses of the site;

vii. Information concerning the nature and extent of any contamination and releases of pollutants which have occurred at the site including any impacts on areas contiguous to the site;

viii. Any sampling results or other data which characterizes the soil, groundwater, or surface water on the site; and

ix. A description of the human and environmental exposure to contamination at the site;

b. A proposal, if needed, to clean up and remediate any contamination or condition which has or could lead to contamination and a timetable for implementing the proposal and for monitoring the site after the proposed measures are completed; and

c. An agreement and consent to allow the Department to enter and inspect the site, property, or activity at any time until the voluntary cleanup plan is completed without the requirement of any warrant or order of the Tribal Court.

4. Any environmental assessment submitted to the Department under this Section shall be prepared by a qualified environmental professional. A qualified environmental professional is a person with education, training, and experience in preparing environmental studies and assessments.

5. Remediation alternatives in any voluntary cleanup plan shall be based on the actual risk to human health and the

environment currently posed by any pollutant on the site, considering the following factors:

a. The present or proposed uses of the site;

b. The ability of the pollutant to move in a form and manner which would result in exposure to humans and the surrounding environment; and

c. The potential risks associated with proposed cleanup alternatives and the economic and technical feasibility and reliability of such alternatives.

6. The Department shall provide formal written notification that a voluntary cleanup plan has been approved or disapproved within no more than forty-five (45) days after a request by an applicant, unless the applicant and the Department agree to an extension of the review to a date certain. Such review shall be limited to a review of the materials submitted by the applicant and documents or information readily available to the Department.

7. The Department shall approve a voluntary cleanup plan if, based on the information submitted by the applicant, the Department concludes that the plan will attain a degree of cleanup and control of pollutants that complies with all applicable laws, requirements, criteria, or standards or otherwise reduces concentrations such that the site does not present an unacceptable risk to human health or the environment.

8. In the event that a voluntary cleanup plan is not approved by the Department, the Department shall promptly provide the applicant with a written statement of the reasons for such denial. An applicant shall be permitted to resubmit a voluntary cleanup plan with appropriate changes based on the Department's reasons for denial.

9. The approval of a voluntary cleanup plan by the Department applies only to conditions on the site and standards that exist as of the time of submission of the application.

10. An approval by the Department of a voluntary cleanup plan pursuant to this Section shall be rendered void if the applicant:

a. Fails to materially comply with the voluntary cleanup plan; or

b. Submits materially misleading information in the context of the voluntary cleanup plan.

11. If a voluntary cleanup plan is not initiated within twelve (12) months and completed within twenty-four (24) months after approval by the Department, such approval shall lapse. The Department may grant an extension of the time limit for completion of a voluntary cleanup plan if the applicant submits a written request for re-application accompanied by written certification of a qualified environmental professional that the conditions on the site are substantially similar to those that existed at the time of the original approval. Any re-application where the conditions at the site have substantially changed since approval of the original voluntary cleanup plan shall be treated as a new application.

12. Within forty-five (45) days after the completion of a voluntary cleanup described in the voluntary cleanup plan approved by the Department, the applicant shall provide to the Department a certification from a qualified environmental professional that the plan has been fully implemented.

13. If an applicant or owner or operator fails to materially comply with a voluntary cleanup plan or initiate and complete the voluntary cleanup plan within the time permitted, the Department may issue a cleanup order pursuant to this Chapter.

14. In no event shall a potentially responsible party be subject to a lesser standard of liability, receive preferential treatment, or in any other way, whether direct or indirect, benefit from any voluntary cleanup arrangement.

Section 17-3-8. Owner and Operator Liability.

1. The owner and operator of any property or activity shall be jointly and severally liable and responsible for the full costs of any and all cleanup, remediation, and testing of contamination at a site as well as the Department’s fees and costs of administering notices and enforcing cleanup, remediation, and testing of the site.

2. In addition to any other methods allowed by the laws of the Tribe or other applicable law, the Department may collect any costs for which an owner or operator is responsible under this Section through an action in Tribal Court or any other court of competent jurisdiction.

3. Nothing in this Section shall limit an owner's, an operator's, or the Tribe's right to recover costs from persons contributing to the contamination of a site.

TC Approved 04/20/20
Resolution 20-25

PONCA TRIBE OF NEBRASKA

TITLE XVIII
HEALTH

CHAPTER 1
GENERAL PROVISIONS

Section 18-1-1. Purpose. This Title shall be interpreted and construed to fulfill the following purposes:

1. To provide for holistic, culturally competent health services for members of the Tribe and others served by the Tribe's health services program that encourages wellness, is designed to improve health status, and assures quality health care services; and

2. To provide for the preservation of the public health of members of the Tribe and others within the territory of the Tribe, including during public health emergencies.

Section 18-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Department" means Ponca Health Services.

2. "Director" means the chief executive officer of the Department.

3. "Communicable disease" means an illness due to a specific infectious agent or its toxic products that arises through transmission of that agent or its products from an infected person, animal, or reservoir to a susceptible host, either directly or indirectly through an intermediate plant or animal host, vector, or the inanimate environment.

4. "Epidemic disease" means cases of an illness or condition, communicable or noncommunicable, in excess of normal expectancy, compared to the usual frequency of the illness or condition in the same area, among the specified population, at the same season of the year.

5. "Health care provider" means:

a. A hospital, health clinic, health care facility, home health agency, hospice, doctors office, special care facility, nursing home, pharmacy, or clinical laboratory;

b. A physician, surgeon, physician assistant, acupuncturist, optometrist, chiropractic physician, naturopathic physician, or respiratory care practitioner;

c. A nurse, nurse practitioner, midwife, dietitian, or nursing home administrator;

d. A radiologist, polysomnographic technologist, or other medical imaging provider

e. A dentist, dental hygienist, or denturist;

f. A psychologist, occupational therapist, regulated social worker, professional counselor, marriage and family therapist, or other behavioral health provider;

g. A speech-language pathologist or audiologist;

h. A physical therapist or massage therapist;

i. A paramedic or emergency medical services provider;

j. A pharmacist;

k. A funeral service practitioner; or

l. Any other person or entity that furnishes, bills for, or is paid for health care in the normal course of business.

6. "Individually identifiable health information" means information, including genetic and demographic information, whether oral or recorded in any form or medium, that:

a. Relates to the past, present, or future physical or mental health or condition of an individual or the provision of health care to an individual; and

b. Either identifies the individual or could be used to identify the individual.

7. "Public health measure" means a test, medical examination, treatment, isolation, quarantine, or other measure

imposed on an individual or group of individuals in order to prevent the spread of or exposure to a communicable disease, toxic substance, or transmissible agent.

8. "Toxic substance" means a substance that may cause illness, disability, or death to persons who are exposed to it.

Section 18-1-3. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials, or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 18-1-4. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 18-1-5. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
HEALTH SERVICES DEPARTMENT

Section 18-2-1. Establishment.

1. There is hereby established a health agency to be known as Ponca Health Services as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Department shall be the public health agency of the Tribe.

3. The Department shall consist of a Director and such other personnel and employees as may be required.

4. The Department shall have such divisions and programs as necessary to achieve maximum efficiency, economy, and

effectiveness in providing health services and administering the public health.

5. The Department may employ such personnel and employees as may be required for the proper discharge of its duties under this Title, provided that the Department may use personnel and employees of the Tribal administration as authorized in this Chapter.

Section 18-2-2. Director.

1. The day-to-day direction, operation, control, and supervision of the Department shall be the responsibility of the chief executive officer of the Department who shall be the Director of the Department and an employee of the Tribe.

2. The Director shall administer and exercise all managerial and supervisory authority over the Department in accordance with this Title, the regulations of the Department, and the policies and procedures of the Department. The Director may delegate any of his or her duties to staff or employees of the Department.

3. The Director shall be the public health officer of the Tribe.

4. The Director should have a degree of doctor of medicine or doctor of osteopathy and be licensed to practice medicine or have sufficient experience or a master's degree or above in public health or a related field. If the Director does not have such qualifications, the Director shall designate a chief medical officer in the Department with such qualifications. The chief medical officer shall provide independent medical judgment, guidance, and advice to the Director, the Department, and the Tribal Council regarding medical and public health issues.

Section 18-2-3. Powers and Duties of Department. The power, authority, and duties of the Department shall be as follows:

1. To administer, implement, and enforce this Title and enforce and assist in the enforcement of all laws of the Tribe relating to the protection and regulation of the public health;

2. To make recommendations to the Tribal Council concerning amendments to this Title and other laws of the Tribe protecting and regulating the public health;

3. To make reports to the Tribal Council regarding any matters within the authority of or under the jurisdiction of the Department as requested or required by the Tribal Council;

4. To advise and make recommendations to the Tribal Council regarding the needs of the Tribe with respect to the allocation of health resources, health priorities, program development and planning, training of personnel, the construction of new health facilities, and for the general coordination of all health programs in the territory of the Tribe;

5. To promote the delivery of maximum quality health care to members of the Tribe and others eligible to receive health services from or paid by the Department in a manner that accords with the needs of those receiving such services and the values of the Tribe, including ensuring such services are culturally appropriate;

6. To review and make recommendations to the Tribal Council regarding the budget of the Department as well as the provisions of any contract entered into between the Tribe and a United States federal agency for the provision or conducting of health services, public health activities, or administration of federal programs by the Department;

7. To establish services, including through health facilities operated by the Department, in accordance with funding agreements and Tribal budget appropriations for the Department to prevent illness, disease, and disability, promote effective coordination and use of community resources, and extend health services to members of the Tribe and others eligible to receive services from or paid by the Department, taking into consideration and applying the culture, history, and social and economic conditions of the Tribe, including medical services, public health nursing, disease prevention and control, public health education, behavioral health services, and environmental health services;

8. Subject to the approval of the Tribal Council and in accordance with funding agreements and Tribal budget appropriations for the Department, to establish and operate divisions and programs within the Department for the provision of health services to individuals and which are important in promoting, protecting, and maintaining the public health;

9. To employ traditional health care practices and practitioners in providing health services;

10. To obtain input and feedback from persons receiving services from or paid by the Department about their health care needs and to provide information and guidance to the public on health care and public health issues that affect them;

11. To establish programs of community and professional education relevant to the detection, prevention, and control of disease;

12. To participate in quality improvement activities concerning the Department, the services it provides, and the public health;

13. To adopt policies and procedures of the Department, including for credentialing and competency of personnel and contractors of the Department;

14. To investigate and control the causes of epidemic and communicable diseases affecting the public health;

15. To investigate and monitor the spread of disease that is considered part of an emergency epidemic to determine the extent of environmental contamination resulting from the emergency epidemic and to rapidly provide epidemiological and environmental information to the Tribal Council;

16. To establish, maintain, and enforce isolation and quarantine as provided in this Title, and, in pursuance thereof and for this purpose only, to exercise such physical control over property and the persons of the people within the territory of the Tribe as the Department may find necessary for the protection of the public health;

17. In cases of emergency in which the health of persons within the territory of the Tribe is menaced by or exposed to any epidemic or communicable disease, adopt, promulgate, and enforce special epidemic and/or communicable disease control rules, regulations, and orders, subject to the approval of the Tribal Council, as may be required by the occasion and proper protection of the public health;

18. To abate nuisances when necessary for the purpose of eliminating sources of epidemic and communicable diseases affecting the public health;

19. To order the closure of offices, buildings, and other public places and to forbid gatherings of people when necessary to

protect the public health, provided that the Tribal Council may override any such order;

20. To administer and enforce minimum general food safety and sanitary standards and regulations adopted pursuant this Title;

21. To conduct hearings and hear appeals authorized by this Title, provided the Department shall have no authority to declare any portion of this Title or other law of the Tribe invalid for any reason;

22. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states of the United States as necessary to implement and enforce this Title or other laws of the Tribe protecting and regulating the public health;

23. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

24. To utilize or adopt forms, guidance, and other standards from other appropriate jurisdictions to use as its own so long as such forms, guidance, or other standards meet the requirements of the laws of the Tribe for which such forms, guidance, or other standards are utilized and do not abrogate or diminish the sovereignty or self-government of the Tribe;

25. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title or any other laws administered by the Department;

26. To perform any other duties and responsibilities delegated to the Department by the Tribal Council or in furtherance of the duties and responsibilities otherwise granted to the Department;

27. To delegate any of the Department's duties and responsibilities to the staff of the Department to further achieve maximum efficiency, economy, and effectiveness; and

28. To perform all other duties delegated or assigned to the Department by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 18-2-4. Rules and Regulations. The Department may promulgate rules and regulations, not inconsistent with this Title and subject to the approval of the Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Department including, but not limited to:

1. Procedures for conducting investigations and inspections;

2. Procedures for all hearings conducted and decision made by the Department;

3. Minimum food safety and sanitation standards; and

4. Protection of the due process rights of all persons subject to the enforcement of this Title by the Department.

Section 18-2-5. Confidentiality.

1. Except where expressly provided otherwise in the laws of the Tribe, individually identifiable health information shall be held confidential and shall not be provided or open to inspection except for the following:

a. To the person to whom the information pertains or his or her legal representative or, in the case of a child, the child's parent, guardian, custodian, or guardian ad litem;

b. For treatment of the person to whom the information pertains, payment for such treatment, and operations of the Department, including to a person or entity that provides services to the Department with respect to individually identifiable health information and that requires access on a routine basis to such individually identifiable health information, provided such person or entity agrees to comply with this Title;

c. When provided to a person reasonably able to prevent or lessen it, including the target thereof, to prevent or lessen:

i. A crime;

ii. Abuse, neglect, or self-harm; or

iii. A serious threat to the health or safety of a person or the public;

d. To a medical examiner, coroner, or funeral director for the purpose of identifying a deceased person, determining a cause of death, or other duties of the medical examiner, coroner, or funeral director authorized by law;

e. When necessary for the public health activities of the Department, including to a person who may have been exposed to a communicable disease or toxic substance or may otherwise be at risk of contracting or spreading a disease or condition;

f. When expressly required under the laws of the Tribe or other applicable law, including reporting of communicable diseases, child abuse, domestic and family abuse, violent injuries, and other mandatory public health reports;

g. When expressly permitted under the laws of the Tribe or other applicable law, including reporting of communicable diseases, child abuse, domestic and family abuse, violent injuries, and other mandatory public health reports;

h. Pursuant to an order of a court or administrative tribunal with jurisdiction over the Department, but not a subpoena or discovery request, provided that:

i. The Department discloses only the protected health information expressly authorized by such order;

ii. The order contains or is subject to provisions prohibiting the parties from using or disclosing the information for any purpose other than the proceeding for which such information was requested and requires the return or destruction of the information and all copies of the information at the end of the proceeding; and

iii. The person to whom the information pertains has been notified and given a reasonable opportunity to object and prevent the providing of the information; or

i. When the person to whom the information pertains has authorized the release of information in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department; or

b. When necessary in a proceeding in a court to which the Department is a party, participating, or representing the Tribe.

3. Any person who receives information from the Department pursuant to this Section shall not further disclose such information except when authorized by the Department or as otherwise required or permitted by applicable law. Whenever the Department discloses information pursuant to this Section, the disclosure shall be accompanied by the following written statement:

> This information has been disclosed to you from records protected by confidentiality laws. Those laws prohibit you from making any further disclosure of information in this record unless further disclosure is expressly authorized by Ponca Health Services or otherwise required or permitted by applicable law.

Section 18-2-6. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department may, subject to any laws or rules governing confidentiality of information, use the services, information, or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies, and others shall furnish such services, information or records upon request of the Department;

2. The Department may refer matters for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation or any portion thereof, including any determinations therein, as its own, which shall then be treated as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation or any portion thereof, including any determinations therein, made by another investigating agency or authority as its own and such

investigation or portion thereof so adopted shall be treated as though conducted directly by the Department; and

4. The Department may use personnel and employees of the Tribal administration, provided the Department coordinates with and obtains approval from the Tribal administration.

Section 18-2-7. Decisions and Orders of Department. In addition to any other requirements in this Title or other laws of the Tribe, all decisions and orders of the Department issued under this Title or other law administered by the Department, including with respect to services provided by the Department, shall:

1. Be in writing;

2. If the decision is subject to further appeal within the Department, include a statement that the decision may be appealed pursuant to this Chapter, identify the official to whom it may be appealed, and indicate the appeal procedures, including the time limit for filing the appeal; and

3. If the decision is the final decision of the Department and subject to judicial review under this Title, include a statement that the decision is subject to judicial review in accordance with this Chapter and the time limit for filing a request for judicial review.

Section 18-2-8. Appeal to Director.

1. Any person subject to and aggrieved by a decision or order of the Department may file an appeal with the Director within thirty (30) days of issuance of such decision or order or such other time as may be provided in the laws of the Tribe for a particular decision or order of the Department.

2. A request for appeal shall:

a. Be made in writing to the Director;

b. Identify the decision or order;

c. Declare the redetermination or action sought; and

d. Include a complete statement of the facts relied on.

3. The Director shall take testimony and examine documentary evidence as necessary to determine the appeal.

4. After hearing an appeal, the Director shall issue a decision.

5. The decision of the Director on an appeal under this Section shall be the final decision of the Department and shall only be subject to judicial review if expressly permitted under this Title or other law of the Tribe governing the decision. The Director shall be considered to have issued a final decision denying the appeal if the Director:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal or such other longer period of time with the consent or request of the person filing the appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

6. The failure to file an appeal pursuant to this Section shall not prevent the person from defending any action of the Department in Tribal Court.

7. The Department may establish an appeal board within the Department to conduct hearings and appeals pursuant to this Section. If the Department establishes such an appeal board, hearings and appeals pursuant to this Section shall be conducted by such appeal board instead of the Director. The appeal board may be authorized to make final decisions for the Department, make recommendations for final decisions to be issued by the Director, or make decisions for the Department which are subject to appeal or review of the Director, as designated in the establishment of the appeal board. If the appeal board is authorized to issue the final decision of the Department, the appeal board's decision shall be deemed the final decision of the Director under this Section and any provision of this Title or other law of the Tribe governing final decisions of the Director.

Section 18-2-9. Intermediate Appeals.

1. The Department may, pursuant to written policies or rules and regulations of the Department, establish an appeal board within the Department to conduct hearings and hear appeals of

decisions and orders of the Department prior to review by the Director, subject to the following:

a. The authority of the appeal board with respect to hearings and appeals shall be set forth in the policies or rules and regulations, which authority shall be either to:

i. Make a recommendation for a final decision to be issued by the Director; or

ii. Make a decision for the Department which is subject to appeal and review by the Director on the record established before the appeal board;

b. The decisions and orders which are subject to hearing by and appeal to the appeal board shall be set forth in the policies or rules and regulations, which may be either:

i. Specified decisions and orders or classes and types of decisions and orders; or

ii. All decision and orders of the Department;

c. The number, length of terms, and manner of selection of the members of the appeal board shall be set forth in the policies or rules and regulations, but the members shall be employees and staff of the Department with appropriate knowledge and expertise related to matters to be heard by the appeal board;

d. An appeal to the appeal board shall be considered an appeal to the Director under this Chapter and the provisions governing an appeal to the Director under this Chapter shall apply to appeals to the appeal board;

e. Failure to appeal any decision or order to the appeal board within its authority shall constitute a waiver of any further appeal or judicial review; and

f. Final action of the Director shall be required prior to seeking any judicial review, provided that if the Director fails to issue a written decision within thirty (30) days of proper presentation to the Director for a final action, the decision of the appeal board shall be deemed the final action of the Department for purposes of judicial review.

2. In addition to the establishment of an appeal board as provided in this Section, the Department may permit or require, pursuant to written policies or rules and regulations of the Department, one or more levels of review by its employees or delegates with a final review by or decision of the Director, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

Section 18-2-10. Judicial Review.

1. If a final decision or order of the Director is subject to judicial review under this Title or other law of the Tribe, a person aggrieved by such final decision of the Director on appeal may challenge the decision by filing a petition requesting judicial review of the final decision in the Tribal Court. The petition for judicial review shall specifically identify the provision of this Title or other law of the Tribe which authorizes judicial review of the final decision of the Director.

2. Except where a different standard is set forth in this Title to review a particular decision of the Director, judicial review of the Director's final decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Director's final decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Director and the Department;

c. No new or additional issues may be raised and only issues raised before the Director may be heard regardless of the Director's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Director unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Director and the Department;

e. In reviewing legal conclusions reached by the Director, the Tribal Court shall give proper weight to the Director's interpretation of this Title or other law administered by the Department and any rules and regulations of the Department;

f. The Tribal Court may affirm, reverse, modify, or vacate and remand the Department's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Department is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion;

iv. Beyond the Department's authority; or

v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Department or the Director if:

a. The decision is not expressly subject to judicial review pursuant to this Title or other law of the Tribe governing the decision; or

b. The person has not exhausted all administrative remedies before the Department.

4. Nothing in this Section shall be read or construed to permit judicial review of any action, decision, or order of the Department except where judicial review of such action, decision, or order of the Department is expressly permitted in this Title or other law of the Tribe governing such action, decision, or order.

5. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a person except for enjoining the collection, or ordering the return, of civil fines or other payments collected by the Department, or ordering the payment for health services provided to a person to which a provider of such health services is entitled.

CHAPTER 3
PROTECTION OF PUBLIC HEALTH

Section 18-3-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Condition of public health importance" means a disease, syndrome, symptom, injury, contagion, infection, filth, toxic substance, transmissible agent, or other threat to public health that is identifiable on an individual or community level.

2. "Disease outbreak" means a significant or notable increase in the number of cases of a disease or other condition of public health importance.

3. "Public health emergency" means an occurrence or imminent threat of an illness or health condition that:

a. Is believed to be caused by any of the following:

i. The intentional use of any microorganism, virus, infectious substance, or biological product to cause death, disease, or other biological harm to a human, animal, plant, or another living organism;

ii. The appearance of a novel or previously controlled or eradicated infectious agent or biological toxin that may be highly contagious;

iii. An epidemic of communicable disease; or

iv. A natural disaster, chemical release, or nuclear or radioactive release; and

b. Poses a high probability of any of the following harms:

i. A large number of deaths in the affected population;

ii. A large number of serious or long-term disabilities in the affected population; or

iii. Widespread exposure to an infectious or toxic agent that poses a significant risk of substantial future harm to a large number of persons in the affected population.

4. "Reportable disease" means a disease or condition, the reporting of which enables the Department to take action to protect or to benefit the public health.

Section 18-3-2. Reportable Diseases.

1. The Department shall by rule and regulation:

a. Specify reportable diseases and when the diseases must be reported under this Section;

b. Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;

c. Prescribe the procedures and forms for making such reports and transmitting the reports to the Department;

d. Provide for the furnishing of copies of such reports to other health care providers, public health authorities, and government agencies;

e. Prescribe the amount of time such reports shall be maintained; and

f. Specify such other matters the Department deems necessary or desirable for the handling of reportable diseases, including measures and methods for investigating the source and controlling reportable diseases.

2. Persons required under the rules and regulations of the Department to report reportable diseases shall report to the Department as specified by the rules and regulations.

3. In addition to the reportable diseases designated by the Department pursuant to this Section, any health care provider who learns of the existence of a communicable disease, disease outbreak, or condition which the health care provider believes or reasonably should believe to be of public health importance shall report such disease or condition to the Department in the same manner as other reportable diseases.

4. In addition to the reportable diseases designated by the Department pursuant to this Section, the Department may issue a temporary order requiring the reporting of a particular communicable disease or condition of public health importance when necessary to conduct a public health investigation or surveillance

of such disease or condition. An order issued pursuant to this subsection shall specify who is required to report, what information is required to be reported, and the duration for which reporting is required which shall not exceed ninety (90) days unless such order is extended by the Department.

5. Any person making a report or providing information pursuant to this Section, including individually identifiable health information, shall be immune from any civil or criminal liability by reason of such action. Any person involved in an investigation under this Section or who in good faith cooperates with the Department or other agency or official in such investigation shall also be immune from any civil or criminal liability by reason of such action.

Section 18-3-3. Receiving Public Health Reports.

1. In addition to information related to reportable diseases required to be reported to the Department pursuant to this Chapter, the Department may collect and receive reports, including identifiable health and other information relating to individuals, for any public health measure or activity, including, but not limited to:

a. Reports of disease, injury, or disability for the purpose of preventing or controlling such disease, injury, or disability;

b. Vital events such as birth or death; and

c. The conduct of public health surveillance, public health investigations, and public health interventions.

Section 18-3-4. Investigations.

1. The Department may investigate a case of a reportable or communicable disease, disease outbreak, epidemic, or other condition of public health importance. The investigation may include, but is not limited to:

a. Examinations, or orders for examinations, of persons with the disease subject to investigation and, for comparison purposes, persons without such disease;

b. Interviews of persons with the disease subject to investigation, persons without such disease for purposes of

comparison to persons with the disease, health care providers, and others with knowledge or information;

c. Requiring a health care provider, any public or private entity, or an individual who has information necessary for the investigation to permit inspection of the information by, and release the information to, the Department; and

d. Inspection, sampling, and testing of real or personal property with consent of the owner or custodian of the property or with an order of the Tribal Court.

2. Upon request of the Department for information pursuant to this Section, a person shall provide the information requested. The Department may issue a subpoena or request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain information required to be provided under this Section.

3. Upon request or order of the Department for an examination of a person pursuant to this Section, a person shall submit to such examination as requested. The Department may issue a subpoena or other order or request the Tribal Court to issue a subpoena or other order, including ex parte without a hearing, to obtain an examination required to be provided under this Section.

4. Information requested by, and required to be disclosed to, the Department in an investigation pursuant to this Section may include, but is not limited to, individually identifiable health information related to:

a. The case;

b. An individual who may be the potential source of exposure or infection;

c. An individual who has been or may have been exposed to or affected by the disease;

d. Policies, practices, systems, or structures that may have affected the likelihood of disease transmission; and

e. Factors that may influence an individual's susceptibility to the disease or likelihood of being diagnosed with the disease.

Section 18-3-5. Inspections. To enforce this Title or any other public health law of the Tribe, the Department may enter a building, conveyance, or place where a reportable or communicable disease, disease outbreak, epidemic disease, contagion, infection, filth, other source or cause of preventable disease, or other condition of public health importance exists or is reasonably suspected.

Section 18-3-6. Abatement of Nuisances.

1. If a threat to the public health, including communicable disease, disease outbreak, epidemic disease, contagion, infection, source of filth, or other source or cause of sickness, is found on any property within the territory of the Tribe, the Department shall order the owner or occupant of the property to remove or abate the threat within a time specified in notice to the owner or occupant but no longer than ten (10) days.

2. Notice for abatement or removal shall be served on the owner, occupant, or agent of the property by a method permitted under the Tribal Rules of Civil Procedure other than publication, provided that if the owner of the property is unknown or absent and has no known representative upon whom notice can be served, the Department shall post notice in a conspicuous place on the property stating that, unless the threat to the public health is abated or removed within a period not longer than ten (10) days, the Department will have the threat abated or removed at the expense of the owner.

3. If the owner, occupant, or agent fails or neglects to comply with the requirement of the notice provided under this Section, the Department or its designated agent shall remove or abate the nuisance, source of filth, or cause of sickness described in the notice from the property. The Department may issue an order assessing the costs of such removal or abatement against the owner, occupant, or agent to recover and, if necessary, bring an action in the Tribal Court against such owner, occupant, or agent to enforce such order of assessment and collect such costs.

4. In addition to any other remedy provided by law, the Department may bring an action in the Tribal Court to enjoin a violation of a law of the Tribe enforceable by the Department or to enjoin as a public health nuisance any activity or failure to act that adversely affects the public health.

5. A final decision of the Director regarding an order issued under this Section shall be subject to judicial review in accordance with this Title.

Section 18-3-7. Contaminated Property. The Department may remediate, disinfect, decontaminate, destroy, or order the remediation, disinfection, decontamination, or destruction of bedding, carpets, household goods, furnishings, materials, clothing, animals, or other property which is determined by the Department to constitute a threat to the public health, provided that the treatment of any such property shall be the least restrictive means necessary to eliminate the threat to the public health posed by such property.

Section 18-3-8. Initiation of Legal Proceedings. The Department may bring an action in the Tribal Court to enforce any provision of this Chapter.

Section 18-3-9. Spreading of Disease.

1. No person shall knowingly, willfully, or intentionally cause the spread of any communicable disease within the territory of the Tribe. Any person who violates this subsection shall be subject to a civil fine not to exceed one thousand dollars ($1,000.00) per occurrence.

2. No person shall, knowing they are infected with a communicable disease, negligently cause the spread of such communicable disease within the territory of the Tribe. Any person who violates this subsection shall be subject to a civil fine not to exceed five hundred dollars ($500.00) per occurrence.

3. The Department may order public health measures appropriate to rectify and prevent the spread of any communicable disease. Any person who knowingly, willfully, or intentionally violates any such order shall be subject to a civil fine not to exceed one thousand dollars ($1,000.00) per occurrence.

4. Every health care provider attending a person affected with any communicable disease shall:

a. Comply with any ordered public health measures of the Department with respect to the disease; and

b. Otherwise use all precautionary measures to prevent the spread of the disease.

Section 18-3-10. Declaration of Public Health Emergency.

1. Upon the occurrence of a public health emergency, the Tribal Council may declare a state of public health emergency to protect the public health.

2. A declaration of a state of public health emergency must specify:

a. The nature of the public health emergency;

b. The geographic area subject to the proclamation;

c. The conditions that have brought about the public health emergency; and

d. The duration of the state of public health emergency, if the duration is more than fourteen (14) days.

3. During a public health emergency, the Tribal Council may directly or authorize the Department to:

a. Close, order the evacuation of, or the decontamination of any facility reasonably believed to endanger the public health;

b. Regulate or restrict by any means necessary the use, sale, or distribution of food, fuel, medical supplies, medicines, or other goods and services;

c. Prescribe modes of transportation, routes, and destinations required for the evacuation of individuals or the provision of emergency services;

d. Control or limit entry into, exit from, movement within, and the occupancy of premises in any public area subject to or threatened by a public health emergency if such actions are reasonable and necessary to respond to the public health emergency; or

e. Take any other action that may be necessary for the management of resources or to protect the public during a public health emergency.

4. A proclamation of a state of public health emergency, and any extension thereof, expires on the earliest of:

a. The date provided in the declaration of the state of emergency, unless expressly extended by the Tribal Council;

b. When terminated by a declaration of the Tribal Council; or

c. If no date is provided in the declaration of the state of public health emergency, fourteen (14) days after the date the public health emergency is declared, unless expressly extended by the Tribal Council.

5. Any extension of a state of public health emergency shall be for the duration provided by the Tribal Council in providing for the extension, provided that if no duration is provided, the extension shall be for fourteen (14) days.

6. Nothing in this Section limits the authority of the Tribal Council to declare a state of emergency under the general powers of the Tribal Council or other applicable law.

Section 18-3-11. Authority of Department During Emergency.

1. During a public health emergency declared by the Tribal Council, the Department may, as necessary to appropriately respond to the public health emergency:

a. Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions, and facilities for the purpose of obtaining information directly related to the public health emergency;

b. After consultation with appropriate medical experts, create and require the use of diagnostic and treatment protocols to respond to the public health emergency and provide notice of those protocols to health care providers, institutions, and facilities;

c. Order public health measures appropriate to the public health threat presented;

d. Authorize pharmacists in the Department to administer vaccines to persons who are three (3) years of age or older;

e. After consultation with appropriate medical experts, provide information to the public regarding their protection and actions being taken by the Department;

f. Upon approval or authorization by the Tribal Council, take other actions necessary to address the public health emergency and provide notice of those actions to health care providers, institutions, and facilities; and

g. Take any enforcement action authorized by the laws of the Tribe, including the imposition of civil penalties as provided in this Chapter.

2. The authority of the Department to take administrative action, and the effectiveness of any action taken, under this Section terminates upon the expiration of the declared public health emergency, unless the actions are continued under other applicable law.

Section 18-3-12. Access to Information During Emergency.

1. During a declared public health emergency, the Department shall be given immediate access to individually identifiable health information necessary to:

a. Determine the causes of an illness related to the public health emergency;

b. Identify persons at risk;

c. Identify patterns of transmission;

d. Provide treatment; and

e. Take steps to control the disease.

2. Individually identifiable health information accessed pursuant to this Section may not be used for any other purpose except the purposes listed in this Section.

3. Individually identifiable health information obtained by the Department pursuant to this Section shall be confidential and shall not be disclosed, provided, or open to inspection except:

a. To the person who is the subject of the information or his or her legal counsel or, in the case of a child, the

child's parent, guardian, custodian, guardian ad litem, or legal counsel;

b. To other Tribal departments and agencies, the Tribal Attorney, and agencies of other governments authorized to receive the information under applicable law;

c. To identify or to determine the cause or manner of death of a deceased individual;

d. To a health care provider for the evaluation or treatment of a condition that is the subject of a declaration of the public health emergency; or

e. To others when the person who is the subject of the information has authorized the release of information or otherwise waived confidentiality expressly in writing.

4. Upon expiration of the public health emergency, the Department may not use or disclose any individually identifiable health information that has been obtained under this Section.

Section 18-3-13. Confidentiality.

1. All records, files, and information relating to reports made to the Department pursuant to this Chapter, including investigations thereof, shall be confidential and shall not be disclosed, provided, or open to inspection to any by the following:

a. The person who is the subject of the information or his or her health care provider or legal counsel or, in the case of a child, the child's parent, guardian, custodian, or guardian ad litem;

b. Other Tribal departments and agencies, the Tribal Attorney, and agencies of other governments directly involved in the investigation or otherwise authorized to receive the information under applicable law;

c. Health care providers if necessary for the evaluation or treatment of a reportable, communicable, or epidemic disease;

d. Law enforcement officials to the extent necessary to carry out the authority granted to the Department related to isolation or quarantine in this Title;

e. A person who may have been exposed to a reportable, communicable, or epidemic disease, provided that the Department may release individually identifiable information to such person only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to the person or to the public;

f. A person with information necessary to assist the Department in identifying an individual who may have been exposed to a reportable, communicable, or epidemic disease, provided that the Department may release individually identifiable information to such person only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other persons or to the public;

g. To a person when necessary to protect the public health; or

h. To others when the person who is the subject of the information has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. The Department may release only the minimum amount of information necessary to carry out the purpose of the release pursuant to this Section.

3. Nothing in this Section shall prevent or limit the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department; or

b. In a proceeding in a court to which the Department is a party or participating; or

c. When a person subject of the information authorizes the release of information or otherwise waives confidentiality expressly in writing.

4. Any person who receives information from the Department pursuant to this Section shall not further disclose such information except when authorized by the Department or as otherwise required or permitted by applicable law. Whenever the Department discloses information pursuant to this Section, the disclosure shall be accompanied by the following written statement:

This information has been disclosed to you from records protected by confidentiality laws. Those laws prohibit you from making any further disclosure of information in this record unless further disclosure is expressly authorized by Ponca Health Services or otherwise required or permitted by applicable law.

5. Nothing in this Section affects the confidentiality or admissibility into evidence of information not otherwise confidential or privileged that is obtained from sources other than the Department.

Section 18-3-14. Violations.

1. It shall be a violation of this Title for any person:

a. Who is mandated to report a reportable disease under the rules and regulations established by the Department pursuant to this Chapter or order of the Department authorized under this Chapter to knowingly fail to do so or willfully prevent someone else from doing so;

b. To refuse to provide any information which is required to be furnished to the Department under this Chapter;

c. To refuse to submit to an examination ordered by the Department pursuant to this Chapter;

d. To hinder an employee or agent of the Department from entering a building, conveyance, or place where a reportable or communicable disease, disease outbreak, epidemic, contagion, infection, filth, other source or cause of preventable disease, or other condition of public health importance exists or is reasonably suspected;

e. To interfere with the performance of the duties of the Department pursuant to this Chapter;

f. To fail or refuse to comply with any public health measure ordered by the Department pursuant to this Chapter;

g. To knowingly expose any person to or infect any person with any communicable disease;

h. To violate or refuse to comply with any order of the Department issued pursuant to this Chapter;

i. To violate or fail to comply with any requirements imposed by the Tribal Council pursuant to a declaration of public health emergency or resulting from actions taken in accordance with the powers granted to the Department during a state of public health emergency; or

j. To disclose confidential information protected under this Chapter other than as expressly authorized in this Chapter.

2. In addition to any other consequences for a violation of this Title or other remedies provided under the laws of the Tribe, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine of up to five thousand dollars ($5,000) per day or occurrence of such violation, which may be imposed by the Department pursuant to an order and thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

CHAPTER 4
ISOLATION AND QUARANTINE

Section 18-4-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Isolation" means the physical separation and confinement of a person or group of persons who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease from non-isolated persons to prevent or limit the transmission of the disease to non-isolated persons.

2. "Quarantine" means the physical separation and confinement of a person or group of persons who have been or may have been exposed to a communicable disease or possibly communicable disease and who do not show signs or symptoms of a communicable disease, from persons who have not been exposed to a communicable disease or possibly communicable disease, to prevent or limit the transmission of the disease to other persons.

Section 18-4-2. Conditions for Isolation or Quarantine. When isolating or quarantining a person or group of persons under this Chapter, the Department shall adhere to the following conditions and principles:

1. Isolation or quarantine must be by the least restrictive means necessary to prevent the spread of a communicable disease or possibly communicable disease to others or to limit exposure to or contamination with a toxic substance by others, and may include, but is not limited to, confinement to private homes or other public or private premises;

2. Confinement may not be in a prison, jail, or other facility where those charged with a crime are incarcerated unless:

a. The person or group of persons represents an immediate and serious physical threat to the staff or physical facilities of a hospital or other facility in which the person or group of persons has been confined; or

b. A person has been found in contempt of court because of failure to obey a court order.

3. Isolated persons must be confined separately from quarantined persons and if a facility is not capable of separating isolated persons from quarantined persons, either the isolated persons or the quarantined persons must be moved to a separate facility;

4. The health status of an isolated or quarantined person must be monitored regularly to determine if the person requires continued isolation or quarantine;

5. A quarantined person who subsequently becomes infected or is reasonably believed to have become infected with a communicable disease or possibly communicable disease that the Department believes poses a significant threat to the health and safety of other quarantined persons must be promptly placed in isolation;

6. An isolated or quarantined person must be released as soon as practicable when the Department determines that the person has been successfully decontaminated or that the person no longer poses a substantial risk of transmitting a communicable disease or possibly communicable disease that would constitute a serious or imminent threat to the health and safety of others;

7. The needs of a person who is isolated or quarantined must be addressed to the greatest extent practicable in a systematic and competent fashion, including, but not limited to, providing adequate food, medication, competent medical care, clothing, shelter, and means of communication with other persons

who are in isolation or quarantine and persons who are not under isolation or quarantine;

8. Premises used for isolation or quarantine must, to the extent practicable, be maintained in a safe and hygienic manner to lessen the likelihood of further transmission of a communicable disease or possibly communicable disease or of further harm to persons who are isolated and quarantined;

9. Cultural and religious beliefs should be considered to the extent practicable in addressing the needs of persons who are isolated or quarantined and in establishing and maintaining premises used for isolation or quarantine;

10. Isolation or quarantine shall not abridge the right of any person to rely exclusively on spiritual means to treat a communicable disease or possibly communicable disease in accordance with religious or other spiritual tenets and practices, provided that nothing in this Chapter prohibits a person who relies exclusively on spiritual means to treat a communicable disease or possibly communicable disease and who is infected with a communicable disease or has been exposed to a toxic substance from being isolated or quarantined;

11. Prior to placing a person or group of persons subject to isolation or quarantine in a health care facility, the Department must consult with the managers of the health care facility regarding how to best meet the requirements of this Section; and

12. The Department shall provide adequate means of communication between a person or a group of persons who is isolated or quarantined and legal counsel for the person or group of persons.

Section 18-4-3. Duration of Isolation or Quarantine. The maximum duration of time a person or group of persons may be isolated or quarantined pursuant to an order under this Chapter, including an administrative order of the Department, may not exceed:

1. One hundred eighty (180) days if there is substantial medical evidence indicating that the condition that is the basis of the public health threat is spread by airborne transmission and cannot be rendered noninfectious within sixty (60) days or may recur after sixty (60) days; or

2. In all other cases, sixty (60) days.

Section 18-4-4. Authority of Department.

1. The Department may issue an administrative order causing a person or group of persons who would be subject to the jurisdiction of the Tribal Court under this Chapter to be placed in isolation or quarantine if the Department has probable cause to believe that a person or group of persons requires isolation or quarantine in order to avoid a clear danger to others.

2. An administrative order issued under this Section shall:

a. Identify the person or group of persons subject to isolation or quarantine by name or shared or similar characteristics or circumstances;

b. Identify the premises where isolation or quarantine will take place, if known;

c. Either:

i. Describe the reasonable efforts made to obtain voluntary compliance with requests for testing or medical examination, treatment, counseling, vaccination, decontamination of persons or animals, isolation, quarantine, or inspection and closure of facilities; or

ii. Explain why reasonable efforts to obtain voluntary compliance are not possible and why the pursuit of these efforts creates a risk of serious harm to others;

d. Describe the suspected communicable disease or toxic substance, if known, that is the basis for the issuance of the administrative order and the anticipated duration of isolation or quarantine based on the suspected communicable disease or toxic substance;

e. Provide information supporting the reasonable belief of the Department that the person or group of persons is, or is suspected to be, infected with, exposed to, or contaminated with a communicable disease or toxic substance that could spread to or contaminate others if remedial action is not taken;

f. Provide information supporting the reasonable belief of the Department that the person or group of persons

would pose a serious and imminent risk to the health and safety of others if not isolated or quarantined;

g. Describe the medical basis for which isolation or quarantine is justified and explain why isolation or quarantine is the least restrictive means available to prevent a risk to the health and safety of others;

h. Establish the time and date at which the isolation or quarantine commences;

i. Specify the duration for the isolation or quarantine, subject to the maximum duration allowed in this Chapter;

j. Contain a statement of compliance with the conditions for isolation and quarantine specified in this Chapter; and

k. Be served on all affected persons or groups in accordance with Chapter.

3. A final decision of the Director regarding an administrative order issued under this Section shall be subject to judicial review in accordance with this Title.

Section 18-4-5. Authority of Tribal Court.

1. The Tribal Court has jurisdiction to issue orders for isolation and quarantine when:

a. The person or group of persons to be isolated or quarantined resides or is domiciled in the territory of the Tribe;

b. The person or group of persons to be isolated or quarantined receives services from or through the Department;

c. The person or group of persons to be isolated or quarantined is employed by the Department;

d. The person or group of persons has otherwise consented to the jurisdiction of the Tribal Court; or

e. The Tribal Court otherwise has jurisdiction over the person or group of persons.

2. The Tribal Court has jurisdiction to issue orders releasing any person or group of persons from isolation or quarantine or providing a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter if the person or group of persons is subject to an order for isolation or quarantine issued under this Chapter, including an administrative order issued by the Department.

3. The Tribal Court's lack of jurisdiction over a single person to subject to an order for isolation or quarantine shall not deprive the Tribal Court of jurisdiction to issue an order for isolation or quarantine, confirm or enforce an administrative order of the Department issued under this Chapter, or order any release or remedy related to an order for isolation or quarantine with respect to any other person over whom the Tribal Court may exercise jurisdiction.

4. The Tribal Court may issue orders under this Chapter regardless of whether a prior action on the same or similar matter has been commenced in the court of another jurisdiction involving the same individual.

Section 18-4-6. Procedure.

1. The procedures in the Tribal Court under this Chapter shall be governed by the rules of procedure for the Tribal Court which are not in conflict with this Chapter.

2. The Tribal Court may issue orders under this Chapter by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Orders issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 18-4-7. Conduct of Hearings. All hearings involving proceedings under this Chapter shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health care provider testifying about his or her patient or any privilege of confidentiality between a physician or other health care provider in any proceeding under this Chapter, provided that any evidence presented at a hearing that would be privileged and not subject to disclosure except as required by this subsection shall be disclosed only to the Tribal Court, the parties and their legal counsel, or persons authorized by the Tribal Court and may not be disclosed to the public.

6. A verbatim record shall be taken of all hearings; and

7. The Department may request that the respondent not personally appear before the Tribal Court because personal appearance would pose a risk of serious harm to others and, if the Tribal Court grants the Department's request or otherwise determines personal appearance by the respondent poses a risk of serious harm to others, the hearing shall either be conducted by legal counsel for the respondent or at a location or by a means, including simultaneous electronic transmission, that allows all parties to fully participate without risk of harm to others.

Section 18-4-8. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Tribal Court exercising both legal and equitable powers.

Section 18-4-9. Initiation of Proceedings by Department.

1. The Department may petition the Tribal Court for an order authorizing:

   a. The isolation or quarantine of a person or group of persons; or

   b. The confirmation and enforcement of an administrative order issued by the Department under this Chapter.

2. Petitions brought by the Department for an order for isolation or quarantine shall be captioned: "Ponca Tribe of Nebraska, by and through Ponca Health Services, Petitioner vs. (name(s) of respondent(s)), Respondent(s)".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, last known address, employer, employer address, and tribal affiliation of the person or group of persons to be subject to isolation or quarantine, who shall be the named respondent, or the reasons that such information is unavailable;

b. The basis for the Tribal Court's jurisdiction;

c. The information required for an administrative order of the Department under this Chapter;

d. If the Department requests confirmation and enforcement of an administrative order issued by it, a copy of the administrative order; and

e. A request that the Tribal Court enter an order for isolation or quarantine or confirm and enforce an administrative order of the Department, as the case may be.

4. In addition to the information required herein, a petition under this Section may also include such supporting documents the Department desires to include which, unless objected to by the respondent, shall be received and accepted as evidence by the Tribal Court by virtue of such attachment the same as any evidence formally presented and admitted.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 18-4-10. Initiation of Proceedings for Relief from Administrative Order.

1. A person or group of persons isolated or quarantined pursuant to an administrative order for isolation or quarantine may petition the Tribal Court at any time during the duration of isolation or quarantine for an order:

a. Releasing the person or group of persons from isolation or quarantine or otherwise vacating the administrative order; or

b. Providing a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter.

2. Petitions brought by persons subject to an administrative order for isolation or quarantine shall be captioned: "(name(s) of person(s) or group of persons), Petitioner(s) vs. Ponca Health Services, Respondent".

3. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, last known address, employer, employer address, and tribal affiliation of the person or group of persons subject to the administrative order for isolation or quarantine;

b. The basis for the Tribal Court's jurisdiction;

c. A copy of the administrative order for isolation or quarantine issued by the Department under this Chapter; and

d. A request that the Tribal Court enter an order releasing the petitioner from isolation or quarantine or providing a remedy for breach of conditions of isolation or quarantine specified in this Chapter, as the case may be.

4. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include.

5. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 18-4-11. Emergency Orders.

1. The Tribal Court may issue an emergency order for isolation or quarantine ex parte without a hearing if, and only if, it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. Probable cause exists to believe that the respondent requires immediate isolation or quarantine in order to avoid a clear and immediate danger to others; and

b. Considerations of safety do not allow time for notice to the respondent and a hearing.

2. If the Tribal Court issues an emergency order for isolation or quarantine ex parte without a hearing, the Tribal Court shall:

a. Issue a summons to the respondent in accordance with this Chapter;

b. Schedule a hearing to be held within seventy-two (72) hours of issuing the emergency order for isolation or quarantine; and

c. Cause the petition, the emergency order for isolation or quarantine, and summons to be served on the respondent in accordance with this Chapter.

Section 18-4-12. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Tribal Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but in the case of a petition seeking release from isolation or quarantine pursuant to an administrative order issued by the Department, no later than seventy-two (72) hours from the date the petition was filed.

2. In extraordinary circumstances and for good cause shown, or with consent of the respondent, the Tribal Court may continue the hearing date for up to ten (10) days, giving due regard to the rights of the respondent, the protection of the public health, the severity of the public health threat, and the availability of necessary witnesses and evidence.

3. The Tribal Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The hearing required under this Section may be waived by consent of the respondent.

5. The Tribal Court shall issue an order under this Chapter if it finds by clear and convincing evidence that:

a. In the case of an order for isolation or quarantine or confirming an administrative order of the Department,

isolation or quarantine is necessary to prevent a serious risk to the health and safety of others;

b. In the case of an order seeking release from isolation or quarantine pursuant to an administrative order of the Department:

i. The administrative order is contrary to the provision of this Chapter or beyond the Department's authority; or

ii. Isolation or quarantine is not necessary or no longer necessary to prevent a serious risk to the health and safety of others; and

c. In the case of an order seeking a remedy for breach of conditions of isolation or quarantine specified in this Chapter, such conditions have been breached and the petitioner is otherwise entitled to a remedy for such breach.

6. In lieu of or in addition to any relief requested in a proceeding under this Chapter, the Tribal Court may order the imposition of other public health measures appropriate to the public health threat presented.

Section 18-4-13. Order for Isolation or Quarantine. In addition to any other matters necessary for an order of the Tribal Court, an order for isolation or quarantine, including an emergency order, shall:

1. Specify the maximum duration for the isolation or quarantine as set forth in this Chapter;

2. Identify the person or group of persons subject to the order by name or shared or similar characteristics or circumstances;

3. Specify the factual findings warranting imposition of isolation, quarantine, or another public health measure;

4. Include any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this Chapter; and

5. Be served on all affected persons or groups in accordance with Chapter.

Section 18-4-14. Notice and Service of Order.

1. The Tribal Court or, in the case of an administrative order, the Department shall provide the person or group of persons subject to an order for isolation or quarantine with a written notice informing the person or group of persons of:

a. The right to legal counsel, including how to request and communicate with counsel;

b. The right to petition the Tribal Court for release from isolation or quarantine and the procedures for filing a petition;

c. The conditions of isolation and quarantine specified in this Chapter;

d. The right to petition the Tribal Court for a remedy regarding a breach of the conditions of isolation or quarantine specified in this Chapter and the procedures for filing a petition; and

e. The sanctions that may be imposed under this Chapter for violating an order for isolation or quarantine.

2. Except as provided in this Section, any person or group of persons isolated or quarantined or sought for isolation or quarantine shall be personally served in accordance with the Tribal Rules of Civil Procedure.

3. Service of any documents may be made by posting the documents to be served in a conspicuous place where the documents can be viewed by the person or group of persons to be served or by another means which will meaningfully communicate the information in the documents to the person or group of persons to be served if personal service:

a. Cannot be accomplished in a timely manner to a group of persons isolated or quarantined because the number of persons in the group makes personal service impracticable; or

b. Personal service would endanger the health or safety of a person conducting personal service.

4. Any person requested or required to transport or receive a person or group of persons subject to quarantine or isolation shall be informed of the infectious or contagious status of the

person or group of persons and the protections advised for transporting or receiving such person or group of persons prior to transporting or receiving the person or group of persons.

Section 18-4-15. Modification of Order.

1. Any party to an order for isolation or quarantine issued by the Tribal Court under this Chapter may, by motion in the same action in which the order for isolation or quarantine was issued, request the Tribal Court to:

a. Modify, terminate, vacate, or enforce the order;

b. Extend the order;

c. Order a party's release from isolation or quarantine pursuant to the order; or

d. Order a remedy for a breach of the conditions of isolation or quarantine specified in this Chapter.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for the relief requested.

3. The Tribal Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Tribal Court may grant a motion made under this Section if the movant proves by clear and convincing evidence that there are grounds for the relief sought, provided that if the relief seeks to extend an order for isolation or quarantine for a duration which would result in a person or group of persons being held in quarantine or isolation for longer than one hundred eighty (180) days, the Tribal Court shall grant such extension only if it finds that extraordinary circumstances exist and the person or group of persons subject to isolation or quarantine continue to pose a serious threat to the health and safety of others if isolation or quarantine is not continued.

Section 18-4-16. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates, or attempts or intends to knowingly, willfully, or purposely violate, an order for isolation or quarantine issued under this Chapter, including an administrative order issued by

the Department, shall be subject to a civil fine not to exceed one thousand dollars ($1,000) per day or occurrence of such violation.

2. In addition to the civil fines provided herein, the Tribal Court may enforce an order for protection issued under this Chapter using any and all other enforcement remedies available to enforce an order of the Tribal Court, including contempt.

Section 18-4-17. Entry Into Isolation or Quarantine.

1. Entry into premises used for isolation or quarantine shall be allowed under the following conditions:

a. The Department may authorize health care providers or other persons access to persons or groups of persons who are in isolation or quarantine as necessary to meet the needs of isolated or quarantined persons;

b. Only persons authorized by the Department may enter premises used for isolation or quarantine;

c. An authorized person entering premises used for isolation or quarantine shall be provided with infection control training and may be required to wear personal protective equipment or to receive vaccinations as determined by the Department; and

d. A person entering premises used for isolation or quarantine with or without authorization of the Department may become subject to isolation or quarantine.

2. Persons subject to isolation or quarantine and other persons entering premises used for isolation or quarantine are subject to rules and orders adopted by the Department. Failure to comply with rules and orders adopted by the Department is a violation of this Title.

CHAPTER 5
MEDICAL TREATMENT

Section 18-5-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Counseling" means the provision of counseling or mental health services by a health care provider or domestic violence advocate or counselor.

2. "Dependent adult" means a person over the age of majority who has mental limitations that restrict his or her ability to manage his or her own affairs, care for himself or herself, or protect his or her rights, including, but not limited to, persons who have developmental disabilities, or whose mental abilities have diminished because of age, mental illness, mental deficiency, chronic use of drugs, chronic intoxication, or other like incapacity which results in a lacking of sufficient understanding or capacity to communicate informed decisions.

3. "Domestic or family abuse" means domestic or family abuse as defined in Title IV of this Code.

4. "Emergency" means:

a. Immediate medical care is required for the alleviation of severe pain; or

b. Immediate diagnosis and treatment of unforeseeable medical conditions are required, if such conditions would lead to serious disability or death if not immediately diagnosed and treated.

5. "Medical care" means medical care and dental care.

6. "Mental health treatment" means the provision of mental health treatment or counseling on an outpatient basis.

7. "Residential shelter services" means the provision of residential and other support services to minors on a temporary or emergency basis in a facility that services only minors.

8. "Sexual assault" means causing a person to engage in sexual activity:

a. Involuntarily;

b. Without consent;

c. When the person is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity; or

d. When the person is under the age of fourteen (14) years;

e. When the person is under the age of majority but at least fourteen (14) years of age if the perpetrator is more than three (3) years older; or

f. With consent obtained by force, threat of force, intimidation, fraud, or duress.

Section 18-5-2. Informed Consent. Where a patient's informed consent is required prior to medical care, the patient or his or her legal representative shall be informed of:

1. The nature of the procedure;

2. The risks, complications, and expected benefits or effects of the procedure;

3. Any alternatives to the treatment which may be legally provided and their risks and benefits; and

4. Any potentially conflicting interest the health care provider may have, including research or financial interests.

Section 18-5-3. Surrogate Consent.

1. If an adult patient is unable to consent to medical care or counseling, including a dependent adult, and the patient does not have a health care directive which applies to the treatment required, the following individual or individuals in the indicated order of priority, who are available and willing to serve as a surrogate, shall have the authority to consent on behalf of the patient:

a. A guardian appointed by a court with the authority to make health care decisions on behalf of the patient;

b. A person designated in a health care power of attorney;

c. The patient's spouse or domestic partner, unless they are legally separated;

d. An adult child of the patient, provided that if the patient has more than one adult child, the health care

provider shall seek the consent of a majority of the adult children who are reasonably available for consultation;

e. A parent of the patient;

f. The patient's child over sixteen (16) years of age, provided that if the patient has more than one child over sixteen (16) years of age, the health care provider shall seek the consent of a majority of the children over sixteen (16) years of age who are reasonably available for consultation;

g. The patient's adult sibling, provided that if the patient has more than one adult sibling, the health care provider shall seek the consent of a majority of the adult siblings who are reasonably available for consultation;

h. Another member of the patient's immediate family;

i. A member of the patient's extended family; or

j. An adult who has exhibited special care and concern for the patient, who is familiar with the patient's medical care views and desires, and who is willing and able to become involved in the patient's medical care and to act in the patient's best interest.

2. If the health care provider cannot locate any of the people listed in subsection 1 of this Section, the patient's attending physician may make medical care treatment decisions for the patient after the physician consults with and obtains the recommendations of an institutional ethics committee. If this is not possible, the physician may make these decisions after consulting with a second physician who concurs with the physician's decision.

3. A surrogate may make decisions about mental health treatment on behalf of a patient if the patient is found incapable. However, a surrogate who is not the patient's agent or guardian shall not have the authority to admit the patient to an inpatient psychiatric facility.

4. A person who makes a good faith medical decision pursuant to this Section is immune from criminal and civil liability and is not subject to professional discipline for that decision.

Section 18-5-4. Consent in Emergency.

1. In cases of emergency where the attending health care provider reasonably believes that a medical procedure should be undertaken immediately and there is insufficient time to obtain the consent of the patient or a person authorized to consent for the patient, the medical procedure may be provided without consent.

2. In cases where a minor or dependent adult is in need of immediate medical care and, after reasonable efforts made under the circumstances, the parents, guardian, or custodian of such minor cannot be located or contacted for the purpose of consenting thereto, consent for said emergency attention may be given by any person standing in loco parentis to said minor or dependent adult.

3. A minor who is twelve (12) years of age or older or a dependent adult who is found to be under the influence of a dangerous drug or narcotic which includes withdrawal symptoms, may be considered an emergency case and the minor or dependent adult considered as having consented to medical care needed for treatment of that condition.

4. Nothing in this Section authorizes the undertaking of a medical procedure where the patient or the patient's legal representative has validly exercised his or her right to refuse that particular medical procedure.

Section 18-5-5. Consent by Person Having Care of Minor or Court.

1. The parent, guardian, or custodian of a minor or dependent adult may authorize in writing an adult to consent to medical care, counseling, or both for the minor or dependent adult.

2. Upon application by a minor, the Tribal Court may summarily grant consent for medical care, counseling, or both, for the minor if the Tribal Court determines:

a. The minor is sixteen (16) years of age or older and resides in the territory of the Tribe; and

b. The consent of a parent, guardian, or custodian is necessary to permit the medical care, counseling, or both, and the minor has no parent, guardian, or custodian available to give the consent.

Section 18-5-6. Consent by Minor Generally.

1. A minor living apart from his or her parents, guardian, or custodian and who lacks a fixed and regular nighttime residence or whose primary residence is either a supervised shelter designed to provide temporary accommodations, a halfway house, or a place not designed for or ordinarily used for sleeping by humans may consent to any medical care.

2. Notwithstanding any other provision of law, a minor may consent to:

a. Medical care and counseling related to the prevention or treatment of pregnancy, provided that no minor may be sterilized without the consent of the minor's parent or guardian; and

b. If the minor is alleged to be the victim of sexual assault, medical care and counseling related to the diagnosis and treatment of the condition and the collection of medical evidence with regard to the alleged sexual assault, provided that, unless the minor is twelve (12) years of age or older or the health care provider reasonably believes that the minor's parent, guardian, or custodian committed the sexual assault, the health care provider providing medical treatment shall attempt to contact the minor's parent, guardian, or custodian and shall note in the minor's treatment record the date and time of the attempted contact and whether the attempt was successful.

3. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to any of the following:

a. Medical care related to the prevention, diagnosis, or treatment of any disease which is required to be reported to the Department under this Title;

b. Medical care and counseling related to the prevention, diagnosis, or treatment of any sexually transmitted disease or the general sexual activity of the minor; and

c. If the minor states that he or she is a victim of or injured as a result of domestic or family abuse, medical care and counseling related to the diagnosis or treatment of the domestic or family abuse and the collection of medical evidence with regard to the alleged domestic or family abuse.

4. Notwithstanding any other provision of law, a minor who is sixteen (16) years of age or older and is otherwise competent may consent to the donation of blood and be subject to the penetration of tissue necessary to accomplish the donation at a blood bank if the minor has the written consent of the minor's parent or legal guardian.

5. If the health care provider providing treatment to a minor for any medical care pursuant to this Section believes that the condition requires a report pursuant to the laws of the Tribe, the health care provider shall:

a. Inform the minor that the report will be made; and

b. Unless the health care provider reasonably believes that the minor's parent, guardian, or custodian committed the act which caused the condition, attempt to contact the minor's parent, guardian, or custodian, inform them of the report, and note in the minor's treatment record the date and time of the attempted contact and whether the attempt was successful.

6. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-7. Minor Consent to Substance Use Treatment.

1. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a substance use problem.

2. The treatment plan of a minor authorized by this Section shall include the involvement of the minor's parent, guardian, or custodian, if appropriate, as determined by the health care provider treating the minor. The health care provider providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the health care provider attempted to contact the minor's parent, guardian, or custodian and whether the attempt was successful, or the reason why, in the opinion of the health care provider, it would not be appropriate to contact the minor's parent, guardian, or custodian.

3. This Section does not authorize a minor to receive replacement narcotic abuse treatment without the consent of the minor's parent, guardian, or custodian.

4. Nothing in this Section shall be construed to restrict or eliminate the right of a parent, guardian, or custodian to seek medical care and counseling for a substance use problem of a minor when the minor does not consent to the medical care and counseling.

5. Notwithstanding any other provision of law, when a parent, guardian, or custodian has sought the medical care and counseling for a substance use problem of a minor, the health care provider shall disclose medical information concerning the care to the minor's parent, guardian, or custodian upon the parent's, guardian's, or custodian's request even if the minor does not consent to disclosure.

6. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-8. Minor Consent to Counseling.

1. Notwithstanding any other provision of law, a minor who is twelve (12) years of age or older may consent to mental health treatment or counseling on an outpatient basis or to residential shelter services if both of the following requirements are satisfied:

a. The minor, in the opinion of the attending health care provider or domestic violence advocate or counselor, is mature enough to participate intelligently in the outpatient services or residential shelter services; and

b. The minor either:

i. Would present a danger of serious physical or mental harm to self or others without the mental health treatment, counseling, or residential shelter services; or

ii. Is the alleged victim of incest, child neglect or abuse, or domestic or family abuse.

2. A health care provider offering residential shelter services shall make his or her best efforts to notify the parent, guardian, or custodian of the minor of the provision of services.

3. The mental health treatment or counseling of a minor authorized by this Section shall include involvement of the minor's parent, guardian, or custodian unless, in the opinion of the health care provider or domestic violence advocate or counselor who is treating or counseling the minor, the involvement would be inappropriate. The health care provider or domestic violence advocate or counselor who is treating or counseling the minor shall state in the minor's treatment record whether and when the health care provider or domestic violence advocate or counselor attempted to contact the minor's parent, guardian, or custodian and whether the attempt was successful, or the reason why, in the opinion of the health care provider or domestic violence advocate or counselor, it would not be appropriate to contact the minor's parent, guardian, or custodian.

4. This Section does not authorize a minor to receive convulsive therapy, psychosurgery, or psychotropic drugs without the consent of the minor's parent, guardian, or custodian.

5. Subject to any limitations provided in this Section, the consent of the parent, guardian, or custodian of a minor for any medical care or counseling provided to a minor pursuant to this Section is not necessary in order to authorize such medical care or counseling and a consent given by a minor under this Section is not subject to disaffirmance because of minority.

Section 18-5-9. Access to Minor Information.

1. Except where notice to or contact of a parent, guardian, or custodian is required under this Chapter, the parent, guardian, custodian, or other representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records or receive information about a minor's medical care or counseling in either of the following circumstances:

a. With respect to medical care or counseling which the minor consented to as authorized by this Chapter; or

b. Where the health care provider or domestic violence advocate or counselor determines that access to the patient records requested by the parent, guardian, custodian, or other representative would have a detrimental effect on the provider's, advocate's, or counselor's professional

relationship with the minor patient or the minor's physical safety or psychological well-being.

2. The decision of a health care provider or domestic violence advocate or counselor as to whether or not a minor's records are available for inspection or copying under this Section shall not attach any liability to the provider unless the decision is found to be in bad faith.

Section 18-5-10. Liability of Provider.

1. A health care provider or domestic violence advocate or counselor acting in reliance on the consent of a minor who has authority or apparent authority pursuant to this Chapter to consent to medical care or counseling is not subject to criminal or civil liability or professional disciplinary action on the ground that he or she failed to obtain consent of the minor's parent, guardian, or custodian.

2. A health care provider shall not be subject to criminal or civil liability or professional disciplinary action on account of a failure to obtain consent or inform a patient of the possible consequences of a medical procedure where the failure to inform is caused by any of the following:

a. The health care provider reasonably believed that consent was not required pursuant to a provision of this Chapter;

b. The patient was unconscious;

c. The medical procedure was undertaken without the consent of the patient because the health care provider reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to fully inform the patient; or

d. A medical procedure was performed on a person legally incapable of giving consent and the health care provider reasonably believed that a medical procedure should be undertaken immediately and that there was insufficient time to obtain the informed consent of a person authorized to give such consent for the patient.

Section 18-5-11. Liability During Emergency.

1. A health care provider who renders services during any state of emergency at the express or implied request of any official or agency of the Tribe shall have no liability for any injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause those injuries are sustained.

2. A health care provider who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care.

3. The immunity granted in this Section shall not apply:

a. When the person receiving services or care has been seen regularly by or under the direction of the health care provider providing services or care; or

b. To any willful act or omission.

CHAPTER 6
FOOD SERVICES

Section 18-6-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form and whether raw, cooked, or processed, that are sold or intended in whole or in part for ingestion or chewing by humans and includes ingredients used or intended for use in food and chewing gum.

2. "Food establishment" means, regardless of whether conducted in a mobile, stationary, temporary, or permanent facility or location, whether conducted on a temporary, seasonal, or permanent basis, whether consumption is on or off the premises, or whether there is a charge for the food:

a. An operation that stores, prepares, packages, serves, or vends food directly to members of the public or otherwise provides food for human consumption, such as restaurants, satellite or catered feeding locations, catering operations, retail food establishments and outlets, grocery

stores and markets, vending locations, conveyances used to transport food, and food banks, but excluding:

i. A produce stand that only offers whole, uncut fresh fruits and vegetables; and

ii. An individual preparing and selling food out of his or her own home;

b. An operation that relinquishes possession of food to members of the public directly or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders; and

c. An element, part, or subdivision of a food establishment, such as transportation vehicles or a central preparation facility that supplies a vending location or satellite feeding location, unless such element is licensed as part of the food establishment.

3. "Health inspector" means the health inspector of the Department designated pursuant to this Chapter.

4. "Temporary food establishment" means a food establishment which operates for a period of no more than ten (10) consecutive days in conjunction with a single event or celebration.

Section 18-6-2. Consent to Jurisdiction. Any person who operates a food establishment in the territory of the Tribe, conducts business or engages in a business transaction in the territory of the Tribe or with the Tribe or any of its members, enters into a consensual relationship with Tribe or any of its members, acts under Tribal authority, or enters the territory of the Tribe shall be deemed to have consented to the following:

1. To be bound by the terms of this Title; and

2. To the exercise of jurisdiction by the Tribal Court over it, him, or her in an action arising under this Title.

Section 18-6-3. Health Inspector.

1. The Department may designate an employee of the Department as the health inspector of the Tribe. The health inspector should have the knowledge, skills, and abilities to adequately perform the required duties under this Chapter. In the

absence of the Department designating a health inspector, the Director shall be the health inspector of the Tribe.

2. The power, authority, and duties of the health inspector shall be as follows:

a. To administer, implement, and enforce this Chapter and enforce and assist in the enforcement of all laws of the Tribe relating to food safety and food establishments, subject to the supervision of the Department;

b. To make recommendations to the Department concerning the promulgation of and amendment to rules and regulations to implement this Chapter;

c. To investigate, inspect, and monitor food establishments as provided in this Chapter;

d. To receive applications for and issue to and suspend, cancel, and revoke licenses of food establishments in accordance with this Chapter and the rules and regulations of the Department;

e. To bring legal action in the name of the Tribe to enforce this Chapter;

f. To inspect any premises where food is manufactured, distributed, or sold as provided in this Chapter;

g. To conduct an audit to inspect any licensee's records and books as provided in this Chapter;

h. To examine, under oath, either orally or in writing, any person with respect to any matter subject of this Chapter;

i. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states of the United States in carrying out the duties of the health inspector; and

j. To perform all other duties delegated or assigned to the health inspector by this Chapter or other laws of the Tribe or the Tribal Council and otherwise implement this Chapter.

Section 18-6-4. Rules and Regulations.

1. The Department may promulgate rules and regulations, not inconsistent with this Chapter and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Department under this Chapter.

2. In the absence of the Department promulgating such rules and regulations, the most recent model Food Code developed and approved by the Food and Drug Administration of the Public Health Service of the United States Department of Health and Human Services shall constitute the rules and regulations of the Department governing food safety and food establishments to the extent not inconsistent with this Title, provided that terms particular to the United States, a state of the United States, or either of their agencies, courts, or tribunals in such model Food Code or any law incorporated therein by reference shall be read as referring to their counterparts under the laws of the Tribe unless the context requires otherwise, including, but not limited to the following:

a. "Regulatory authority" shall refer to the Department and, when appropriate, the health inspector; and

b. "Local," "state," and "federal" shall refer to the Tribe.

Section 18-6-5. License Required.

1. No person may commence, practice, transact, or carry on any food establishment in the territory of the Tribe except with a license issued in accordance with this Chapter and compliance with all other applicable laws governing the same.

2. Except for licenses issued for temporary food establishments, a license issued by the Department shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

Section 18-6-6. Exemptions. Any school, club, athletic organization, or charitable or religious entity operating a temporary food establishment for the sole purpose of raising funds for charitable or religious purposes where no part of the income accrues to the personal benefit of any person shall be exempt from the requirement of a license under this Chapter.

Section 18-6-7. Application for License.

1. Any person desiring a license pursuant to this Chapter shall complete and file an application for the appropriate license with the Department and pay such application fee as may be set by the Department to defray the costs of processing the application.

2. In addition to any other items required by the Department, all applications for a license pursuant to this Chapter shall include the following:

a. The name, address, telephone number, and signature of the applicant and the name, mailing address, and location of the food establishment;

b. Any other names used by the applicant, including trade names;

c. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity and the jurisdiction where the applicant is organized or registered to conduct business;

d. A statement specifying whether the food establishment is mobile or stationary and temporary or permanent;

e. The name, title, address, and telephone number of the person directly responsible for the food establishment;

f. Information on each license for a food establishment which the applicant has held in any jurisdiction;

g. Whether the applicant or any of its principals have had a license for a food establishment revoked or suspended in any jurisdiction;

h. Agreement by the applicant to comply with the laws of the Tribe and all conditions of the license issued by the Department; and

i. A statement that the applicant attests to the accuracy of all information provided in the application.

Section 18-6-8. Processing of Application.

1. To qualify for a license, an applicant shall:

a. Be an owner or officer of the food establishment;

b. Comply with the requirements of this Chapter, the rules and regulations of the Department under this Chapter, and all applicable laws of the Tribe; and

c. Agree to permit access by the Department and health inspector to the food establishment and provide required information to the same.

2. The Department shall issue a license only after, at a minimum:

a. A properly completed application is submitted;

b. The required fee is submitted;

c. Plans, specifications, and information required by the health inspector are reviewed and approved by the health inspector; and

d. A pre-operational inspection shows that the food establishment is built in accordance with any approved plans and specifications and that the food establishment is in compliance with this Chapter and the rules and regulations of the Department under this Chapter.

3. The Department may establish additional requirements for the issuance of a license that are not inconsistent with this Chapter, including inspections, ensuing the suitability of the physical premises and plan of operation of the applicant, and any other relevant considerations.

Section 18-6-9. Form of License.

1. Each license issued pursuant to this Chapter shall specify:

a. The name and address of the licensee;

b. The premises to which the license applies; and

c. Such other information as the Department may require.

2. The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.

3. A licensee must pay all taxes assessed against it under the laws of the Tribe.

4. Notwithstanding anything else in the laws of the Tribe, a license issued pursuant to this Chapter constitutes only a permit to the licensee to conduct the activities permitted by the license for the duration of the license and shall not be construed or deemed to constitute a property or other vested right of any kind or give rise to a legal entitlement to a license for any future period of time.

Section 18-6-10. Renewal of License.

1. A licensee may renew its license by filing an application for renewal with the Department and paying such renewal application fee as may be set by the Department to defray the costs of processing the application.

2. The renewal application shall identify any changes in information required on the licensee's application for a license since the issuance of the license or previous renewal, whichever is later, or the applicant shall certify that no such information has changed.

3. The Department shall renew a license upon submission of a renewal application, payment of the applicable annual license fee, and compliance with any other additional requirements of the Department for the issuance of a renewal that are not inconsistent with this Chapter.

Section 18-6-11. Transfer and Modification of License.

1. No license issued pursuant to this Chapter may be assigned or transferred to any other person or entity or to any other location.

2. A licensee may request a change in the name and/or address of the licensee by applying with the Department for a modification of the license in accordance with this Section and paying such fee as may be set by the Department to defray the costs of processing the modification.

3. The Department shall approve a change in the address of the licensee upon request, provided the change in address is not a change in location. The Department shall approve a change in the name of the licensee provided that the name is not the name of an individual and the change is not the result of any change in more than fifty percent (50%) of the ownership interest in the licensee.

4. If the Department approves a modification of a license pursuant to this Section, the Department shall issue a modified license to the licensee reflecting the modified information. The modified license shall expire on the same date as the original license.

5. A new license shall be required for any of the following changes:

a. Any change in ownership of the licensee that constitutes more than fifty percent (50%) of the ownership interest;

b. A change in location of the premises to which a license applies; or

c. Any modification of a license not provided for in this Section.

Section 18-6-12. License Suspension or Revocation.

1. The health inspector may summarily suspend for up to fifteen (15) days the license of any person upon a finding of imminent danger to the public health or welfare caused by the licensee or any act or omission of the licensee. If the health inspector determines it is necessary to protect the public or health or welfare, the health inspector may make such suspension effective immediately upon notification to the licensee.

2. The Department, after at least ten (10) days notice and a full hearing, may revoke the license of any person for any of the following:

a. Violation or permitting the violation of any provision of this Chapter or any other law of the Tribe or other applicable law governing the licensee;

b. Failure or refusal to pay all taxes imposed on the licensee under the laws of the Tribe;

c. Misrepresentation of a material fact in the licensee's application for a license or any renewal thereof;

d. The occurrence of any event which would have made the licensee ineligible for a license if the event had occurred prior to the issuance of the license;

e. Imminent danger to the public health or welfare caused by the licensee;

f. Any act or omission of the licensee which has not been corrected within a reasonable time after notice from the health inspector; or

g. Failure of the licensee to correct an unhealthy or unsafe condition on the licensed premises within a reasonable time after notice from the health inspector.

3. The Department may suspend the license of any licensee for a period not exceeding one-hundred eighty (180) days as an alternative to revoking the license if the Department is satisfied that the grounds giving rise to the revocation or the circumstances thereof are such that a suspension of the license would be adequate.

4. Any suspension of a license pursuant to this Section shall be effective twenty-four (24) hours after service of notice thereof upon the licensee. During any period of suspension of a license, the licensee shall have and exercise no rights or privileges whatsoever under the license.

5. After revocation of a license, the licensee's rights and privileges under such license shall terminate twenty-four (24) hours after service of notice thereof upon the licensee. Any licensee whose license is revoked shall not be granted any license under the provisions of this Title for a period of two (2) years from the date of revocation.

Section 18-6-13. Enjoining Food Establishment. In addition to any other remedies available to it, the Department may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Chapter requires a license for the conduct of such business, activity, or function. The enjoining of a business pursuant to this Section shall be deemed an exclusion of the

business pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-6-14. Operation of Licensed Premises.

1. All food establishments shall have a person in charge responsible for the operation of the food establishment and to supervise persons handling food.

2. All food establishments shall only distribute food to the public which is safe, unadulterated, and truthfully presented.

3. All licensees shall operate food establishments in accordance with this Chapter and the rules and regulations of the Department under this Chapter.

4. No licensee may lock or permit the locking of the entrances to the licensed premises until all persons other than the licensee and its employees have left.

5. No licensee may change the name of its licensed premises without first obtaining a modification of its license as provided in this Chapter.

6. No licensee shall make any significant structural alteration or addition to a food establishment without first submitting a copy of the plans and specifications to the health inspector for review and obtaining approval of such alteration or addition from the health inspector.

Section 18-6-15. Inspections.

1. The health inspector may enter a food establishment at any time food is being prepared or served or food workers are present to examine the premises, equipment, and procedures, obtain samples of food or other substances for laboratory analysis, or otherwise determine compliance with this Chapter and the rules and regulations of the Department under this Chapter.

2. After an inspection, the health inspector shall provide a copy of his or her completed inspection report to the licensee, owner or operator of the food establishment, or person in charge. The inspection report shall:

    a. Document specific factual observations of conditions which violate this Chapter or other deviations from this Chapter that require correction; and

b. Provide a specified time that is reasonable under the circumstances to make required corrections documented in the inspection report.

3. Unless a food establishment files an appeal in accordance with this Title and requests and obtains a stay of enforcement pending such appeal, a food establishment shall comply with and make all corrections mandated in an inspection report.

4. Inspection reports shall be considered public information and the Department shall make inspection reports available to a person upon request in accordance with procedures established by the Department.

5. The health inspector shall inspect food establishments as often as the health inspector and Department deem advisable for the protection of public health and safety.

Section 18-6-16. Violations.

1. It shall be a violation of this Chapter:

a. To operate a food establishment in the territory of the Tribe without a license issued pursuant to this Chapter, during any time a license issued pursuant to this Chapter is suspended, or after a license issued pursuant to this Chapter has been revoked;

b. To prevent, obstruct, or restrict or attempt to prevent, obstruct, or restrict an inspection of a food establishment or other action of the health inspector authorized under this Chapter or the rules and regulations of the Department;

c. Unless such failure or refusal is excused by a stay obtained pending an appeal in accordance with this Title, to fail or refuse to make a correction mandated in an inspection report issued by the health inspector within the time specified in the inspection report;

d. To knowingly operate a food establishment in which contaminated food is served or sold or in which workers in such food establishment suffer from or are carriers of a communicable disease;

e. To knowingly label food in a manner which is illegible, deceptive, misleading, or omits a material fact as to the condition, nature, components, or quantity of the food or to knowingly sell or serve food in a food establishment which is labeled, described, or advertised in a manner which is illegible, deceptive, misleading, or omits a material fact as to the condition, nature, components, or quantity of the food; or

f. To violate any other provision of this Chapter or the rules and regulations of the Department.

2. If an act is a violation of this Chapter when committed by a licensee or food establishment, the licensee or food establishment is also liable if the act is committed by one of its employees or agents.

3. In addition to any other consequences for a violation of this Chapter, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine of up to five hundred dollars ($500) per occurrence.

4. Any person who engages in a pattern or practice of violations under this Section shall be subject to a civil fine of up to one thousand dollars ($1,000) per occurrence.

5. Each day during which a violation under this Section continues shall constitute a separate occurrence.

6. The health inspector shall impose civil fines under this Section by issuing a notice of violation under this Title and the Department may enforce and collect such civil fines through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-6-17. Review of Actions. Any notice of violation, inspection report, decision, or order of the health inspector or Department under this Chapter shall be subject to appeal and judicial review in accordance with this Title.

Section 18-6-18. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a final decision of the Director regarding a notice of violation, inspection report, decision, or order of the health inspector or Department in accordance with this Title as authorized under this Chapter,

nothing in this Chapter shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe, the Department, or any of their agents, officers, officials, personnel, or employees.

2. An action brought or taken by the health inspector or the Department, including without limitation the bringing of suit for the collection of fines or enjoining a business, activity, or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the health inspector or the Department, including a suit for the collection of fines or the enjoining of a business, activity, or function of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity of its economic enterprises in any action brought or taken by the health inspector or the Department against such economic enterprise.

CHAPTER 7
ENFORCEMENT AND VIOLATIONS

Section 18-7-1. Violations Generally.

1. It shall be a violation of this Title:

a. To disclose confidential information protected under this Title other than as expressly authorized in this Title;

b. To knowingly or willfully embezzle, steal, misapply, or otherwise without authority convert to the use of any person other than the rightful owner any of the moneys, funds, securities, premiums, credits, property, or other assets of the Department;

c. To receive, conceal, or retain moneys, funds, securities, premiums, credits, property, or other assets of the Department knowing the same have been embezzled, stolen, misapplied, or converted;

d. To knowingly or willfully make or cause to be made or submit or cause to be submitted any false statement, claim, or representation of material fact to obtain a payment or

other benefit from the Department for which no entitlement would otherwise exist;

e. To knowingly solicit, receive, offer, or pay remuneration or provide anything of value, including any kickback, bribe, or rebate, to induce or reward referrals for items or services provided, paid, or reimbursed by the Department or in return for purchasing, leasing, ordering, arranging for, or recommending any good, facility, service, or item for which payment may be made in whole or in part by the Department;

f. To make any materially false, fictitious, or fraudulent statement or representation, or make or use any materially false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, in connection with the receipt or delivery of or payment for health care benefits, items, or services from the Department;

g. With the intent to defraud, to sign the name of another or of a fictitious person on, counterfeit, forge, corrupt, or falsify any record, document, or other instrument of the Department or to pass or attempt to pass the same as genuine;

h. To violate any provision of this Title where a remedy for such violation is not otherwise provided; or

i. To violate any other law applicable to the Department or the benefits, services, or payments provided by the Department which is punishable by any fine, imprisonment, or other sanction.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine for each occurrence of up to the greater of:

a. Four (4) times the amount or value of anything received, attempted to be received, or expected to be received as a result of the violation; or

b. One thousand dollars ($1,000).

3. Any civil fine permitted under this Section may be imposed by the Department pursuant to a notice of violation and

thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-7-2. Disorderly Conduct Violations.

1. It shall be a violation of this Title for any person, while present in facilities operated by the Department or otherwise while receiving services from the Department, to:

a. Engage in fighting or otherwise threatening or violent behavior;

b. Use language, an utterance, or gesture or engage in a display or act that is physically threatening or menacing or done in a manner that is likely to inflict injury or incite an immediate breach of the peace; or

c. If a patient of the Department, to refuse or knowingly or willfully fail to comply with any rules of the Department governing the conduct of patients.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Title as defined in this Section shall be subject to a civil fine of up to five hundred dollars ($500) per occurrence, which may be imposed by the Department pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Department on behalf of the Tribe in the Tribal Court.

Section 18-7-3. Denial of Access. The Department may, through order or decision issued in accordance with this Title, limit, restrict, or deny access to any facilities or services of the Department by any person who violates the provisions of this Title, provided that, in the case of a patient of the Department, any such limitation, restriction, or denial of access shall not prevent such patient from receiving medically necessary treatment and shall otherwise be narrowly tailored to prevent the conduct subject of the violation while protecting the patient's right to health care. The limitation, restriction, or denial of access to any facilities or services of the Department pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-7-4. Notice of Violation.

1. If the Department has reason to believe that a violation of this Title has occurred or otherwise intends to impose a civil fine on any person pursuant to any provision of this Title or other law of the Tribe administered by the Department, the Department shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title or other law administered by the Department alleged to have been violated;

b. The Department will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner provided for service of a summons in the Tribal Rules of Civil Procedure.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Department shall consider any written response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Department may:

a. Close the notice of violation if satisfied by the accused's response;

b. Issue an order imposing an appropriate sanction for the matters in the notice of violation; or

c. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this

Title occurred, the Department shall determine an appropriate sanction for such violation, and impose such sanction by order of the Department.

7. Written notice shall be provided of the Department's decision under this Section.

8. A decision of the Department under this Section shall be subject to appeal and a final decision of the Director subject to judicial review in accordance with this Title.

Section 18-7-5. Exclusion from Contracting. In addition to any other remedies available to it, the Department may, by order, designate any person who violates any provision of this Title as ineligible or excluded, temporarily or permanently, from entering into, receiving, or engaging in any contracts or business with the Department. Any action of the Department pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 18-7-6. Reporting of Violations. The Department may report any violation of this Title or another applicable law to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Approved 4/20/21
Resolution 21-22

PONCA TRIBE OF NEBRASKA
TITLE XIX
CORPORATIONS

CHAPTER 1
GENERAL PROVISIONS

Section 19-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Act of the board of directors" means either:

   a. An act adopted or rejected by a majority of the directors present at a duly called meeting where a quorum is present, unless the act of a greater number is required by this Title, the articles of incorporation, or the bylaws; or

   b. Action taken by written consent of the directors in accordance with this Title.

2. "Act of the shareholders" means either:

   a. An act adopted or rejected by a majority of the votes entitled to be cast by each class of shareholders entitled to vote on the act at a duly called meeting where a quorum is present, unless a greater number of votes is required by this Title, the articles of incorporation, or the bylaws; or

   b. An action taken by written consent of the shareholders in accordance with this Title.

3. "Articles of incorporation" means the articles filed under this Title to organize and establish a corporation and includes the articles as amended or restated.

4. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

5. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign corporation irrespective of the name by which the group is designated.

6. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign

corporation irrespective of the name by which those rules are designated.

7. "Corporation" means, except when used in the phrase foreign corporation, an entity that is formed under this Title or that becomes subject to this Title.

8. "Distribution" means a direct or indirect transfer of money or other property, except its own shares, from a domestic or foreign corporation to or for the benefit of its shareholders in respect of any of its shares and includes a declaration or payment of a dividend and any purchase, redemption, or other acquisition of shares, but does not include:

a. Amounts constituting reasonable compensation for present or past service; or

b. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

9. "Foreign corporation" means an incorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a corporation if the incorporated entity were formed under the laws of the Tribe.

10. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

11. "Shares" means the units into which the proprietary interests in a corporation are divided.

12. "Voting group" means all shares of one or more classes or series that under the articles of incorporation, bylaws, or this Title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

13. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 19-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all corporations.

2. This Title shall apply to all corporations to which Title XIV of this Code applies.

Section 19-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 19-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
FORMATION

Section 19-2-1. Formation.

1. One or more persons at least the age of majority may act as incorporators to form a corporation by delivering to the Office of the Secretary for filing the articles of incorporation. The incorporators of a corporation need not be shareholders at the time of formation or thereafter.

2. A corporation is formed when the articles of incorporation become effective.

3. The Office of the Secretary's filing of the articles of incorporation of a corporation is conclusive proof that the corporation is organized and formed under this Title.

Section 19-2-2. Articles of Incorporation.

1. The articles of incorporation must state all of the following:

a. A statement that the corporation is organized under this Title;

b. The name of the corporation that complies with the laws of the Tribe;

c. The period of duration, which may be perpetual;

d. The number of shares the corporation is authorized to issue and, if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

e. A brief statement of the character of business that the corporation initially intends to actually conduct in the territory of the Tribe, provided such statement shall not constitute a limitation on the character of business that the corporation ultimately may conduct;

f. The principal address, which may be the same as the mailing address of the corporation's registered agent;

g. The name and street and mailing addresses in the territory of the Tribe of the corporation's registered agent;

h. The name and address of each incorporator;

i. Whether the corporation is a Tribal business entity; and

j. If the corporation is Tribal business entity, whether the corporation enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of incorporation shall be signed by all incorporators.

3. The articles of incorporation may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 19-2-3. Amendment or Restatement of Articles.

1. Articles of incorporation may be amended or restated at any time. Except as provided in the articles of incorporation, a shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, purpose, or duration of the corporation.

2. If a corporation has not yet issued shares, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

3. If a corporation has issued shares, the following apply to amendments to the articles of incorporation:

a. A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders and the board of directors may condition its submission of the proposed amendment on any basis;

b. If the articles of incorporation expressly permit, the shareholders may propose one or more amendments to the articles of incorporation;

c. The corporation shall provide notice to each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting and the notice shall:

i. State that the proposed amendment will be considered at the meeting; and

ii. Contain or be accompanied by a copy or summary of the amendment; and

d. For the amendment to be adopted, the shareholders must approve the amendment by:

i. A majority vote at a meeting where a quorum consisting of a majority of the votes entitled to vote is present; and

ii. If any voting group is entitled to vote on the amendment, the approval of each such voting group at a meeting where a quorum of the voting group consisting of a majority of the votes entitled to be cast on the amendment by that voting group is present.

4. To amend its articles of incorporation, a corporation must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of each amendment adopted;

d. The date of each amendment's adoption;

e. If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly adopted by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required; and

f. If an amendment required approval of the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this Title and the articles of incorporation.

5. The articles of incorporation shall be amended if there is a statement in the articles that was false or erroneous when it was made.

6. If a director of a corporation knows that any information in a filed articles of incorporation was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 19-2-4. Restatement of Articles.

1. A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

2. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in this Chapter for amendments to the articles of incorporation.

3. A corporation that restates its articles of incorporation shall deliver to the Office of the Secretary for filing articles of restatement setting forth:

a. The name of the corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of the restated articles of incorporation;

d. A statement that the restated articles consolidate all amendments into a single document; and

e. If a new amendment is included in the restated articles, the statements required under this Chapter for an amendment to the articles of incorporation.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

Section 19-2-5. Bylaws.

1. The board of directors of a corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with the laws of the Tribe or the articles of incorporation.

3. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless:

a. The power to alter, amend, or repeal the bylaws is reserved to the shareholders by the articles of incorporation; or

b. The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

4. Unless otherwise provided in the articles of incorporation, the bylaws of a corporation shall be subject to repeal or change by act of the shareholders even though the bylaws may also be amended or repealed by the board of directors.

CHAPTER 3
SHARES AND SHAREHOLDERS

Section 19-3-1. Shares.

1. The articles of incorporation shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class, and before the issuance of shares of a class, the preferences, limitations, and relative rights of that class shall be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical to those other shares of the same class except to the extent otherwise permitted by this Section.

2. The articles of incorporation shall authorize:

a. One or more classes of shares that together have unlimited voting rights; and

b. One or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation on dissolution.

3. The articles of incorporation may authorize one or more classes of shares that:

a. Have special, conditional, or limited voting rights or no right to vote, except to the extent prohibited by this Chapter;

b. Are redeemable or convertible as specified in the articles of incorporation either:

i. At the option of the corporation, the shareholder, or another person or on the occurrence of a designated event;

ii. For cash, indebtedness, securities, or other property; or

iii. In a designated amount or in an amount determined in accordance with a designated formula or by reference to external data or events.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, non-cumulative, or partially cumulative; or

d. Have preference over any other class of shares with respect to distributions, including dividends and distributions on the dissolution of the corporation.

4. The description of the designations, preferences, limitations, and relative rights of share classes in this Section is not exhaustive.

5. If the articles of incorporation provide for it, the board of directors may determine, in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in this Section, of either:

a. Any class of shares before the issuance of any shares of that class; or

b. One or more series within a class before the issuance of any shares of that series.

6. Each series of a class of shares shall be given a distinguishing designation.

7. Unless otherwise expressly permitted in this Chapter, all shares of a series shall have preferences, limitations, and relative rights identical to those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

8. A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

9. At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation on dissolution must be outstanding.

Section 19-3-2. Issuance of Shares.

1. Unless the articles of incorporation reserve the power to the shareholders, the board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation including cash, services performed, or other securities of the corporation, except that neither promissory notes nor future services constitute valid consideration.

2. A shareholder of a corporation shall be under no obligation to the corporation or its creditors with respect to the shareholder's shares other than the obligation to pay to the corporation the full consideration for which said shares were issued or to be issued.

3. Before the corporation issues shares, the board of directors or, if the articles of incorporation reserve the power to the shareholders, the shareholders, must determine that the consideration received or to be received for shares to be issued is adequate. Such determination is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and non-assessable.

4. When the corporation receives the consideration for which the board of directors or shareholders authorized the issuance of shares, the shares issued for the consideration are fully paid.

5. Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the terms and conditions relating to their exercise, including the time or times, the conditions precedent, and the consideration for which and the holders by whom the rights, options, or warrants may be exercised.

6. The shares of a corporation shall be represented by certificates signed by an officer of the board of directors. At a minimum, each share certificate must state on its face:

a. The name of the issuing corporation;

b. The name of the person to whom issued; and

c. The number and class of shares and the designation of the series, if any, the certificate represents.

7. The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. Such a restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

8. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this Section and its existence is noted conspicuously on the front or back of the certificate. Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

9. The shareholders of a corporation do not have any preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

10. A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares, except that if the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired.

Section 19-3-3. Meetings of Shareholders.

1. A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

2. A corporation shall hold a special meeting of shareholders:

a. On the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws;

b. On the call of the holders of not less than one-fifth (1/5) of all the outstanding shares entitled to vote; or

c. When otherwise required in this Title, other law of the Tribe applicable to the corporation, the articles of incorporation, or bylaws.

3. Only business within the purpose or purposes described in the meeting notice may be conducted at a special shareholders' meeting.

4. Shareholders' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's known place of business.

5. Unless the articles of incorporation provide otherwise, shareholders may participate in any shareholders' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A shareholder participating in a meeting by such means is deemed to be present in person at the meeting.

6. Unless otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding shares entitled to vote on the matter. Unless otherwise provided in the articles of incorporation or bylaws, once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

7. Unless the vote of a greater number is required by the articles of incorporation, bylaws, this Title, or other law of the Tribe applicable to the corporation, if a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the matter shall be the act of the shareholders.

8. If the articles of incorporation provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the articles of incorporation provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

9. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

10. A shareholder may waive any notice before or after the date and time of the shareholders' meeting that is the subject of such notice. The waiver must be in writing, signed by the shareholder entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records, except that a shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

11. Unless the shareholder objects to considering the matter when it is presented, a shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 19-3-4. Shareholder Action Without Meeting.

1. Action required or permitted to be taken at a shareholders' meeting may be taken without a meeting or a vote if there is written consent by at least the minimum number of outstanding shares entitled to vote on the action which would be necessary to authorize or take the action at a meeting.

2. An action taken by shareholders without a shareholders' meeting must be taken by all shareholders and must be evidenced by written consent of all shareholders of the corporation if:

a. The action involves the election or removal of one or more directors; or

b. The articles of incorporation or bylaws require that the action must be taken by all shareholders if taken without a shareholders' meeting.

3. Action taken by the written consent of the shareholders must be evidenced by one or more written consents describing the

action taken and signed by holders of at least the minimum number of outstanding shares necessary to authorize or take the action. The written consents to the action must be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

4. Unless the written shareholder consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the corporation.

5. A shareholder may revoke the shareholder's consent by delivering a signed revocation of the consent to the chairperson or secretary of the board of directors before the date that the consents sufficient to authorize taking the action have been delivered to the corporation.

6. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the corporation, the certificate so filed shall state, in lieu of any statement concerning a vote of shareholders, that written consent has been obtained in accordance with this Section.

7. Notice of the taking of a corporate action without a meeting must be given within thirty (30) days after the effective date of the corporate action to:

a. Each shareholder entitled to take the action who did not consent to the action in writing; and

b. Each shareholder who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

Section 19-3-5. Voting of Shares.

1. Unless otherwise provided in the articles of incorporation, each outstanding share shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of shareholders.

2. Except for shares held by it in a fiduciary capacity, shares of its own stock belonging to a corporation shall not be voted, directly or indirectly, and shall not be counted in

determining the total number of outstanding shares at any given time.

3. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by the shareholder's duly authorized attorney-in-fact, but a proxy shall not be permitted for a Tribal business entity wholly owned by the Tribe. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy.

4. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of sale may agree in writing as to which of them shall vote the stock pledged or sold until the contract of pledge or sale is fully executed.

5. In all elections for directors, every shareholder entitled to vote shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder, for as many persons as there are directors to be elected.

6. If so provided in the articles of incorporation, shareholders may cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 19-3-6. Voting Trusts and Agreements.

1. One or more shareholders may create a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their shares to the trustee. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

2. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 19-3-7. Shareholder Agreements.

1. An agreement among the shareholders of a corporation is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this Title

if it complies with this Section and meets any of the following conditions:

a. Restricts the discretion or powers of the board of directors;

b. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in this Chapter;

c. Establishes who shall be directors or officers of the corporation, their terms and conditions of office or employment, or their manner of selection or removal;

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

f. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue where there is a deadlock among directors or shareholders;

g. Requires dissolution of the corporation at the request of one or more of the shareholders or on the occurrence of a specified event or contingency;

h. Establishes the terms and conditions of employment of shareholders;

i. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among shareholders;

j. Restricts the transfer of shares; or

k. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation, its liquidation and dissolution, or the

relationship among the shareholders, the directors, and the corporation, or among any of them.

2. An agreement authorized by this section shall be:

a. Set forth either:

i. In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

ii. In a written agreement that is signed by all persons who are shareholders at the time of the agreement and that is filed with the corporation;

b. Subject to amendment or termination only by all persons who are shareholders at the time of the amendment or termination, unless the agreement provides otherwise; and

c. Valid for the duration of the corporation's existence, unless the agreement provides otherwise.

3. An agreement authorized by this Section is enforceable by any person with standing. The existence of an agreement authorized by this Section shall be noted conspicuously on the front or back of each certificate for outstanding shares. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who at the time of purchase did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate for the shares or the purchaser has actual notice of the existence of the agreement at the time of purchase. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of the purchase of the shares.

4. If an agreement authorized by this Section ceases to be effective for any reason and the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, the board of directors may adopt an amendment to the articles of incorporation or bylaws without shareholder action to delete the agreement and any references to it.

5. An agreement that is authorized by this Section and that limits the discretion or powers of the board of directors relieves the directors of liability for acts or omissions imposed by law on directors with respect to the discretion or powers limited by the agreement and imposes such liability on the persons in whom such discretion or powers are vested.

6. The existence or performance of an agreement authorized by this Section is not a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators may act as shareholders with respect to an agreement authorized by this Section if no shares have been issued when the agreement is made.

8. This Section does not apply to, limit, or invalidate agreements that are otherwise valid or authorized without regard to this Section, including, without limitation, shareholder agreements between or among some or all of the shareholders or agreements between or among the corporation and one or more shareholders. The procedure set forth in this Section is not the exclusive method of agreement among shareholders or among shareholders and the corporation with respect to any of the matters described in this Section.

Section 19-3-8. Shareholder Dissent.

1. A shareholder is entitled to dissent from and obtain payment of the fair value of the shareholder's shares in the event of any of the following corporate actions:

a. Consummation of a plan of merger to which the corporation is a party if:

i. Shareholder approval is required for the merger under the articles of incorporation or laws of the Tribe; or

ii. The corporation is a subsidiary that is merged with its parent;

b. If the shareholder is entitled to vote on the plan, consummation of a plan of interest exchange to which the corporation is a party as the acquired entity;

c. Consummation of a plan of conversion, domestication, or division if the shareholder does not receive interests in the converted, domesticated, or resulting entity that have terms as favorable to the shareholder in all material respects and that represent at least the same percentage interest of the total voting rights of the outstanding interests of the converted entity as the shares held by the shareholder before the conversion, domestication, or division;

d. If the shareholder is entitled to vote on the sale or exchange, consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business, including a sale in dissolution, but excluding a sale:

i. Pursuant to court order; or

ii. For cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;

e. An amendment of the articles of incorporation that materially and adversely affects rights in respect of the shareholder's shares because it:

i. Alters or abolishes a preferential right of the shares;

ii. Creates, alters, or abolishes a right in respect of redemption of the shares;

iii. Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

iv. Excludes or limits the right of the shares to vote on any matter; or

v. Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash; or

f. Any other corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that shareholders are entitled to dissent and obtain payment for their shares.

2. A shareholder entitled to dissent and obtain payment for the shareholder's shares under this Section may not challenge the corporate action creating the shareholder's entitlement unless the action is fraudulent or fails to comply with this Title, the articles of incorporation, or bylaws with respect to the shareholder or the corporation.

3. The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any of the following events:

a. The proposed corporate action is abandoned or rescinded; or

b. The shareholder's demand for payment is withdrawn with the written consent of the corporation.

4. If proposed corporate action creating dissenters' rights is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this Section. If corporate action creating dissenters' rights is taken without a vote of shareholders, the corporation, within ten (10) days after the effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them written dissenters' notice as provided in this Section.

5. If proposed corporate action creating dissenters' rights under this Section is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights shall both deliver written notice to the corporation before the vote is taken of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated and not vote the shares in favor of the proposed action. A shareholder who does not satisfy the requirements of this subsection is not entitled to payment for the shares under this Section. The corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of this subsection.

6. Dissenters' notice required in this Section must be sent within ten (10) days after the effective date of the corporate action and shall:

a. State where the payment demand must be sent and where and when certificates for shares must be deposited; and

b. Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the dissenters' notice is delivered.

7. A shareholder sent a dissenters' notice must demand payment and deposit the shareholder's certificates in accordance with the terms of the notice. A shareholder who demands payment and deposits the shareholder's share certificates retains all other rights of a shareholder until the proposed corporate action is affected. A shareholder who does not demand payment or deposit the shareholder's share certificates where required by the date set in the dissenters' notice is not entitled to payment for the shareholder's shares under this Section.

8. Within thirty (30) days of the later of the effective date of the proposed corporate action or the date the payment demand is received, the corporation shall pay each dissenter who demanded payment and deposited the shareholder's share certificates in accordance with the notice the amount the corporation estimates to be the fair value of the shares plus accrued interest. The payment must be accompanied by:

a. The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

b. An explanation of how the corporation estimated the fair value of the shares;

c. An explanation of how the interest was calculated; and

d. A statement of the dissenter's right to dispute the payment amount under this Section.

9. Provided a demand for payment under this subsection is made in writing within thirty (30) days after the corporation made or offered payment for the dissenter's shares, a dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due and demand payment of the dissenter's estimate, less any payment made under this Section, and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

a. The dissenter believes that the amount paid under this Section is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

b. The corporation fails to make payment under this Section within sixty (60) days after the date set for demanding payment; or

c. The corporation does not affect the proposed action and does not return the deposited share certificates within sixty (60) days after the date set for demanding payment.

10. If a dissenter's demand for payment under subsection 9 of this Section remains unsettled:

a. The corporation shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the Tribal Court to determine the fair value of the shares and accrued interest;

b. If the corporation does not commence the proceeding within such sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded;

c. The Tribal Court may appoint one (1) or more persons as appraisers to receive evidence and recommend a fair valuation to the Tribal Court;

d. Appraisers appointed by the Tribal Court shall have the powers described in the order appointing them or in any amendment to it;

e. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings;

f. Each dissenter made a party to the proceeding shall be entitled to judgment for the amount, if any, by which the

Tribal Court finds the fair value of the dissenter's shares plus interest exceeds the amount paid by the corporation;

g. The Tribal Court shall determine all costs of the proceeding, including the reasonable compensation and expenses of the appraisers appointed by the Tribal Court and assess the costs against the corporation, except that the Tribal Court may assess the costs against all or some of the dissenters, other than dissenters who are the Tribe or a Tribal business entity, in amounts the Tribal Court finds equitable, to the extent the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment;

h. Except for a party that is the Tribe or a Tribal business entity, the Tribal Court may assess fees and expenses of legal counsel and experts for the respective parties in amounts the Tribal Court finds equitable:

i. Against the corporation and in favor of any or all dissenters if the corporation did not substantially comply with the requirements of this Section; or

ii. Against the corporation or a dissenter if the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided in this Section.

11. Under this Section, fair value with respect to a dissenter's shares shall be determined as the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

12. If the Tribe is a shareholder in a corporation, any right to dissent as a shareholder may only be exercised by the Tribe and no individual member of the Tribe or the Tribal Council shall have any right of shareholder dissent under this Section even if the shares of the Tribe are voted by individual members of the Tribal Council.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as a shareholder or otherwise or waiving the sovereign immunity of any Tribal business entity.

Section 19-3-9. Derivative Actions.

1. A shareholder may maintain a derivative action to enforce a right of a corporation if:

a. Unless such a demand would be futile, the shareholder first makes a demand on the board of directors requesting that they cause the corporation to bring an action to enforce the right; and

b. The board of directors do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a corporation may be maintained only by a person that is a shareholder at the time the action is commenced and:

a. Was a shareholder when the conduct giving rise to the action occurred; or

b. Who became a shareholder through transfer by operation of law from one who was a shareholder at the time of the conduct.

4. The court may appoint a panel of one or more independent persons on motion by the corporation to determine whether the maintenance of the derivative action is in the best interests of the corporation. If the court appoints such a panel, on motion by the corporation, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the panel to make its determination. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. After appropriate investigation, a panel appointed by the court under this Section may determine that it is in the best interests of the corporation that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the corporation;

c. Be settled on terms approved by the corporation; or

d. Be dismissed.

6. After making a determination how to proceed, a panel appointed by the court under this Section shall file with the court a statement of its determination and its report supporting its determination. The panel shall serve each party with a copy of the determination and report. If the court finds the panel has proven that the members of the panel were disinterested and independent and that the panel acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the panel. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff. A person appointed to a panel by the court under this Section is not liable whatsoever for a determination made pursuant to this Section.

7. A derivative action on behalf of a corporation may not be voluntarily dismissed or settled without the court's approval. If the court determines that a proposed dismissal or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

8. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the corporation and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the corporation.

9. Unless the corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable

legal counsel's fees and costs, from the recovery of the corporation.

10. In any derivative action brought to enforce the right of a foreign corporation, the matters covered by this Section shall be governed by the laws of the jurisdiction of formation of the foreign corporation except for the provision in this Section governing stays, discontinuance, settlement, and payment of expenses.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 19-3-10. Financial Statements.

1. A corporation shall furnish its shareholders annual financial statements that may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, and that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the corporation's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. A corporation shall mail or transmit the annual financial statements to each shareholder within one hundred twenty (120) days after the close of each fiscal year. On written request from a shareholder, the corporation shall mail or transmit that shareholder the latest annual financial statements.

4. If a corporation indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the corporation shall report the indemnification or advance in writing to the shareholders with or before the annual financial statements required under this Section. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 19-3-11. Rights to Information and Records.

1. On reasonable request, a shareholder is entitled to inspect and copy, during regular business hours at the corporation's principal place of business, any of the records of the corporation required to be maintained at such principal place of business under this Title or other law of the Tribe applicable to the corporation.

2. The corporation shall furnish to each shareholder, on reasonable and good faith demand, any other true and full information concerning the corporation's activities, affairs, financial condition, and other circumstances.

3. A former shareholder is entitled to information to which the shareholder was entitled while a shareholder if:

a. The information pertains to the period during which the person was a shareholder;

b. The former shareholder seeks the information in good faith; and

c. The former shareholder satisfies the requirements of this Section.

4. The corporation may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by shareholders under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

6. A shareholder's agent or legal representative has the same inspection and copying rights as the shareholder it represents.

7. If a corporation does not allow within a reasonable time a shareholder to inspect and copy any record subject to inspection and copying under this Section, on application of the shareholder, the Tribal Court may summarily order inspection and copying of the records demanded at the corporation's expense.

8. Unless the corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if the Tribal Court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded. Unless the shareholder is the Tribe or a Tribal business entity, the Tribal Court may order a shareholder to pay all or a portion of the corporation's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

9. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the shareholder.

10. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a corporation that is a Tribal business entity.

CHAPTER 4
BOARD OF DIRECTORS

Section 19-4-1. Board of Directors.

1. The business and affairs of a corporation shall be managed by a board of directors, subject to any limitations in this Title, the articles of incorporation, or bylaws.

2. Unless the articles of incorporation or bylaws so provide, directors need not be shareholders in the corporation.

3. The articles of incorporation or bylaws may prescribe qualifications for directors.

4. A board of directors shall consist of one (1) or more individuals, with the number established in the articles of incorporation or bylaws.

5. Initial directors may be named in the articles of incorporation, elected by the shareholders, or, prior to the issuance of shares, elected by the incorporators. Thereafter, directors shall be elected at the annual meeting of the shareholders.

6. Unless otherwise provided in the articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting where a quorum is present and those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. At each election for directors, shareholders are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

7. Unless otherwise provided in the articles of incorporation, each director shall hold office for the term for which he or she is elected or appointed and until his successor shall have been elected or appointed and qualified.

8. Unless the articles of incorporation require cause for removing a director, a director may be removed from office with or without cause at a meeting of the shareholders called expressly for that purpose by such vote as would suffice for the director's election. The articles of incorporation may provide additional procedures for removing a director.

9. A director may resign at any time by delivering written notice thereof to the board of directors or its chairperson.

10. Unless the articles of incorporation or bylaws provide otherwise, a vacancy on the board of directors may be filled by the board of directors in office even if they constitute less than a quorum. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

11. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

12. Unless a law applicable to the corporation or the articles of incorporation or bylaws provide otherwise generally or for any particular act of the board of directors, a majority of

the number of directors shall constitute a quorum for the transaction of business, provided that in no event shall a quorum consist of fewer than one third (1/3) of the number of directors.

13. Unless a law applicable to the corporation or the articles of incorporation or bylaws provide for a greater number generally or for any particular act of the board of directors, the act of the majority of the directors present at a meeting where a quorum is present shall be the act of the board of directors.

14. A director may waive any notice required by this Title, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

15. Unless the articles of organization or bylaws provide otherwise, action to be taken at a meeting of the board of directors may be taken without a meeting or a vote if there is written consent by at least a majority of the directors. The written consent to the action must be included in the minutes or filed with the corporate records.

Section 19-4-2. Board Committees.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

2. Unless the articles of incorporation or bylaws require a greater number, the creation of a committee and appointment of members of the board of directors to it must be approved by a majority of all the directors in office when the action is taken.

3. The provisions of this Chapter governing meetings, action without meetings, notice, waiver of notice, quorum, and voting requirements of the board of directors also apply to committees and their members.

4. Subject to the limitations set forth in this Section, each committee of the board of directors may exercise the authority of the board of directors under this Chapter to the extent

specified by the board of directors or in the articles of incorporation or bylaws.

5. A committee shall not take any of the following actions:

a. Authorize distributions;

b. Approve or recommend to shareholders any action that requires the shareholders' approval under this Title;

c. Fill vacancies on the board of directors or on any of its committees;

d. Adopt, amend, or repeal articles of incorporation or bylaws; or

e. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in this Chapter.

7. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Section 19-4-3. Officers.

1. A corporation has the officers set forth in its articles of incorporation or bylaws or appointed by the board of directors. Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles of incorporation and bylaws, prescribed by the board of directors.

2. The articles of incorporation shall delegate to one of the officers the responsibility for preparing minutes of meetings of the directors and the shareholders and for authenticating records of the corporation.

3. Unless the articles of incorporation or bylaws provided otherwise, the same individual may simultaneously hold more than one office in the corporation.

4. The appointment of an officer does not by itself create any contractual or property right. Nor does the removal of an officer affect the contractual or property rights, if any, of the officer or corporation.

5. The board of directors may remove an officer at any time with or without cause.

6. An officer may resign at any time by delivering written notice thereof to the corporation.

Section 19-4-4. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the corporation and the shareholders.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the corporation;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the corporation and hold as trustee for it any property, profit, or benefit derived by the director or officer:

i. In the conduct or winding up of the corporation's activities and affairs;

ii. From a use by the director or officer of the corporation's property; or

iii. From the appropriation of a corporation opportunity;

e. To refrain from dealing with the corporation in the conduct or winding up of the corporation's activities and affairs as or on behalf of a person having an interest adverse to the corporation;

f. To refrain from competing with the corporation in the conduct of the corporation's activities and affairs before the dissolution of the corporation;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the corporation, or the articles of incorporation or bylaws consistently with the contractual obligation of good faith and fair dealing.

4. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

5. The shareholders of a corporation may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

6. Every director and officer shall account to the corporation and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the corporation; and

b. A use by a director or officer of the property of the corporation, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a director or officer.

7. A corporation's articles of incorporation or bylaws may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 19-4-5. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the corporation.

2. A transaction with the corporation in which a director has an interest is voidable by the corporation solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the shareholders entitled to vote and the

shareholders authorized, approved, or ratified the transaction by a majority vote of the shares entitled to vote, excluding any shares owned by a director who has an interest in the transaction; or

c. The transaction was fair to the corporation at the time it was approved.

3. A corporation shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the corporation unless:

a. The shareholders approve the loan or guarantee by a majority vote of the shares entitled to vote, excluding any shares owned by a director who has an interest in the transaction; or

b. The board of directors determines the loan or guarantee benefits the corporation and a majority of the directors approve the loan or guarantee, provided that any director with an interest in the transaction does not vote on the approval and is not counted toward the minimum number of directors required to constitute a quorum.

Section 19-4-6. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the business of a corporation within the scope of the director's or officer's authority may be used as evidence against the corporation in any legal proceeding.

Section 19-4-7. Knowledge of Directors and Officers. The following operates as notice to or knowledge of a corporation:

1. Notice to any director or officer of any matter relating to the business of the corporation;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

CHAPTER 5
DEALING WITH CORPORATION

Section 19-5-1. Nature of Corporation. A corporation is an entity distinct from its shareholders.

Section 19-5-2. Property of Corporation.

1. All property originally transferred to or acquired by a corporation is property of the corporation and not the shareholders individually.

2. Property acquired with funds of a corporation is presumed to be property of the corporation.

3. Property may be acquired, held, and conveyed in the name of a corporation.

4. Subject to any limitations in its articles of incorporation, its bylaws, this Title, or other law of the Tribe applicable to the corporation, the property of a corporation may be transferred by an instrument executed by a director in the name of the corporation.

Section 19-5-3. Liability to Third Parties.

1. A debt, obligation, or other liability of a corporation, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the corporation. This subsection applies regardless of the dissolution of the corporation.

2. A shareholder is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the corporation solely by reason of being or acting as a shareholder. This subsection applies regardless of the dissolution of the corporation.

3. The failure of a corporation to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a shareholder for an act, debt, obligation, or other liability of the corporation.

Section 19-5-4. Parties to Actions. A shareholder of a corporation is not a proper party to a proceeding by or against a corporation solely by reason of being a shareholder, except if:

1. The object of the proceeding is to enforce a shareholder's right against or liability to the corporation; or

2. The action is brought by a shareholder under this Title.

Section 19-5-5. Authority to Sue.

1. Unless otherwise provided in its articles of incorporation or bylaws, an action on behalf of a domestic or foreign corporation may be brought in the name of the corporation by:

a. One or more shareholders as a derivative action in accordance with this Title; or

b. One or more directors, if authorized by the board of directors, unless otherwise directed by a majority vote of the shares entitled to vote, excluding shares of any shareholder who has an interest in the outcome of the action that is adverse to the interests of the corporation.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as shareholder or otherwise.

Section 19-5-6. Records.

1. A corporation shall keep at its principal place of business all of the following:

a. A record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each;

b. A list of the names and business addresses of its current directors and officers;

c. A copy of its articles of incorporation and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any articles were executed;

d. A copy of its most recent annual report delivered to the Office of the Secretary;

e. A copy of all other organizational documents of the corporation, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

f. A copy of its bylaws and all amendments thereto and restatements thereof;

g. A copy of all shareholder agreements under this Chapter;

h. Any notices to shareholders on which a document filed with the Office of the Secretary is dependent;

i. Resolutions adopted by its board of directors;

j. All written communications within the past three (3) years to shareholders;

k. Minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors;

l. All annual financial statements prepared for the corporation for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

m. A record of all matters referred to in this Title or other law of the Tribe applicable to the corporation as maintained in such records which are not otherwise specified in the articles of incorporation or bylaws.

2. A corporation shall maintain accounting records in a form that permits preparation of its financial statements.

3. Failure of a corporation to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the corporation.

CHAPTER 6
DISTRIBUTIONS

Section 19-6-1. Distributions Generally.

1. The board of directors may authorize, and the corporation may make, distributions to its shareholders subject to any restrictions in the articles of incorporation and the limitations in this Section.

2. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving any purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

Section 19-6-2. Limitations on Distributions.

1. A distribution shall not be made if, after giving it effect, either:

a. The corporation would not be able to pay its debts as they become due in the ordinary course of the corporation's activities and affairs; or

b. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation provide otherwise, the amount that would be needed to satisfy the preferential rights, if any, of shareholders upon dissolution and winding up.

2. The board of directors may base a determination that a distribution is not prohibited under this Section on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances, which in the absence of special circumstances shall be generally accepted accounting principles or applicable regulatory accounting principles; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. Except as otherwise provided in this Section, the effect of a distribution is measured:

a. In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of either:

i. The date money or other property is transferred or debt is incurred by the corporation; or

ii. The date the shareholder ceases to be a shareholder with respect to the acquired shares;

b. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

c. In all other cases, as of either:

i. The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or

ii. The date the payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

4. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this Section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

Section 19-6-3. Liability for Improper Distributions.

1. A director who votes for or assents to a distribution made in violation of this Chapter or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating this Chapter or the articles of incorporation if it is established that the director's duties were not performed in compliance with this Chapter.

2. A director of a corporation who is present at a meeting of its board of directors at which action on any distribution in violation of this Chapter is taken is presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting, the director files his or her written dissent to the action with the secretary of the meeting before the adjournment of the meeting, or the director forwards the dissent

by registered or certified mail to the secretary of the corporation before close of business on the next business day after the adjournment of the meeting. The right to dissent does not apply to a director who voted in favor of the action.

3. A director who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other director who could be held liable under this Section for the unlawful distribution; and

b. Each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of this Chapter or the articles of incorporation.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than four (4) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a corporation that is a Tribal business entity.

APPROVED 7/26/22
RESOLUTION 22-48

PONCA TRIBE OF NEBRASKA
TITLE XX
NONPROFIT ENTITIES

CHAPTER 1
GENERAL PROVISIONS

Section 20-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Charitable purpose" means any educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, other benevolent purpose, or lessening the burdens of government.

2. "Foreign nonprofit entity" means an entity that is formed under the law of a jurisdiction other than the Tribe and that would be a nonprofit entity if the entity were formed under the laws of the Tribe.

3. "Manager" means a person that is responsible, alone or in concert with others, for the management of a nonprofit entity and includes a manager of an unincorporated business entity, the board of directors of a nonprofit corporation, and an individual director or officer of a nonprofit corporation.

4. "Member" means a person having membership rights in a nonprofit entity in accordance with the provisions of its organizational documents or governing principles.

5. "Membership" means the rights and any obligations of a member in a domestic or foreign nonprofit entity.

6. "Nonprofit entity" means, except when used in the phrase foreign nonprofit entity, a business entity organized under this Title or that is or becomes subject to this Title:

a. For a purpose not involving pecuniary gain to its members, other than to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government; and

b. Where no part of the income of which is distributable, directly or indirectly, to its members, managers, directors, or officers, other than members that are

nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

7. "Public purpose" means one or more positive effects or reduction of negative effects on one or more categories of persons, entities, communities, or interests other than owners of a business entity in their capacities as owners, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature and, in the case of a Tribal business entity, reducing unemployment in the territory of the Tribe, enhancing the Tribe's self-determination, self-government, or economic self-sufficiency, or otherwise serving and supporting the needs, priorities, goals, objectives, and/or policies of the Tribe.

8. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 20-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all nonprofit entities.

2. This Title shall apply to all nonprofit entities to which Title XIV of this Code applies.

Section 20-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 20-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
NONPROFIT CORPORATIONS

Section 20-2-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Act of the board of directors" means either:

   a. An act of the majority of the directors present at a duly called meeting where a quorum is present, unless the act of a greater number is required by this Title, the articles of incorporation, or the bylaws; or

   b. Action taken by written consent of the directors in accordance with this Chapter.

2. "Act of the members" means either:

   a. An act adopted or rejected by a majority of the votes represented and voting at a duly held meeting where a quorum is present, unless a greater number of votes is required by this Title, the articles of incorporation, or the bylaws; or

   b. An action taken by written consent of the members in accordance with this Chapter.

3. "Articles of incorporation" means the articles filed under this Chapter to organize and establish a corporation and includes the articles as amended or restated.

4. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign corporation irrespective of the name by which the group is designated.

5. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign corporation irrespective of the name by which those rules are designated.

6. "Charitable corporation" means a nonprofit corporation that is operated primarily or exclusively for one or more charitable or public purposes.

7. "Delegate" means a person elected or appointed to vote in a representative assembly for the election of directors or on other matters.

8. "Designated body" means a person or group, other than a committee of the board of directors, that has been vested by the articles of incorporation or bylaws with powers that, if not vested by the articles of incorporation or bylaws in that person or group, would be required to be exercised by the board of directors or the members.

9. "Foreign nonprofit corporation" means an incorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a nonprofit corporation if the incorporated entity were formed under the laws of the Tribe.

10. "Membership corporation" means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall have members.

11. "Nonmembership corporation" means a nonprofit corporation whose articles of incorporation or bylaws provide that it shall not have members.

12. "Nonprofit corporation" means, except when used in the phrase foreign nonprofit corporation, a nonprofit entity organized as a corporation under this Chapter or that becomes subject to this Chapter.

13. "Voting group" means all memberships of one or more classes that under the articles of incorporation, bylaws, or this Title are entitled to vote and be counted together collectively on a matter at a meeting of members.

Section 20-2-2. Formation.

1. One or more persons at least the age of majority may act as incorporators to form a nonprofit corporation by delivering to the Office of the Secretary for filing the articles of incorporation. The incorporators of a nonprofit corporation need not be members at the time of formation or thereafter.

2. A nonprofit corporation is formed when the articles of incorporation become effective.

3. The Office of the Secretary's filing of the articles of incorporation of a nonprofit corporation is conclusive proof that the nonprofit corporation is organized and formed under this Title.

Section 20-2-3. Articles of Incorporation.

1. The articles of incorporation must state all of the following:

a. A statement that the nonprofit corporation is organized under this Chapter;

b. The name of the nonprofit corporation that complies with the laws of the Tribe;

c. The period of duration, which may be perpetual;

d. If applicable, a statement that the nonprofit corporation is a public benefit corporation, a mutual benefit corporation, or a religious corporation;

e. The purpose or purposes for which it is formed, which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain;

f. A statement that no part of the income of the nonprofit corporation is or will be distributable, directly or indirectly, to its members, managers, directors, or officers, provided that the articles may provide for distribution of the nonprofit corporation's income to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government;

g. The principal address, which may be the same as the mailing address of the nonprofit corporation's registered agent;

h. The name and street and mailing addresses in the territory of the Tribe of the nonprofit corporation's registered agent;

i. The name and address of each incorporator;

j. Whether the nonprofit corporation is a Tribal business entity; and

k. If the nonprofit corporation is Tribal business entity, whether the nonprofit corporation enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of incorporation shall be signed by all incorporators.

3. The articles of incorporation may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 20-2-4. Amendment of Articles.

1. Articles of incorporation may be amended or restated at any time. Except as provided in the articles of incorporation, a member of the nonprofit corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, purpose, or duration of the corporation.

2. If a membership corporation has not yet issued memberships, its board of directors, or its incorporators if it has no board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

3. If a membership corporation has issued memberships, the following apply to amendments to the articles of incorporation:

a. A nonprofit corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the members and the board of directors may condition its submission of the proposed amendment on any basis;

b. If the articles of incorporation expressly permit, the members may propose one or more amendments to the articles of incorporation;

c. The nonprofit corporation shall provide notice to each member, whether or not entitled to vote, of the proposed members' meeting and the notice shall:

i. State that the proposed amendment will be considered at the meeting; and

ii. Contain or be accompanied by a copy or summary of the amendment; and

d. For the amendment to be adopted, the members must approve the amendment by a majority vote at a meeting where a quorum consisting of a majority of the votes entitled to vote is present and, if any voting group is entitled to vote on the amendment, the approval of each such voting group at a meeting where a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the amendment by that voting group.

4. Except as otherwise provided in the articles of incorporation, the board of directors of a nonmembership corporation may adopt amendments to the nonprofit corporation's articles of incorporation. An amendment adopted by the board under this subsection must also be approved:

a. By a designated body whose approval is required by the articles of incorporation or bylaws;

b. If the amendment changes or deletes a provision regarding the appointment of a director by persons other than the board, by those persons as if they constituted a voting group; and

c. If the amendment changes or deletes a provision regarding the designation of a director, by the individual designated at the time as that director.

5. To amend its articles of incorporation, a nonprofit corporation must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the nonprofit corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of each amendment adopted;

d. The date of each amendment's adoption;

e. If an amendment was adopted by the incorporators or board of directors without member approval, a statement that the amendment was duly adopted by the incorporators or by the

board of directors, as the case may be, and that member approval was not required; and

f. If an amendment required approval of the members, a statement that the amendment was duly approved by the members in the manner required by this Chapter and the articles of incorporation.

6. The articles of incorporation shall be amended if there is a statement in the articles that was false or erroneous when it was made.

7. If a director of a nonprofit corporation knows that any information in a filed articles of incorporation was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 20-2-5. Restatement of Articles.

1. A nonprofit corporation's board of directors may restate its articles of incorporation at any time with or without member action.

2. If the restatement includes an amendment requiring member approval, it shall be adopted as provided in this Chapter for amendments to the articles of incorporation.

3. A nonprofit corporation that restates its articles of incorporation shall deliver to the Office of the Secretary for filing articles of restatement setting forth:

a. The name of the nonprofit corporation;

b. The date of filing of its initial articles of incorporation;

c. The text of the restated articles of incorporation;

d. A statement that the restated articles consolidate all amendments into a single document; and

e. If a new amendment is included in the restated articles, the statements required under this Chapter for an amendment to the articles of incorporation.

4. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation.

Section 20-2-6. Effect of Amendment of Articles.

1. Except as provided in this Section, an amendment to the articles of incorporation does not affect a cause of action existing against or in favor of the nonprofit corporation, a proceeding to which the nonprofit corporation is a party, or the existing rights of persons other than members of the nonprofit corporation or persons referred to in the articles. An amendment changing a nonprofit corporation's name does not affect a proceeding brought by or against the nonprofit corporation in its former name.

2. Property held in trust by a nonprofit corporation or otherwise dedicated to a charitable purpose may not be diverted from its purpose by an amendment of its articles of incorporation.

3. A person that is a member or otherwise affiliated with a charitable corporation may not receive a direct or indirect financial benefit in connection with an amendment of the articles of incorporation unless the person is itself a charitable corporation or a nonprofit entity with a charitable or public purpose or a commission, board, agency, department, division, instrumentality, subdivision, or unit of the Tribe or another government. This subsection does not apply to the receipt of reasonable compensation for services rendered.

Section 20-2-7. Bylaws.

1. The incorporators or the board of directors of a nonprofit corporation shall adopt initial bylaws for the corporation.

2. The bylaws of a nonprofit corporation may contain any provision for managing the activities and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

3. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless:

a. The power to alter, amend, or repeal the bylaws is reserved to the members by the articles of incorporation;

b. The members in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw; or

c. The provision to be amended includes a higher quorum or voting requirement for the board of directors, unless otherwise expressly provided in the bylaws or the provision was adopted by the board of directors.

4. Unless otherwise provided in the articles of incorporation, the bylaws of a nonprofit corporation shall be subject to repeal or change by act of the members even though the bylaws may also be amended or repealed by the board of directors.

Section 20-2-8. Members.

1. A nonprofit corporation may or may not have members.

2. If the articles of incorporation or bylaws of a nonprofit corporation do not provide that it shall have members or if a nonprofit corporation in fact has no members entitled to vote on a matter, any provision of this Title or any other law of the Tribe governing the nonprofit corporation requiring notice to, the presence of, or the vote, consent, or other action by members of the nonprofit corporation in connection with the matter shall be satisfied by notice to, the presence of, or the vote, consent, or other action by the board of directors or a body of the corporation otherwise designated in the articles of incorporation or bylaws.

3. If the articles of incorporation or bylaws of a nonprofit corporation provide that it shall have members, the following standards shall apply:

a. The articles of incorporation shall establish the criteria and procedures for admission of members;

b. A person may not be admitted as a member without the person's consent;

c. A member is not an agent of the nonprofit corporation solely by reason of being a member;

d. Each member shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and all other matters unless the articles of incorporation or bylaws specifically establish classes of membership with different rights or obligations;

e. Except as provided in its articles of incorporation or bylaws, the nonprofit corporation may admit members for no consideration or for such consideration as is determined by the board of directors, which may consist of money or property transferred to, services performed for, or another benefit provided to the nonprofit corporation or an agreement to transfer money or property to, perform services for, or provide another benefit to the nonprofit corporation;

f. The nonprofit corporation may issue certificates evidencing membership therein;

g. Unless otherwise provided in the articles of incorporation or bylaws, a member may not transfer a membership or any right arising therefrom;

h. Where a member has the right to transfer a membership, a restriction on that right shall not be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the affected member;

i. The nonprofit corporation may levy dues, assessments, and fees on its members to the extent authorized in the articles of incorporation or bylaws and the articles of incorporation or bylaws may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees;

j. A member may resign at any time, but resignation of a member does not relieve the member from any obligations incurred or commitments made prior to resignation;

k. A membership may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws, but the termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension;

1. A nonprofit corporation that is not a charitable corporation may purchase any of its memberships or any right arising therefrom only to the extent provided in and in accordance with the articles of incorporation or bylaws, but a charitable corporation may not purchase any of its memberships or any right arising therefrom.

Section 20-2-9. Meetings of Members.

1. A nonprofit corporation with members shall hold a meeting of members annually at a time stated in or fixed in accordance with the bylaws. The failure to hold an annual meeting at the time stated in or fixed in accordance with a nonprofit corporation's bylaws does not affect the validity of any corporate action.

2. A membership corporation shall hold a special meeting of members:

a. On the call of its board of directors or the person authorized to do so by the articles of incorporation or bylaws;

b. On the call of the holders of not less than one-fifth (1/5) of all the memberships entitled to vote; or

c. When otherwise required in this Chapter.

3. Only business within the purpose or purposes described in the meeting notice may be conducted at a special members' meeting.

4. Members' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the nonprofit corporation's known place of business.

5. Unless the articles of incorporation provide otherwise, members may participate in any members' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A member participating in a meeting by such means is deemed to be present in person at the meeting.

6. Unless otherwise provided in the articles of incorporation or bylaws, a majority of the votes entitled to be

cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding memberships entitled to vote on the matter. Unless otherwise provided in the articles of incorporation or bylaws, once a membership is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

7. Unless the vote of a greater number is required by the articles of incorporation, bylaws, or this Title or other law of the Tribe applicable to the nonprofit corporation, if a quorum is present, the affirmative vote of the majority of the memberships represented at the meeting and entitled to vote on the matter shall be the act of the members.

8. If the articles of incorporation provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the articles of incorporation provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

9. A membership corporation shall notify members of the date, time, and place of each annual and special members' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called. Notice of a special meeting shall include a description of the purpose or purposes for which the meeting is called.

10. A member may waive any notice before or after the date and time of the members' meeting that is the subject of such notice. The waiver must be in writing, signed by the member entitled to the notice, and delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records, except that a member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

11. Unless the member objects to considering the matter when it is presented, a member waives objection to consideration of a

particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 20-2-10. Member Action Without Meeting.

1. Action required or permitted by this Title or other law of the Tribe governing the nonprofit corporation to be taken at a members' meeting may be taken without a meeting or a vote if there is written consent by at least the minimum number of memberships entitled to vote on the action which would be necessary to authorize or take the action at a meeting.

2. An action taken by members without a members' meeting must be taken by all members and must be evidenced by written consent of all members of the nonprofit corporation if:

a. The action involves the election or removal of one or more directors; or

b. The articles of incorporation or bylaws require that the action must be taken by all members if taken without a members' meeting.

3. Action taken by the written consent of the members must be evidenced by one or more written consents describing the action taken and signed by holders of at least the minimum number of memberships necessary to authorize or take the action. The written consents to the action must be delivered to the nonprofit corporation for inclusion in the minutes or filing with the corporate records.

4. Unless the written member consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the nonprofit corporation.

5. A member may revoke the member's consent by delivering a signed revocation of the consent to the president or secretary of the board of directors before the date that the consents have been delivered to the nonprofit corporation.

6. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the nonprofit corporation, the certificate so filed shall state, in lieu of any

statement concerning a vote of members, that written consent has been obtained in accordance with this Section.

7. Notice of the taking of a corporate action without a meeting must be given within thirty (30) days after the effective date of the corporate action to:

a. Each member entitled to take the action who did not consent to the action in writing; and

b. Each member who, if the action had been taken at a meeting, would have been entitled to notice of the meeting.

Section 20-2-11. Voting of Members.

1. Unless otherwise provided in the articles of incorporation, each member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members.

2. A member may vote either in person or by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy.

3. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of transfer may agree in writing as to which of them shall vote the membership pledged or transferred until the contract of pledge or transfer is fully executed.

4. In all elections for directors, every member entitled to vote shall have the right to vote, in person or by proxy, for as many persons as there are directors to be elected.

5. If so provided in the articles of incorporation, members may cumulate votes by multiplying the number of memberships they are entitled to cast by the number of directors to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 20-2-12. Voting Trusts and Agreements.

1. If and to the extent a membership is transferable as provided in this Chapter, and unless otherwise provided in the articles of incorporation or bylaws, one or more members may create

a voting trust, conferring on one or more trustees the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust and transferring their memberships to the trustee or trustees. The agreement may contain any lawful provision not inconsistent with the purposes of the trust.

2. Two or more members may provide for the manner in which they will vote their memberships by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 20-2-13. Member Agreements.

1. An agreement among the members of a membership corporation is effective among the members and the membership corporation even though it is inconsistent with one or more other provisions of this Title if it complies with this Section and meets any of the following conditions:

a. Restricts the discretion or powers of the board of directors;

b. Governs the authorization or making of distributions whether or not in proportion to ownership of memberships, subject to the limitations in this Title;

c. Establishes who shall be directors or officers of the membership corporation, their terms and conditions of office or employment, or their manner of selection or removal;

d. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the members and directors or by or among any of them, including use of weighted voting rights or director proxies;

e. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the membership corporation and any member, director, officer, or employee of the membership corporation or among any of them;

f. Transfers to one or more members or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the membership corporation, including the resolution of any issue where there is a deadlock among directors or members;

g. Requires dissolution of the membership corporation at the request of one or more of the members or on the occurrence of a specified event or contingency;

h. Establishes the terms and conditions of employment of members;

i. Addresses the use of arbitration or other forms of dispute resolution to resolve disputes among members;

j. Restricts the transfer of memberships; or

k. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the membership corporation, its liquidation and dissolution, or the relationship among the members, the directors, and the membership corporation, or among any of them.

2. An agreement authorized by this section shall be:

a. Set forth either:

i. In the articles of incorporation or bylaws and approved by all persons who are members at the time of the agreement; or

ii. In a written agreement that is signed by all persons who are members at the time of the agreement and that is filed with the membership corporation;

b. Subject to amendment or termination only by all persons who are members at the time of the amendment, unless the agreement provides otherwise; and

c. Valid for the duration of the membership corporation's existence, unless the agreement provides otherwise.

3. An agreement authorized by this Section is enforceable by any party to the agreement against any other party to the agreement. The existence of an agreement authorized by this Section shall be noted conspicuously in an information statement provided to any person who becomes a member and who was not a signatory of the agreement. The failure to note the existence of the agreement in the information statement does not affect the validity of the agreement or any action taken pursuant to it. Any transferee of a membership who at the time of transfer did not

have knowledge of the existence of the agreement is entitled to rescission of the membership. A transferee shall be deemed to have knowledge of the existence of the agreement if its existence is noted in the information statement in compliance with this subsection and the information is delivered to the transferee at or before the time of transfer of the membership or the transferee has actual notice of the existence of the agreement at the time of transfer. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety (90) days after discovery of the existence of the agreement or two (2) years after the time of the transfer of the membership.

4. If an agreement authorized by this Section ceases to be effective for any reason and the agreement is contained or referred to in the membership corporation's articles of incorporation or bylaws, the board of directors may adopt an amendment to the articles of incorporation or bylaws without member action to delete the agreement and any references to it.

5. An agreement that is authorized by this Section and that limits the discretion or powers of the board of directors relieves the directors of liability for acts or omissions imposed by law on directors with respect to the discretion or powers limited by the agreement and imposes such liability on the persons in whom such discretion or powers are vested.

6. The existence or performance of an agreement authorized by this Section is not a ground for imposing personal liability on any member for the acts or debts of the membership corporation even if the agreement or its performance treats the membership corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators may act as members with respect to an agreement authorized by this Section if no memberships have been issued when the agreement is made.

8. This Section does not apply to, limit, or invalidate agreements that are otherwise valid or authorized without regard to this Section, including, without limitation, member agreements between or among some or all of the members or agreements between or among the membership corporation and one or more members. The procedure set forth in this Section is not the exclusive method of agreement among members or among members and the membership corporation with respect to any of the matters described in this Section.

Section 20-2-14. Derivative Actions.

1. A derivative action may be brought by:

a. A member or members having five percent (5%) or more of the voting power or fifty (50) members, whichever is less;

b. A member or members that can fairly and adequately represent the interests of the nonprofit corporation in enforcing the rights of the corporation; or

c. Any director or member of a designated body.

2. A person may maintain a derivative action to enforce a right of a nonprofit corporation if:

a. Unless such a demand would be futile, the person first makes a demand on the board of directors requesting that they cause the nonprofit corporation to bring an action to enforce the right; and

b. The board of directors do not bring the action within a reasonable time.

3. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or

b. Why demand should be excused as futile.

4. A derivative action to enforce a right of a nonprofit corporation may be maintained only by a person that is a member, director, or member of a designated body at the time the action is commenced and:

a. Was a member, director, or member of a designated body when the conduct giving rise to the action occurred; or

b. Who became a member, director, or member of a designated body through transfer by operation of law from one who was a member, director, or member of a designated body at the time of the conduct.

5. If the nonprofit corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative action for such period as the court deems appropriate.

6. The court may appoint a panel of one or more independent persons on motion by the nonprofit corporation to determine whether the maintenance of the derivative action is in the best interests of the nonprofit corporation. If the court appoints such a panel, on motion by the nonprofit corporation, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the panel to make its determination. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

7. After appropriate investigation, a panel appointed by the court under this Section may determine that it is in the best interests of the nonprofit corporation that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the nonprofit corporation;

c. Be settled on terms approved by the nonprofit corporation; or

d. Be dismissed.

8. After making a determination how to proceed, a panel appointed by the court under this Section shall file with the court a statement of its determination and its report supporting its determination. The panel shall serve each party with a copy of the determination and report. If the court finds the panel has proven that the members of the panel were disinterested and independent and that the panel acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the panel. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff. A person appointed to a panel by the court under this Section is not liable whatsoever for a determination made pursuant to this Section.

9. A derivative action on behalf of a nonprofit corporation may not be voluntarily dismissed or settled without the court's approval. If the court determines that a proposed dismissal or settlement will substantially affect the interests of the nonprofit corporation's members or a class of members, the court shall direct that notice be given to the members affected.

10. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the nonprofit corporation and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the nonprofit corporation.

11. Unless the nonprofit corporation is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the nonprofit corporation.

12. In any derivative action brought to enforce the right of a foreign nonprofit corporation, the matters covered by this Section shall be governed by the laws of the jurisdiction of formation of the foreign nonprofit corporation except for the provision in this Section governing stays, discontinuance, settlement, and payment of expenses.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 20-2-15. Delegates.

1. A nonprofit corporation with members may provide in its articles of incorporation or bylaws for delegates.

2. The articles of incorporation or bylaws may set forth provisions relating to:

a. The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;

b. Calling, noticing, holding, and conducting meetings of delegates; and

c. Carrying on corporate activities during and between meetings of delegates.

3. An assembly or other organized group of delegates constitutes a designated body.

Section 20-2-16. Financial Statements.

1. On written demand from a member, a nonprofit corporation shall furnish that member with financial statements for its latest completed fiscal year within a reasonable time after receipt of the demand. The financial statements may be consolidated or combined statements of the nonprofit corporation and one or more of its subsidiaries, as appropriate, and that include a balance sheet as of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the nonprofit corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the nonprofit corporation's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. If a nonprofit corporation indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the nonprofit corporation shall report the indemnification or advance in writing

to the members. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 20-2-17. Board of Directors.

1. A nonprofit corporation must have a board of directors which shall manage the affairs of the nonprofit corporation, subject to any limitations in this Title, the articles of incorporation, or bylaws.

2. Unless the articles of incorporation or bylaws so provide, directors need not be members of the nonprofit corporation.

3. The articles of incorporation or bylaws may prescribe qualifications for directors.

4. A board of directors shall consist of one (1) or more individuals, with the number established in the articles of incorporation or bylaws.

5. Initial directors may be named in the articles of incorporation, elected by the members, or elected by the incorporators. Thereafter:

a. The directors of a membership corporation shall be elected at the annual meeting of the members, unless the articles or bylaws provide some other time or method of election, or provide that some or all of the directors are appointed by some other person or designated in some other manner;

b. The directors of a nonmembership corporation shall be elected, appointed, or designated as provided in the articles or bylaws, but if no method of designation or appointment is set forth in the articles or bylaws, the directors shall be elected by the board of directors.

6. Unless otherwise provided in the articles of incorporation, directors of a membership corporation are elected by a plurality of the votes cast by the members entitled to vote in the election at a meeting where a quorum is present and those receiving the greatest number of votes shall be deemed elected even though not receiving a majority. At each election for directors, members are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting

the product for a single candidate or distributing the product among two or more candidates.

7. Unless otherwise provided in the articles of incorporation, each director shall hold office for the term for which he or she is elected or appointed and until his successor shall have been elected or appointed and qualified.

8. Unless the articles of incorporation require cause for removing a director, a director of a membership corporation may be removed from office with or without cause at a meeting of the members called expressly for that purpose by such vote as would suffice for the director's election. Unless the articles of incorporation require cause for removing a director, a director of a nonmembership corporation may be removed from office with or without cause by majority vote of the board of directors present at a meeting of the board of directors where a quorum is present, excluding the director to be removed. The articles of incorporation may provide additional procedures for removing a director.

9. A director may resign at any time by delivering written notice thereof to the board of directors or its chairperson.

10. Unless the articles of incorporation or bylaws provide otherwise, a vacancy on the board of directors may be filled by the board of directors in office even if they constitute less than a quorum. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of his or her predecessor in office.

11. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

12. Unless a law applicable to the nonprofit corporation or the articles of incorporation or bylaws provide otherwise generally or for any particular act of the board of directors, a majority of the number of directors shall constitute a quorum for the transaction of business, provided that in no event shall a quorum consist of fewer than one third (1/3) of the number of directors.

13. Unless a law applicable to the nonprofit corporation or the articles of incorporation or bylaws provide for a greater number generally or for any particular act of the board of directors, the act of the majority of the directors present at a

meeting where a quorum is present shall be the act of the board of directors.

14. A director may waive any notice required by this Title, the articles of incorporation, or the bylaws before or after the date and time stated in the notice. A director's attendance at or participation in a meeting waives any required notice to the director of the meeting, unless the director at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

15. Unless the articles of incorporation or bylaws provide otherwise, action to be taken at a meeting of the board of directors may be taken without a meeting or a vote if there is written consent by at least a majority of the directors. The written consent to the action must be included in the minutes or filed with the corporate records.

Section 20-2-18. Board Committees.

1. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee shall have one or more members, and each member of a committee shall serve at the pleasure of the board of directors.

2. Unless the articles of incorporation or bylaws require a greater number, the creation of a committee and appointment of members of the board of directors to it must be approved by a majority of all the directors in office when the action is taken.

3. The provisions of this Chapter governing meetings, action without meetings, notice, waiver of notice, quorum, and voting requirements of the board of directors also apply to committees and their members.

4. Subject to the limitations set forth in this Section, each committee of the board of directors may exercise the authority of the board of directors under this Chapter to the extent specified by the board of directors or in the articles of incorporation or bylaws.

5. A committee shall not take any of the following actions:

a. Authorize distributions;

b. Approve or recommend to members any action that requires the members' approval under this Title;

c. Fill vacancies on the board of directors or on any of its committees;

d. Adopt, amend, or repeal articles of incorporation or bylaws; or

e. Fix the compensation of directors for serving on the board of directors or any committee of the board of directors.

6. The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in this Chapter.

7. The board of directors may designate one or more directors as alternate members of any committee who may replace any absent member at any meeting of the committee.

Section 20-2-19. Designated Body.

1. Some, but less than all, of the powers, authority, or functions of the board of directors of a nonprofit corporation may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

a. The provisions of this Chapter and other provisions of law applicable to the nonprofit corporation on the rights, duties, liabilities, and indemnification of the board of directors or directors individually also apply to the designated body and to the members of the designated body individually;

b. In the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body, the provisions of this Chapter and other provisions of law applicable to the nonprofit corporation on meetings, notice, and the manner of acting of the board of directors also apply to the designated body; and

c. To the extent the powers, authority, or functions of the board of directors have been vested in the designated body, the directors are relieved from their duties and liabilities with respect to those powers, authority, and functions.

2. Some, but less than all, of the rights or obligations of the members of a membership corporation may be vested by the articles of incorporation or bylaws in a designated body. If such a designated body is created:

a. The provisions of this Chapter and other provisions of law applicable to the membership corporation on the rights and obligations of members also apply to the designated body and to the members of the designated body individually;

b. In the absence of an applicable rule in the articles of incorporation, bylaws, or internal operating rules of the designated body, the provisions of this Chapter and other provisions of law applicable to the membership corporation on meetings, notice, and the manner of acting of members also apply to the designated body; and

c. To the extent the rights or obligations of the members have been vested in the designated body, the members are relieved from responsibility with respect to those rights and obligations.

3. The articles of incorporation or bylaws may prescribe qualifications for members of a designated body. Unless otherwise provided by the articles of incorporation or bylaws, a member of a designated body does not need to be:

a. An individual;

b. A director, officer, or member of the nonprofit corporation; or

c. A resident of the territory of the Tribe.

Section 20-2-20. Officers.

1. A nonprofit corporation has the officers set forth in its articles of incorporation or bylaws or appointed by the board of directors. Each officer has the authority and shall perform the duties set forth in the articles of incorporation or bylaws or, to the extent consistent with the articles of incorporation and bylaws, prescribed by the board of directors.

2. The articles of incorporation shall delegate to one of the officers the responsibility for preparing minutes of meetings

of the directors and the members and for authenticating records of the nonprofit corporation.

3. Unless the articles of incorporation or bylaws provided otherwise, the same individual may simultaneously hold more than one office in the nonprofit corporation.

4. The appointment of an officer does not by itself create any contractual or property right. Nor does the removal of an officer affect the contractual or property rights, if any, of the officer or nonprofit corporation.

5. The board of directors may remove an officer at any time with or without cause.

6. An officer may resign at any time by delivering written notice thereof to the nonprofit corporation.

Section 20-2-21. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the nonprofit corporation and the members.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the nonprofit corporation;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the nonprofit corporation and hold as trustee for it any property, money, or benefit derived by the director or officer:

i. In the conduct or winding up of the nonprofit corporation’s activities and affairs;

ii. From a use by the director or officer of the nonprofit corporation's property; or

iii. From the appropriation of a nonprofit corporation opportunity;

e. To refrain from dealing with the nonprofit corporation in the conduct or winding up of the nonprofit corporation's activities and affairs as or on behalf of a person having an interest adverse to the nonprofit corporation;

f. To refrain from competing with the nonprofit corporation in the conduct of the nonprofit corporation's activities and affairs before the dissolution of the nonprofit corporation;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the nonprofit corporation or its members in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the nonprofit corporation, or the articles of incorporation or bylaws consistently with the contractual obligation of good faith and fair dealing.

4. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the nonprofit corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the nonprofit corporation as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

5. The members of a membership corporation may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

6. Every director and officer shall account to the nonprofit corporation and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the nonprofit corporation; and

b. A use by a director or officer of the property of the nonprofit corporation, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a director or officer.

7. A nonprofit corporation's articles of incorporation or bylaws may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 20-2-22. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the nonprofit corporation.

2. A transaction with the nonprofit corporation in which a director has an interest is voidable by the nonprofit corporation solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. In the case of a membership corporation, the material facts of the transaction and the director's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a majority vote of the members entitled to vote, excluding any membership of a member who has an interest in the transaction; or

c. The transaction was fair to the nonprofit corporation at the time it was approved.

3. A nonprofit corporation shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the nonprofit corporation, provided the fact that a loan or guarantee is made in violation of this subsection does not affect the borrower's liability on the loan. This subsection does not apply to:

a. An advance to pay reimbursable expenses reasonably expected to be incurred by a director or officer;

b. An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;

c. Advances for indemnification and expenses permitted or required under the laws of the Tribe applicable to the nonprofit corporation, the articles of incorporation, or bylaws; or

d. Loans or advances pursuant to employee benefit plans.

Section 20-2-23. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the affairs of a nonprofit corporation within the scope of the director's or officer's authority may be used as evidence against the nonprofit corporation in any legal proceeding.

Section 20-2-24. Knowledge of Directors and Officers. The following operates as notice to or knowledge of a nonprofit corporation:

1. Notice to any director or officer of any matter relating to the business of the nonprofit corporation;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

CHAPTER 3
UNINCORPORATED NONPROFITS

Section 20-3-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Established practices" means the practices used by an unincorporated nonprofit association without material change during the most recent five (5) years of its existence, or if it has existed for less than five (5) years, during its entire existence.

2. "Governing principles" means:

a. The organizational documents of an unincorporated nonprofit association;

b. In the absence of organizational documents, the agreements, whether oral, in writing, or implied from its established practices, or any combination thereof, which govern the purpose or operation of an unincorporated nonprofit association and the rights and obligations of its members and managers; and

c. Includes the governing principles as amended or restated.

3. "Manager-managed unincorporated nonprofit association" means an unincorporated nonprofit association where management is vested in a manager.

4. "Member-managed unincorporated nonprofit association" means an unincorporated nonprofit association where management is vested in the members and not in any manager.

5. "Unincorporated nonprofit association" means a nonprofit entity organized under this Chapter, organized under another title of this Code governing the business entity and whose organizational documents state that it is a nonprofit, or that otherwise becomes subject to this Chapter, but does not include:

a. The Tribe or any other government or subdivision thereof, provided that the Tribe or another government or subdivision thereof may be a member of an unincorporated nonprofit association;

b. A trust;

c. A marriage, domestic partnership, common law domestic relationship, civil union, or other domestic living arrangement;

d. A nonprofit corporation formed under this Title or under the law of a jurisdiction other than the Tribe that would be a nonprofit corporation if the incorporated entity were formed under the laws of the Tribe;

e. A corporation formed under Title XIX of this Code or formed under the law of a jurisdiction other than the Tribe that would be a corporation if the incorporated entity were formed under the laws of the Tribe;

f. A joint tenancy, tenancy in common, or tenancy by the entireties even if the co-owners share use of the property for a nonprofit purpose;

g. A relationship under a written agreement that expressly provides that the relationship between the parties does not create an unincorporated nonprofit association; or

h. An organization or entity which is not a nonprofit entity.

Section 20-3-2. Formation.

1. An unincorporated nonprofit association may be formed by two (2) or more persons who are members of the association and join under an agreement that is oral, written, or implied from conduct for one or more common purposes which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain.

2. An unincorporated nonprofit association may also be formed as any other type of business entity permitted under the laws of the Tribe, other than a corporation, not inconsistent with its nonprofit status or this Title. If an unincorporated nonprofit association is formed as another type of business entity, the provisions of the laws of the Tribe governing the type of business entity shall govern the unincorporated nonprofit association to the extent not inconsistent with this Title, its nonprofit status, or its purpose.

3. An unincorporated nonprofit association is formed when its governing principles become effective.

4. If the form of an unincorporated nonprofit association permits or requires the filing of its governing principles with the Office of the Secretary, the Office of the Secretary's filing of the governing principles of an unincorporated nonprofit association is conclusive proof that the unincorporated nonprofit association is organized and formed under this Chapter.

Section 20-3-3. Governing Principles.

1. In addition to any other requirements for its public organizational documents under the laws of the Tribe applicable to the unincorporated nonprofit association, an unincorporated nonprofit association which is formed as any other type of business entity permitted under the laws of the Tribe must state in its public organizational documents all of the following:

a. A statement that the unincorporated nonprofit association is nonprofit;

b. The purpose or purposes for which it is formed, which may include, but is not limited to, charitable or public purposes, but not a purpose involving pecuniary gain; and

c. A statement that no part of the income of the unincorporated nonprofit association is or will be

distributable, directly or indirectly, to its members, managers, directors, or officers, provided that the governing principles may provide for distribution of the unincorporated nonprofit association's income to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

2. The organizational documents of an unincorporated nonprofit association may be amended or restated:

a. If the unincorporated nonprofit association is formed as a type of business entity permitted under another law of the Tribe as permitted in this Chapter, as provided in such law of the Tribe under which the unincorporated nonprofit association is formed, to the extent not inconsistent with this Title; or

b. As provided in this Chapter for governing principles.

Section 20-3-4. Restatement of Governing Principles.

1. A manager-managed unincorporated nonprofit association may restate its governing principles at any time by action of the managers with or without member action.

2. A member-managed unincorporated nonprofit association may restate its governing principles at any time by action of the members.

3. If a restatement includes an amendment requiring member approval, it shall be adopted as provided in this Chapter for amendments to the governing principles.

4. If the form of an unincorporated nonprofit association permits or requires the filing of its governing principles with the Office of the Secretary, an unincorporated nonprofit association that restates its governing principles shall deliver to the Office of the Secretary for filing restated governing principles setting forth:

a. The name of the unincorporated nonprofit association;

b. The date of filing of its initial governing principles;

c. The text of the restated governing principles;

d. A statement that the restated governing principles consolidate all amendments into a single document; and

e. Anything else in the laws of the Tribe governing the unincorporated nonprofit association required for an amendment of its organizational documents.

5. Duly adopted restated governing principles supersede the original governing principles and all amendments to the governing principles.

Section 20-3-5. Appointment of Registered Agent.

1. An unincorporated nonprofit association which is not otherwise required under the laws of the Tribe to maintain a registered agent may deliver to the Office of the Secretary for filing a statement appointing a registered agent for purposes provided under the laws of the Tribe governing registered agents of business entities.

2. A statement appointing a registered agent under this Section must state:

a. The name of the unincorporated nonprofit association; and

b. The name and street and mailing addresses in the territory of the Tribe of the registered agent.

3. A statement appointing a registered agent under this Section must be signed by a person authorized to manage the affairs of the unincorporated nonprofit association. The signing of the statement is an affirmation of fact that the person is authorized to manage the affairs of the unincorporated nonprofit association and that the agent has consented to serve.

4. The duties of, changes to, resignations of, and other matters involving a registered agent appointed under this Section shall be in the same manner as registered agents of other business entities.

Section 20-3-6. Members.

1. Upon formation of an unincorporated nonprofit association, a person becomes a member as agreed upon the formation of the unincorporated nonprofit association.

2. After the formation of an unincorporated nonprofit association, a person becomes a member and may be suspended, dismissed, or expelled:

a. As provided in the governing principles;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of the members.

3. A person may not be admitted as a member of an unincorporated nonprofit association without the person's consent.

4. Each member of an unincorporated nonprofit association shall have the same rights and obligations as every other member with respect to voting, dissolution, membership transfer, and all other matters unless the governing principles specifically establish classes of membership with different rights or obligations.

5. Unless otherwise provided in the governing principles, an unincorporated nonprofit association may admit members for no consideration or for such consideration as is determined by the members or managers, which may consist of money or property transferred to, services performed for, or another benefit provided to the unincorporated nonprofit association or an agreement to transfer money or property to, perform services for, or provide another benefit to the unincorporated nonprofit association.

6. An unincorporated nonprofit association may issue certificates evidencing membership therein.

7. Unless otherwise provided in the governing principles, a member may not transfer a membership or any right arising therefrom. Where a member has the right to transfer a membership, a restriction on that right shall not be binding with respect to a member holding a membership issued prior to the adoption of the

restriction unless the restriction is approved by the affected member.

8. The unincorporated nonprofit association may levy dues, assessments, and fees on its members to the extent authorized in the governing principles and the governing principles may provide reasonable means, such as termination and reinstatement of membership, to enforce the collection of dues, assessments, and fees.

9. An unincorporated nonprofit association may purchase any of its memberships or any right arising therefrom only to the extent provided in and in accordance with the governing principles.

10. Unless the governing principles provide otherwise, the resignation, suspension, dismissal, or expulsion of a member does not relieve the member from any obligations incurred or commitments made by the member before the resignation, suspension, dismissal, or expulsion.

Section 20-3-7. Meetings of Members.

1. An unincorporated nonprofit association shall hold a meeting of members:

a. As provided in the governing principles;

b. On the call of its managers or other person authorized to do so by the governing principles;

c. On the call of the holders of not less than one-fifth (1/5) of all the memberships entitled to vote; or

d. When otherwise required in this Chapter.

2. Members' meetings may be held in or out of the territory of the Tribe at the place stated in or fixed in accordance with the governing principles. If no place is stated in or fixed in accordance with the governing principles, meetings shall be held at the unincorporated nonprofit association's known place of business.

3. Unless the governing principles provide otherwise, members may participate in any members' meeting by any means of communication by which all persons participating in the meeting can hear each other during the meeting. A member participating in

a meeting by such means is deemed to be present in person at the meeting.

4. Unless otherwise provided in the governing principles, a majority of the votes entitled to be cast on a matter constitutes a quorum for action on that matter, provided that in no event shall a quorum consist of less than one-third (1/3) of the outstanding memberships entitled to vote on the matter. Unless otherwise provided in the governing principles, once a membership is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting.

5. Unless the vote of a greater number is required by the governing principles, this Title, or other law of the Tribe applicable to the unincorporated nonprofit association, if a quorum is present, the affirmative vote of a majority of the votes cast at the meeting shall be the act of the members.

6. If the governing principles provide for voting by a single voting group on a matter, action on that matter is taken when voted on by that voting group. If the governing principles provide for voting by two or more voting groups on a matter, action on that matter is taken when voted on by each of those voting groups counted separately. Voting by individual voting groups entitled to vote on a matter need not be simultaneous.

7. An unincorporated nonprofit association shall notify members of the date, time, and place of each members' meeting at least ten (10) but not more than sixty (60) days before the meeting date. Notice may be given by mail, personal delivery, or electronic transmission. Notice of a meeting need not include a description of the purpose or purposes for which the meeting is called.

8. A member may waive any notice before or after the date and time of the members' meeting that is the subject of such notice. The waiver must be in writing, signed by the member entitled to the notice, and delivered to the unincorporated nonprofit association for inclusion in the minutes or filing with the association's records, except that a member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

9. Unless the member objects to considering the matter when it is presented, a member waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice.

Section 20-3-8. Member Action Without a Meeting.

1. Unless the governing principles require that action be taken only at a members' meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in writing to the action.

2. A member may revoke the member's consent by delivering a signed revocation of the consent to the managers before the date that the consents have been delivered to the unincorporated nonprofit association.

3. Unless the written member consent specifies a later effective date, action taken under this Section is effective when consents sufficient to authorize taking the action have been delivered to the unincorporated nonprofit association.

4. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document, except that, if the action requires the filing of a certificate under this Title or other law of the Tribe applicable to the unincorporated nonprofit association, the certificate so filed shall state, in lieu of any statement concerning a vote of members, that written consent has been obtained in accordance with this Section.

Section 20-3-9. Voting of Members.

1. Unless otherwise provided in the governing principles, each member shall be entitled to one (1) vote on each matter submitted to a vote at a meeting of members.

2. A member may vote either in person or by proxy executed in writing by the member or by the member's duly authorized attorney-in-fact. No proxy shall be valid after twelve (12) months from the date of its execution unless otherwise provided in the proxy. Every proxy shall be revocable at the pleasure of the person executing it or his or her personal representatives or assignee, but the parties to a valid pledge or to an executory contract of transfer may agree in writing as to which of them shall vote the membership pledged or transferred until the contract of pledge or transfer is fully executed.

3. Unless otherwise provided in the governing principles, this Title, or other law of the Tribe applicable to the unincorporated nonprofit association, the affirmative vote, approval, or consent of the members shall be required to do any of the following:

a. Admit, suspend, dismiss, or expel a member;

b. Select or dismiss a manager;

c. Adopt, amend, or repeal the governing principles;

d. Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the association's property, with or without the association's goodwill, outside the ordinary course of its activities;

e. Dissolve the association or merge the association with another entity;

f. Undertake any other act outside the ordinary course of the association's activities;

g. Determine the policy and purposes of the association; or

h. Do any other act or exercise a right that the governing principles require to be approved by the members.

4. In all elections for managers, every member entitled to vote shall have the right to vote, in person or by proxy, for as many persons as there are managers to be elected. If so provided in the governing principles, members may cumulate votes by multiplying the number of memberships they are entitled to cast by the number of managers to be elected and to cast the product for a single candidate or distribute the product among two (2) or more candidates.

Section 20-3-10. Voting Agreements. Two or more members may provide for the manner in which they will vote their memberships by signing an agreement for that purpose. Unless otherwise provided in the voting agreement, a voting agreement is specifically enforceable.

Section 20-3-11. Derivative Actions.

1. A member may maintain a derivative action to enforce a right of an unincorporated nonprofit association if:

a. Unless such a demand would be futile, the member first makes a demand on the other members or managers requesting that they cause the unincorporated nonprofit association to bring an action to enforce the right; and

b. The members or managers do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the members or managers; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of an unincorporated nonprofit association may be maintained only by a person that is a member at the time the action is commenced and:

a. Was a member when the conduct giving rise to the action occurred; or

b. Who became a member through transfer by operation of law from one who was a member at the time of the conduct.

4. If an unincorporated nonprofit association is named as or made a party in a derivative proceeding, the unincorporated nonprofit association may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the unincorporated nonprofit association. If the unincorporated nonprofit association appoints a special litigation committee, on motion by the committee made in the name of the unincorporated nonprofit association, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Chapter; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the members or managers not named as parties in the proceeding or, if all members or managers are named as parties, a majority of all the members or managers.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the unincorporated nonprofit association that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the committee;

c. Be settled on terms approved by the committee; or

d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of an unincorporated nonprofit association may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the unincorporated nonprofit association and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the unincorporated nonprofit association.

10. Unless the unincorporated nonprofit association is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the unincorporated nonprofit association.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 20-3-12. Managers.

1. If no managers are selected or the governing principles so provide, an unincorporated nonprofit association is a member-managed unincorporated nonprofit association. If managers are selected, an unincorporated nonprofit association is a manager-managed unincorporated nonprofit association.

2. Subject to the provisions of this Title and the governing principles, in a member-managed unincorporated nonprofit association, the following rules apply:

a. All the members are the managers;

b. Each member has equal rights in the management and conduct of the activities of the unincorporated nonprofit association; and

c. A member ceases being a manager once no longer a member of the unincorporated nonprofit association.

3. Subject to the provisions of this Title and the governing principles, in a manager-managed unincorporated nonprofit association, the following rules apply:

a. Only the members may select the managers;

b. Managers need not be members of the unincorporated nonprofit association;

c. The governing principles may prescribe qualifications for managers;

d. Each manager shall hold office for the term for which he or she is selected and until his successor shall have been selected and qualified;

e. Unless the governing principles require cause for removing a manager, a manager may be removed from office with or without cause at a meeting of the members called expressly for that purpose by such vote as would suffice for the manager's selection;

f. A manager may resign at any time by delivering written notice thereof to the other managers or the members;

g. Except for matters reserved for approval by the members in this Title or the governing principles, all matters relating to the unincorporated nonprofit association's activities are decided by its managers;

h. Each manager has equal rights in the management and conduct of the activities of the unincorporated nonprofit association;

i. The affirmative vote or consent of all members is required to undertake an act outside the ordinary course of the association's activities and affairs; and

j. A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the unincorporated nonprofit association or members which the person incurred while a manager.

4. Unless the governing principles or other law of the Tribe governing the unincorporated nonprofit association provide otherwise, the managers may fix the compensation of managers.

5. A manager may waive any notice required by this Title or the governing principles before or after the date and time stated in the notice. A manager's attendance at or participation in a meeting waives any required notice to the manager of the meeting, unless the manager at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not, after objecting, vote for or assent to action taken at the meeting.

Section 20-3-13. Duties of Members and Managers.

1. A member does not have any fiduciary duty to an unincorporated nonprofit association or to another member solely by reason of being a member, but a member shall discharge the duties to the unincorporated nonprofit association and the other members and exercise any rights under this Title or other law of the Tribe governing the association consistent with the governing principles and the contractual obligation of good faith and fair dealing.

2. All managers owe fiduciary duties to the unincorporated nonprofit association and the members.

3. The fiduciary duties of a manager include:

a. To act in a manner the manager reasonably believes to be in the best interests of the unincorporated nonprofit association;

b. To discharge his or her duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other managers information not already known by them but known by the manager to be material to the discharge of the decision-making or oversight functions of the manager, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the unincorporated nonprofit association and hold as trustee for it any property, money, or benefit derived by the manager:

i. In the conduct or winding up of the unincorporated nonprofit association’s activities and affairs;

ii. From a use by the manager of the unincorporated nonprofit association’s property; or

iii. From the appropriation of an association opportunity;

e. To refrain from dealing with the unincorporated nonprofit association in the conduct or winding up of the association's activities and affairs as or on behalf of a person having an interest adverse to the unincorporated nonprofit association;

f. To refrain from competing with the unincorporated nonprofit association in the conduct of the unincorporated nonprofit association's activities and affairs before the dissolution of the unincorporated nonprofit association;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the unincorporated nonprofit association or its members in connection with a matter in which the manager has a material conflict of interest; and

i. To refrain from a transaction from which the manager may derive an improper personal profit.

4. All managers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the unincorporated nonprofit association, or the governing principles consistently with the contractual obligation of good faith and fair dealing.

5. In discharging the manager's duties, unless the manager has knowledge that would make reliance unwarranted, a manager is entitled to rely on:

a. One or more other managers or employees of the unincorporated nonprofit association whom the manager reasonably believes to be reliable and competent in the matters presented; or

b. Legal counsel, public accountants, or other persons retained by the unincorporated nonprofit association as to matters involving skills or expertise the manager reasonably believes are within the person's professional or expert competence.

6. The members of an unincorporated nonprofit association may authorize or ratify, after full disclosure of all material

facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

7. Every manager shall account to the unincorporated nonprofit association and hold as trustee for it any improper personal profit derived by that manager without the consent of a majority of the disinterested managers from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the unincorporated nonprofit association; and

b. A use by a manager of the property of the unincorporated nonprofit association, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a manager.

8. An unincorporated nonprofit association's governing principles may impose duties on its managers that are in addition to, but not in abrogation of, those provided in this Section.

Section 20-3-14. Conflicts of Interests.

1. A manager shall not vote or participate in any discussion or action of the managers concerning a matter where the manager or any of his or her immediate family has a business or personal interest which conflicts with the interests of the unincorporated nonprofit association.

2. A transaction with the unincorporated nonprofit association in which a manager has an interest is voidable by the unincorporated nonprofit association solely because of the manager's interest in the transaction unless:

a. The material facts of the transaction and the manager's interest in the transaction were disclosed to or known by the managers at the time of approval of the transaction and a majority of the managers approved or ratified the transaction, provided that any manager with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of managers required to constitute a quorum;

b. The material facts of the transaction and the manager's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a

majority vote of the members entitled to vote, excluding any membership of a member who has an interest in the transaction; or

c. The transaction was fair to the unincorporated nonprofit association at the time it was approved.

3. An unincorporated nonprofit association shall not lend any money to or guarantee the personal debts or obligations of any manager of the unincorporated nonprofit association, provided the fact that a loan or guarantee is made in violation of this subsection does not affect the borrower's liability on the loan. This subsection does not apply to:

a. An advance to pay reimbursable expenses reasonably expected to be incurred by a manager;

b. An advance to pay premiums on life insurance if the advance is secured by the cash value of the policy;

c. Advances for indemnification and expenses permitted or required under the laws of the Tribe applicable to the unincorporated nonprofit association or the governing principles; or

d. Loans or advances pursuant to employee benefit plans.

Section 20-3-15. Member or Manager as Agent.

1. In a member-managed unincorporated nonprofit association:

a. Each member is an agent of the unincorporated nonprofit association for the purpose of its business, but not of any of the other members; and

b. The act of any member, including the execution in the name of the unincorporated nonprofit association of an instrument for apparently carrying on the ordinary course of business of the unincorporated nonprofit association, binds the unincorporated nonprofit association in the particular matter unless the person with whom the member is dealing knows or should know that the member has no authority to act in the matter.

2. If the Tribe is a member of an unincorporated nonprofit association, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

3. In a manager-managed unincorporated nonprofit association:

a. No member, solely by being a member, is an agent of the unincorporated nonprofit association or of the other members; and

b. Each manager is an agent of the unincorporated nonprofit association for the purpose of its business, but not for the members; and

c. The act of any manager, including the execution in the name of the unincorporated nonprofit association of an instrument for apparently carrying on the ordinary course of business of the unincorporated nonprofit association, binds the unincorporated nonprofit association in the particular matter unless:

i. The manager in fact has no authority to act for the unincorporated nonprofit association in the matter; and

ii. The person with whom the manager is dealing knows or should know that the manager has no authority to act in the matter.

4. No act of a member or manager that is not apparently authorized for carrying on the ordinary course of business of the unincorporated nonprofit association shall bind the unincorporated nonprofit association unless the act is in fact authorized at the time of the transaction or ratified thereafter.

Section 20-3-16. Representations of Members and Managers.

1. In a member-managed unincorporated nonprofit association, an admission or representation made by a member concerning the business of the unincorporated nonprofit association within the scope of the member's actual authority may be used as evidence against the unincorporated nonprofit association in any legal proceeding.

2. In a manager-managed unincorporated nonprofit association:

a. An admission or representation made by a manager concerning the business of the unincorporated nonprofit association within the scope of the manager's authority may be used as evidence against the unincorporated nonprofit association in any legal proceeding; and

b. The admission or representation of any member, acting solely in the member's capacity as a member, is not evidence against the unincorporated nonprofit association in any legal proceeding.

Section 20-3-17. Knowledge of Member or Manager.

1. In a member-managed unincorporated nonprofit association, the following operates as notice to or knowledge of the unincorporated nonprofit association:

a. Notice to any member of any matter relating to the business of the unincorporated nonprofit association;

b. Knowledge of any member acting in the particular matter acquired while a member or known by the person at the time of becoming a member; and

c. Knowledge of any member who reasonably could and should have communicated it to an acting member.

2. In a manager-managed unincorporated nonprofit association:

a. The following operates as notice to or knowledge of the unincorporated nonprofit association:

i. Notice to any manager of any matter relating to the business of the unincorporated nonprofit association;

ii. Knowledge of the manager acting in the particular matter acquired while a manager or known by the person at the time of becoming a manager; and

iii. Knowledge of any other manager who reasonably could and should have communicated it to the acting manager; and

b. Notice to or knowledge of any member while the member is acting solely in the capacity of a member is not notice to or knowledge of the unincorporated nonprofit association.

CHAPTER 4
DEALING WITH NONPROFIT ENTITIES

Section 20-4-1. Nature of Nonprofit Entity. A nonprofit entity is an entity distinct from its members and managers. A nonprofit entity may engage in profit-making activities but profits from any activities must be used or set aside for the entity's nonprofit purposes.

Section 20-4-2. Property of Nonprofit Entity.

1. A nonprofit entity may acquire, hold, or transfer in its name an interest in property.

2. A nonprofit entity may be a beneficiary of a trust or contract, a legatee, or a devisee.

3. All property originally transferred to or acquired by a nonprofit entity is property of the nonprofit entity and not the members.

4. Property acquired with funds of a nonprofit entity is presumed to be property of the nonprofit entity.

5. Property may be acquired, held, and conveyed in the name of a nonprofit entity.

6. Subject to any limitations in its organizational documents or this Title, the property of a nonprofit entity may be transferred by an instrument executed by a manager in the name of the nonprofit entity.

Section 20-4-3. Liability to Third Parties.

1. A debt, obligation, or other liability of a nonprofit entity, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the nonprofit entity. This subsection applies regardless of the dissolution of the nonprofit entity.

2. A member or manager of a nonprofit entity is not personally liable, directly or indirectly, for an act, debt, obligation or other liability of the nonprofit entity solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the nonprofit entity.

3. A person's status as a member or manager does not prevent or restrict law other than this Title from imposing liability on the person or the entity because of the person's conduct.

4. The failure of a nonprofit entity to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for an act, debt, obligation, or other liability of the entity.

Section 20-4-4. Parties to Actions. A member of a nonprofit entity is not a proper party to a proceeding by or against a nonprofit entity solely by reason of being a member, except if:

1. The object of the proceeding is to enforce a member's right against or liability to the nonprofit entity; or

2. The action is brought by a member under this Title.

Section 20-4-5. Authority to Sue.

1. Unless otherwise provided in its organizational documents, an action on behalf of a domestic or foreign nonprofit entity may be brought in the name of the nonprofit entity by:

a. One or more members as a derivative action in accordance with this Title; or

b. One or more managers, if authorized by the managers, unless otherwise directed by a majority vote of the memberships entitled to vote, excluding any memberships of any member who has an interest in the outcome of the action that is adverse to the interests of the nonprofit entity.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as a member or otherwise.

Section 20-4-6. Records.

1. A nonprofit entity shall keep at its principal place of business all of the following:

a. Unless the nonprofit entity's organizational documents provides that it shall not have members, a record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by class of membership;

b. A list of the names and business addresses of its current managers;

c. A copy of its public organizational documents and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any public organizational documents were executed;

d. A copy of its most recent annual report delivered to the Office of the Secretary;

e. A copy of all other organizational documents of the nonprofit entity, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

f. A copy of its bylaws or other private organizational documents and all amendments thereto and restatements thereof;

g. Any notices to members on which a document filed with the Office of the Secretary is dependent;

h. Resolutions adopted by its managers;

i. All written communications within the past three (3) years to its members;

j. Minutes of all meetings of its members and managers, a record of all actions taken by the members, managers, or a designated body without a meeting, and a record of all actions taken by a committee of the managers in place of the managers;

k. All annual financial statements prepared for the entity for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

l. A record of all matters referred to in this Title or other law of the Tribe applicable to the nonprofit entity as maintained in such records which are not otherwise specified in its organizational documents.

2. A nonprofit entity shall maintain accounting records in a form that permits preparation of its financial statements.

3. Failure of a nonprofit entity to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the nonprofit entity.

Section 20-4-7. Rights to Information and Records.

1. On reasonable request, a member or manager is entitled to inspect and copy, during regular business hours at the nonprofit entity's principal place of business, any of the records of the nonprofit entity required under this Chapter or other law of the Tribe applicable to the nonprofit entity to be maintained at such principal place of business.

2. The nonprofit entity shall furnish to each member and manager, on reasonable and good faith demand, any other true and full information concerning the nonprofit entity's activities, affairs, financial condition, and other circumstances.

3. A former member or manager is entitled to information to which the member or manager was entitled while a member or manager if the information pertains to the period during which the person was a member or manager, the former member or manager seeks the information in good faith, and the former member or manager satisfies the requirements of this Section.

4. The nonprofit entity may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by members and managers under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a nonprofit entity's organizational documents.

6. A member's or manager's agent or legal representative has the same inspection and copying rights as the member or manager it represents.

7. If a nonprofit entity does not allow within a reasonable time a member or manager to inspect and copy any record subject to inspection and copying under this Section, on application of the member or manager, the Tribal Court may summarily order inspection and copying of the records demanded at the nonprofit entity's expense.

8. If the Tribal Court orders inspection and copying of the records demanded, it shall also order the nonprofit entity to pay the member's or manager's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the nonprofit entity proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member or manager to inspect the records demanded. The Tribal Court may order a member or manager to pay all or a portion of the nonprofit entity's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

9. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the member or manager.

10. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a nonprofit entity that is a Tribal business entity.

CHAPTER 5
OWNERSHIP AND DISTRIBUTIONS

Section 20-5-1. Ownership and Distributions Prohibited.

1. A nonprofit entity shall not have or issue shares of stock or other ownership interests. Any reference to shares of stock or other ownership interests in a nonprofit entity in its organizational documents or otherwise shall be deemed membership interests only. Any reference to shareholders or owners of any kind of a nonprofit entity shall be deemed to members only.

2. A nonprofit entity shall not pay dividends or make distributions of any part of its assets, income, or profits, and no part of the income of a nonprofit entity shall be paid, to its

members, managers, or members of a designated body, provided that a nonprofit entity may make distributions to members that are nonprofit entities or commissions, boards, agencies, departments, divisions, instrumentalities, subdivisions, or units of the Tribe or another government.

3. A nonprofit entity may pay reasonable compensation or reimburse reasonable expenses to members, managers, or members of a designated body for services rendered.

4. A nonprofit entity may confer benefits upon or make contributions to members or nonmembers in conformity with its purposes, purchase its memberships to the extent provided in this Title, or repay capital contributions, except when:

a. The nonprofit entity is currently insolvent or would thereby be made insolvent or rendered unable to carry on its purposes; or

b. The fair value of the assets of the nonprofit entity remaining after the conferring of benefits, contribution, repurchase, or repayment would be insufficient to meet its liabilities.

5. A nonprofit entity may make distributions of cash or property to members upon dissolution or final liquidation only as permitted by the laws of the Tribe governing dissolution of business entities.

Section 20-5-2. Liability for Unlawful Distributions.

1. A manager who votes for or assents to a distribution made in violation of this Chapter is personally liable to the nonprofit entity for the amount of the distribution that exceeds what could have been distributed without violating this Chapter if it is established that the manager's duties were not performed in compliance with this Title.

2. A manager of a nonprofit entity who is present at a meeting of its managers at which action on any distribution in violation of this Chapter is taken is presumed to have assented to the action taken unless his or her dissent is entered in the minutes of the meeting, the manager files his or her written dissent to the action with the secretary of the meeting before the adjournment of the meeting, or the manager forwards the dissent by registered or certified mail to the secretary of the nonprofit entity before close of business on the next business day after the

adjournment of the meeting. The right to dissent does not apply to a manager who voted in favor of the action.

3. A manager who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other manager who could be held liable under this Section for the unlawful distribution; and

b. Each person of the pro-rata portion of the amount of the unlawful distribution the person received, whether or not the person knew the distribution was made in violation of this Chapter.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than four (4) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including an entity that is a Tribal business entity.

Approved 7/26/22

Resolution 22-48

PONCA TRIBE OF NEBRASKA
TITLE XXI
PARTNERSHIPS

CHAPTER 1
GENERAL PROVISIONS

Section 21-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Contribution" means property or a benefit that is provided by a person to a partnership to become a partner or in the person's capacity as a partner.

2. "Distribution" means a direct or indirect transfer of money or other property from a partnership to or for the benefit of its partners or in the person's capacity as a partner, but does not include:

a. Amounts constituting reasonable compensation for present or past service; or

b. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

3. "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the debts, obligations, or other liabilities of the foreign partnership under provisions similar to this Chapter.

4. "Foreign limited partnership" means an unincorporated entity formed under the law of a jurisdiction other than the Tribe which would be a limited partnership if formed under the laws of the Tribe and includes a foreign limited liability limited partnership.

5. "Foreign partnership" means an unincorporated entity that is formed under the law of a jurisdiction other than the Tribe and that would be a partnership if the unincorporated entity were formed under the laws of the Tribe.

6. "General partner" means a person that:

a. Has become a general partner as provided in this Chapter or was a general partner in a partnership when the partnership became subject to this Chapter; and

b. Has not dissociated as a general partner.

7. "Limited liability limited partnership", except when used in the phrase foreign limited liability limited partnership, means a limited partnership whose certificate of limited partnership filed under this Title states that the partnership is a limited liability limited partnership.

8. "Limited liability partnership" means, except when used in the phrase foreign limited liability partnership, means a partnership that has filed a statement of qualification under this Title and does not have a similar statement in effect in any other jurisdiction and, unless the context requires otherwise, includes a limited liability limited partnership.

9. "Limited partner" means a person that:

a. Has become a limited partner in a limited partnership as provided in this Chapter or was a limited partner in a limited partnership when the partnership became subject to this Chapter; and

b. Has not dissociated.

10. "Limited partnership" means, except in when used in the phrase foreign limited partnership, an entity that has filed a certificate of limited partnership under this Title or such an entity which becomes subject to this Title and includes a limited liability limited partnership.

11. "Partner" means a person that both:

a. Has become a partner, including a general partner or limited partner, in a partnership or was a partner when the partnership became subject to this Title; and

b. Has not dissociated under this Title.

12. "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under this Title or that becomes subject to this Title and, unless the context requires otherwise, includes a limited partnership,

limited liability partnership, and limited liability limited partnership.

13. "Partnership agreement" means the agreement, whether or not referred to as a partnership agreement and whether oral, implied, in writing, or in any combination thereof, of all the partners of a partnership concerning the conduct of the business of the partnership and its relationships with its partners and includes the agreement as amended or restated.

14. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

15. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 21-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all partnerships.

2. This Title shall apply to all partnerships to which Title XIV of this Code applies.

Section 21-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 21-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
FORMATION

Section 21-2-1. Formation.

1. Except as otherwise provided in this Section, the association of two or more persons at least the age of majority to

carry on as co-owners a business forms a partnership, whether or not the persons intend to form a partnership.

2. An entity formed under a law of the Tribe other than this Title or a comparable statute of another jurisdiction is not a partnership under this Title.

3. In determining whether a partnership is formed, the following rules apply:

a. Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

b. The sharing of gross revenues does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the revenues are derived;

c. A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

i. Of a debt or loan, even if the amount of payment varies with the profits of the business or the debt or loan includes a present or future ownership of collateral or rights to income, proceeds, or increase in value derived from the collateral;

ii. For services as an independent contractor or an employee;

iii. Of rent;

iv. Of a retirement or health benefit to a deceased or retired partner or a beneficiary, representative, or designee of a deceased or retired partner; or

v. For the sale of the goodwill of a business or other property.

4. A partnership may file its partnership agreement with the Office of the Secretary and, if so filed, the Office of the Secretary’s filing of the partnership agreement of a partnership

is conclusive proof that the partnership is organized and formed under this Title.

Section 21-2-2. Partnership for a Definite Term.

1. Partnership for a definite term or particular undertaking is a partnership in which the partners have agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

2. If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

3. If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Section 21-2-3. Partnership Agreement.

1. Except as otherwise provided in this Section, the partnership agreement governs:

a. Relations among the partners as partners and between the partners and the partnership;

b. The activities and affairs of the partnership and the conduct of those activities and affairs; and

c. The means and conditions for amending the partnership agreement.

2. To the extent the partnership agreement does not provide for a matter described in this Section, this Title and any other law of the Tribe applicable to the partnership governs the matter.

3. In addition to any other limitations on organizational documents of a business entity under the laws of the Tribe, a partnership agreement may not:

a. Vary the law applicable to the partnership;

b. Vary a partnership's capacity to sue and be sued in its own name;

c. Vary any requirement, procedure, or other provision of the laws of the Tribe pertaining to registered agents or the Office of the Secretary, including provisions pertaining to records authorized or required to be filed with the Office of the Secretary under the laws of the Tribe;

d. In the case of limited partnership, vary the right of a general partner to vote on or consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership;

e. Alter or eliminate the duties of partners under the laws of the Tribe, including the duties of loyalty and care and obligations of good faith and fair dealing, except as otherwise expressly permitted in the laws of the Tribe;

f. Vary the power of a person to voluntarily withdraw as a partner under this Title, except to require that notice of withdrawal be in writing;

g. Relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

h. Vary the information required under this Title to be maintained by the partnership or unreasonably restrict the duties and rights of partners to information under this Title;

i. Vary the grounds for expulsion specified in this Title;

j. In the case of limited partnership, vary the power of a person to dissociate as a general partner, except to require that notice of dissociation be in writing;

k. Unreasonably restrict the right of a partner to maintain an action under this Title;

l. Vary the right of a partner to approve a merger, interest exchange, conversion, or domestication;

m. Vary the right of a partner to vote on or consent to a cancellation of a statement of qualification under this Chapter; or

n. Except as otherwise expressly provided in this Title, restrict the rights under this Title of a person other than a partner.

4. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and contains a provision that would be ineffective under this Section if contained in the partnership agreement, the provision is ineffective.

5. If a document delivered by a partnership to the Office of the Secretary for filing becomes effective and conflicts with a provision of the partnership agreement:

a. The partnership agreement prevails as to partners, persons dissociated as partners, and transferees; and

b. The document prevails as to other persons to the extent they reasonably rely on the document.

6. A partnership is bound by and may enforce the partnership agreement, whether or not the partnership has itself manifested assent to the partnership agreement.

7. A person that becomes a partner in a partnership is deemed to assent to the partnership agreement.

8. Two or more persons intending to become the initial partners of a partnership may make an agreement providing that, upon the formation of the partnership, the agreement will become the partnership agreement.

9. A partnership agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

Section 21-2-4. Statement of Qualification.

1. A partnership may become a limited liability partnership pursuant to this Section.

2. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the affirmative vote or consent necessary to amend the partnership agreement.

3. After the required approval, a partnership may become a limited liability partnership by delivering to the Office of the Secretary for filing a statement of qualification. The statement must contain:

a. The name of the partnership that complies with the laws of the Tribe;

b. The principal address, which may be the same as the mailing address of the partnership's registered agent;

c. The name and street and mailing addresses in the territory of the Tribe of the partnership's registered agent; and

d. A statement that the partnership elects to become a limited liability partnership.

4. A partnership's status as a limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled or administratively revoked pursuant to this Section.

5. The Office of the Secretary's filing of a statement of qualification of a limited liability partnership is conclusive proof that the limited liability partnership is organized and formed under this Title.

6. The status of a partnership as a limited liability partnership and the protection against liability of its partners for the debts, obligations, or other liabilities of the partnership while it is a limited liability partnership is not affected by errors or later changes in the information required to be contained in the statement of qualification.

7. A limited liability partnership may amend or cancel its statement of qualification by delivering to the Office of the Secretary for filing a statement of amendment or cancellation. The statement must be approved by the affirmative vote or consent of all the partners and state the name of the limited liability partnership and in the case of:

a. An amendment, state the text of the amendment; and

b. A cancellation, state that the statement of qualification is canceled.

8. The Office of the Secretary may commence a proceeding to revoke the statement of qualification of a limited liability partnership administratively for any of the reasons and under the process for administratively dissolving a business entity under Title XIV of the Code, provided that an administrative revocation affects only a partnership's status as a limited liability partnership and is not an event causing dissolution of the partnership and does not terminate the authority of its registered agent.

CHAPTER 3
PARTNERS

Section 21-3-1. Admission of Partners.

1. Upon formation of a partnership, a person becomes a partner by being one of the persons associated to carry on as a co-owner of the business upon formation.

2. After formation of a partnership, a person becomes a partner:

a. As provided in the partnership agreement;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the partners.

3. A person may become a partner without:

a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the partnership.

Section 21-3-2. Dissociation.

1. A person ceases to be a partner in a partnership and is dissociated as a partner when:

a. The person voluntarily withdraws as a partner and the partnership knows or has notice of the person's express will to withdraw as a partner, provided the person may designate a date of withdrawal as partner;

b. An event stated in the partnership agreement as causing the person's dissociation occurs;

c. The person is expelled as a partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the partnership;

d. The person is expelled as a partner by the affirmative vote or consent of all the other partners if:

i. It is unlawful to carry on the partnership business with the person as a partner;

ii. There has been a transfer of all of the person's transferable interest in the partnership, other than a transfer for security purposes;

e. The person:

i. Becomes a debtor in bankruptcy;

ii. Signs an assignment for the benefit of creditors; or

iii. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

f. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked;

iv. Had its right to conduct business suspended in its jurisdiction of formation; or

v. Has been liquidated;

g. If the person is a trust or estate or is acting as a partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the partnership is distributed;

h. On application by the partnership or a partner in an action brought in Tribal Court, the person is expelled as a partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the partnership, or a duty or obligation to the partnership; or

iv. Has engaged or is engaging in conduct relating to the partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a partner;

i. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement;

j. In the case of a person that is not an individual, the existence of the person terminates;

k. The partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The partnership does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a partner; or

l. The partnership dissolves and completes winding up.

2. A person has the power to dissociate as a partner at any time, rightfully or wrongfully, by withdrawing as a partner voluntarily.

3. A person's dissociation as a partner is wrongful only if the dissociation:

a. Is in breach of an express provision of the partnership agreement, this Title, or other law of the Tribe applicable to the partnership; or

b. In the case of a partnership for a definite term or particular undertaking, occurs before the expiration of the term or the completion of the undertaking and:

i. The person withdraws as a partner voluntarily, unless the withdrawal follows another person's dissociation by death or wrongful dissociation under this subsection not later than ninety (90) days after such dissociation;

ii. The person is expelled as a partner by order of the Tribal Court under this Section;

iii. The person is dissociated as a result of bankruptcy, an assignment for the benefit of creditors, or the appointment of a trustee, receiver, or liquidator under this Section; or

iv. In the case of a person that is not a trust, estate, or individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

4. A person that wrongfully dissociates as a partner is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the partner to the partnership or the other partners. In addition to pursuing any remedies otherwise available under the partnership agreement or applicable law, if a person wrongfully dissociates as a partner, the partnership may offset the damages against the amount otherwise distributable to the partner.

5. If a person is dissociated as a partner:

a. The person's right to participate as a partner in the management and conduct of the partnership's activities and affairs terminates, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution; and

b. The person's duties and obligations as a partner end with regard to matters arising and events occurring after the person's dissociation, except to the extent the partner participates in winding up the partnership's business pursuant to a dissolution.

6. A person's dissociation does not of itself discharge the person from any debt, obligation, or other liability to the partnership or the other partners which the person incurred while a partner.

7. If a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership, the partnership shall cause the person's interest in the partnership to be purchased for a buyout price in the amount that would have been distributable to the person if, on the date of dissociation, the assets of the partnership were sold and the partnership were wound up, with the sale price equal to the greater of:

a. The liquidation value; or

b. The value based on a sale of the entire business as a going concern without the person.

8. A person that wrongfully dissociates as a partner before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any part of the buyout

price until the expiration of the term or completion of the undertaking.

9. A person dissociated as a partner may maintain an action against the partnership to determine the buyout price of that person's interest, any offsets under this Section for wrongful dissociation, or other terms of the obligation to purchase. The action must be commenced not later than one (1) year after written demand for payment by the person or offer to pay by the partnership is tendered, whichever is earlier. The court may assess reasonable attorney's fees and costs against a party that the court finds acted arbitrarily, vexatiously, or not in good faith, unless the party is the Tribe or a Tribal business entity.

10. After a person is dissociated as a partner without the dissociation resulting in a dissolution and winding up of the partnership business and before the partnership is merged out of existence, converted, domesticated, or dissolved under Title XIV of this Code, the partnership is bound by an act of the person only if:

a. The act would have bound the partnership before dissociation; and

b. At the time the other party enters into the transaction:

i. Less than two (2) years has passed since the dissociation; and

ii. The other party does not know or have notice of the dissociation and reasonably believes that the person is a partner.

11. If a partnership is bound under subsection 10, the person dissociated as a partner which caused the partnership to be bound is liable:

a. To the partnership for any damage caused to the partnership arising from the obligation incurred; and

b. If a partner or another person dissociated as a partner is liable for the obligation, to the partner or other person for any damage caused to the partner or other person arising from the liability.

12. By agreement with a creditor of a partnership and the partnership, a person dissociated as a partner may be released from liability for a debt, obligation, or other liability of the partnership. A person dissociated as a partner is released from liability for a debt, obligation, or other liability of the partnership if the partnership's creditor, with knowledge or notice of the person's dissociation but without the person's consent, agrees to a material alteration in the nature or time of payment of the debt, obligation, or other liability.

13. Except as otherwise provided in this Section, a person dissociated as a partner is not liable for a partnership obligation incurred after dissociation. Continued use of a partnership name, or the name of a person dissociated as a partner as part of the partnership name, by partners continuing the business does not of itself make the person dissociated as a partner liable for an obligation of the partners or the partnership continuing the business.

14. A partnership shall defend, indemnify, and hold harmless a person dissociated as a partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the person for which the person is otherwise liable under this Section.

15. A person dissociated as a partner or the partnership may deliver to the Office of the Secretary for filing a statement of dissociation stating the name of the partnership and that the person has dissociated from the partnership. A statement of dissociation is a limitation on the authority of a person dissociated as a partner.

16. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-3. Management.

1. Except as otherwise provided in this Title, each partner has equal rights in the management and conduct of the partnership's business.

2. A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation

for services rendered in winding up the business of the partnership.

Section 21-3-4. Voting of Partners.

1. A difference arising as to a matter in the ordinary course of the partnerships's activities and affairs may be decided by a majority of the partners.

2. The affirmative vote, approval, or consent of all partners shall be required to do any of the following:

a. Amend the partnership agreement;

b. In the case of a limited partnership, amend the certificate of limited partnership to add or delete a statement that the limited partnership is a limited liability limited partnership;

c. Undertake an act outside the ordinary course of the partnerships's activities and affairs, including the sale, lease, exchange, or other disposal of all, or substantially all, of the partnership's property; or

d. Authorize a partner or other person to do any act on behalf of the partnership that contravenes the partnership agreement.

Section 21-3-5. Action by Written Consent.

1. Unless the partnership agreement requires that action be taken only by affirmative vote of the partners, any action that may be taken by the partners may be taken if each partner entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by a partner in writing at any time before the partnership receives a consent from each partner entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 21-3-6. Duties of Partners.

1. All partners, except limited partners in a limited partnership, owe to the partnership and the other partners fiduciary duties.

2. The fiduciary duties of a partner include:

a. To act in a manner the partner reasonably believes to be in the best interests of the partnership;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other partners information not already known by them but known by the partner to be material to the discharge of the decision-making or oversight functions of the partners, unless disclosure would violate another duty imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner:

i. In the conduct or winding up of the partnership's activities and affairs;

ii. From a use by the partner of the partnership's property; or

iii. From the appropriation of a partnership opportunity;

e. To refrain from dealing with the partnership in the conduct or winding up of the partnership's activities and affairs as or on behalf of a person having an interest adverse to the partnership;

f. To refrain from competing with the partnership in the conduct of the partnership's activities and affairs before the dissolution of the partnership;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the partnership or its other partners in connection with

a matter in which the partner has a material conflict of interest; and

i. To refrain from a transaction from which the partner may derive an improper personal profit.

3. All partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

4. All the partners of a partnership may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

5. Every partner shall account to the partnership and hold as trustee for it any improper personal profit derived by that partner without the consent of a majority of the disinterested partners from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the partnership; and

b. A use by a partner of the property of the partnership, including confidential or proprietary information or other matters entrusted to the person as a result of the person's status as a partner.

6. A partnership agreement or other private organizational documents may impose duties on partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-3-7. Partner as Agent. Except for limited partners in a limited partnership, subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, the following rules apply:

1. Each partner is an agent of the partnership for the purpose of its business, but not of any of the other partners.

2. The act of any partner, including the execution in the name of the partnership of an instrument for apparently carrying on the ordinary course of business of the partnership, binds the partnership in the particular matter unless the person with whom

the partner is dealing knows or should know that the partner has no authority to act in the matter.

3. If the Tribe is a partner in a partnership, the Tribe's authority shall be exercised pursuant to Chapter 4 of Title XIV.

4. No act of a partner that is not apparently authorized for carrying on the ordinary course of business of the partnership shall bind the partnership unless the act is in fact authorized at the time of the transaction or ratified thereafter by all the other partners.

Section 21-3-8. Representations of Partner. An admission or representation made by a partner concerning the business of a partnership within the scope of the partner's actual authority may be used as evidence against the partnership in any legal proceeding.

Section 21-3-9. Knowledge of Partner. Except as otherwise provided in this Title, the following operates as notice to or knowledge of the partnership:

1. Notice to any partner of any matter relating to the business of the partnership;

2. Knowledge of any partner acting in the particular matter acquired while a partner or known by the person at the time of becoming a partner; and

3. Knowledge of any partner who reasonably could and should have communicated it to the acting partner.

Section 21-3-10. Rights to Information and Records.

1. On reasonable request, a partner may inspect and during regular business hours copy, at the partner's expense, any record maintained by the partnership regarding the partnership's activities, affairs, financial condition, and other circumstances, unless otherwise provided in the partnership agreement or this Title.

2. The partnership shall furnish to each partner or the partner's legal representative:

a. Without demand, any true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances which the partnership

knows and is material to the proper exercise of the partner's rights and duties under the partnership agreement or this Title; and

b. On demand, any other true and full information concerning the partnership's activities, affairs, financial condition, and other circumstances.

3. The duty to furnish information under this Section also applies to each partner to the extent the partner knows any of the information described in this Section.

4. On ten (10) days' demand made in writing received by a partnership, a person dissociated as a partner may have access to information to which the person was entitled while a partner if:

a. The information pertains to the period during which the person was a partner;

b. The person seeks the information in good faith; and

c. The person satisfies other requirements imposed on a partner by this Section.

5. In addition to any restriction or condition stated in its partnership agreement, a partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the partnership has the burden of proving reasonableness.

Section 21-3-11. Direct Action by Partner.

1. A partner may maintain a direct action against another partner or the partnership to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement or this Title or arising independently of the partnership relationship.

2. A partner maintaining an action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-3-12. Derivative Actions.

1. A partner may maintain a derivative action to enforce a right of a partnership if:

a. Unless such a demand would be futile, the partner first makes a demand on the other partners, excluding limited partners in a limited partnership, requesting that they cause the partnership to bring an action to enforce the right; and

b. The partners do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the partners; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a partnership may be maintained only by a person that is a partner at the time the action is commenced and:

a. Was a partner when the conduct giving rise to the action occurred; or

b. Whose status as a partner devolved on the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

4. If a partnership is named as or made a party in a derivative proceeding, the partnership may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the partnership. If the partnership appoints a special litigation committee, on motion by the committee made in the name of the partnership, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit

the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be partners. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the partners, other than limited partners in a limited partnership, not named as parties in the proceeding or, if all partners are named as parties, a majority of all the partners, other than limited partners in a limited partnership.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the partnership that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the committee;

c. Be settled on terms approved by the committee; or

d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a partnership may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the partnership and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the partnership.

10. Unless the partnership is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the partnership.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

CHAPTER 4
DEALING WITH PARTNERSHIP

Section 21-4-1. Nature of Partnership.

1. A partnership is an entity distinct from its partners.

2. A partnership is the same entity regardless of whether the partnership has a statement of qualification in effect under this Chapter.

3. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

Section 21-4-2. Interest in Partnership.

1. An interest in a partnership is personal property.

2. The right of a person, in his or her capacity as a partner, to receive distributions from a partnership, whether or not the person remains a partner or continues to own any part of the right to receive distributions, is assignable.

3. Unless otherwise provided in its partnership agreement:

a. An interest in a partnership is assignable in whole or in part;

b. An assignment of an interest in a partnership entitles the assignee to receive only the distributions and share in the allocations of profits and losses to which the assignor would be entitled with respect to the assigned interest;

c. An assignment of an interest in a partnership does not dissolve the partnership;

d. Unless and until the assignee becomes a partner, the assignment of an interest in a partnership does not entitle the assignee to participate in the management or exercise the rights of a partner;

e. Unless and until the assignee of an interest in a partnership becomes a partner, the assignor continues to be a partner; and

f. The assignor of an interest in a partnership is not released from any personal liability as a partner solely as a result of the assignment.

4. Unless otherwise provided in the partnership agreement, the granting of a security interest, lien, or other encumbrance in or against any or all of a partner's interest in a partnership is only an assignment and shall not cause the partner to cease to have the power to exercise any rights or powers of a partner.

5. A partner's personal representative, administrator, guardian, conservator, trustee, successor, or other legal representative shall have all the rights of an assignee of the partner's interest if:

a. In the case of an individual:

i. The individual dies;

ii. A guardian or general conservator for the individual is appointed; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a partner under this Title or the partnership agreement; or

b. In the case of a trust, estate, or entity, the trust, estate, or entity is dissolved or terminated.

6. Unless otherwise provided in the partnership agreement or this Title, an assignee of an interest in a partnership may become a partner only if the other partners unanimously consent.

7. An assignee of an interest in a partnership who becomes a partner has, to the extent assigned, the rights and powers and is subject to the restrictions and liabilities of the assignor under the partnership agreement, this Title, and other laws of the Tribe applicable to the partnership.

8. Unless otherwise provided in the partnership agreement, an assignor of an interest in a partnership is not released from any liability to the partnership without the written consent of all the partners, whether or not the assignee becomes a partner.

Section 21-4-3. Charging Partnership Interest.

1. On application to a court having valid jurisdiction over a partner and the subject matter by a judgment creditor of the partner, such court may enter a charging order against the transferable interest in the partnership of the partner, other than a partner which is the Tribe, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the partner's transferable interest and requires the partnership to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the partner. The judgment creditor has only the rights of an assignee of the partner's interest.

3. At any time before foreclosure under this Section, the partner whose transferable interest is subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a partnership or one or more partners whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

5. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest of the partner. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a partner, and has only the rights of an assignee of the partner's interest.

6. This Section shall not be construed to deprive any partner of the benefit of any exemption of an interest in a partnership that may exist under applicable law.

7. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a partner may satisfy the judgment from the partner's transferable interest.

8. In no event shall the Tribe's interest in a partnership be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 21-4-4. Property of Partnership.

1. All property originally transferred to or acquired by a partnership is property of the partnership and not the partners individually.

2. A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

3. A partner may use or possess partnership property only on behalf of the partnership.

4. Property may be acquired, held, and conveyed in the name of a partnership.

5. Property is partnership property if acquired in the name of:

a. The partnership; or

b. One or more partners with an indication in the instrument transferring title to the property of the person's

capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

6. Property is acquired in the name of the partnership by a transfer to:

a. The partnership in its name; or

b. One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

7. Property acquired with funds of a partnership is presumed to be property of the partnership.

8. Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

9. Subject to any limitations in its partnership agreement or this Title, partnership property may be transferred as follows:

a. Subject to the effect of a statement of authority filed with the Office of the Secretary under the laws of the Tribe, if the property is held in the name of the partnership, by an instrument executed by any partner in the partnership name;

b. If held in the name of one or more partners without an indication of the name of the partnership, by an instrument executed by the persons in whose name the property is held; or

c. If held in the name of one or more persons, other than the partnership, without an indication the property is owned by them in their capacity as partners or the partnership, by an instrument executed by the persons in whose name the property is held.

Section 21-4-5. Liability to Third Parties.

1. A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act

or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with the actual or apparent authority of the partnership.

2. If, in the course of the partnership's business or while acting with actual or apparent authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

3. Except as otherwise provided in this Title, all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership, whether arising in contract, tort, or otherwise, unless otherwise agreed by the claimant or provided by law.

4. A person that becomes a partner is not personally liable for a debt, obligation, or other liability of the partnership, whether arising in contract, tort, or otherwise, incurred before the person became a partner.

5. A debt, obligation, or other liability of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the limited liability partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the limited liability partnership solely by reason of being or acting as a partner. This subsection applies:

a. Despite anything inconsistent in the partnership agreement that existed immediately before the vote or consent required to become a limited liability partnership under this Chapter; and

b. Regardless of the dissolution of the limited liability partnership.

6. The failure of a limited liability partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a partner for an act, debt, obligation, or other liability of the limited liability partnership.

7. The cancellation or administrative revocation of a limited liability partnership's statement of qualification does

not affect the limitation in this Section on the liability of a partner for an act, debt, obligation, or other liability of the partnership incurred while the statement was in effect.

8. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

Section 21-4-6. Parties to Actions.

1. A partnership may sue and be sued in the name of the partnership.

2. To the extent not inconsistent with this Title governing liability of partners to third parties, a partner may be joined in an action against the partnership or named in a separate action.

3. A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

4. A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under this Title and:

a. A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment against the partnership has been returned unsatisfied in whole or in part;

b. The partnership is a debtor in bankruptcy;

c. The partner has agreed that the creditor need not exhaust partnership assets;

d. A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is otherwise equitable under the circumstances; or

e. Liability is imposed on the partner by law or contract independent of the existence of the partnership.

Section 21-4-7. Authority to Sue.

1. Unless otherwise provided in its partnership agreement, an action on behalf of a partnership may be brought in the name of the partnership by one or more partners, if authorized by a majority vote of the partners excluding the vote of any partner who has an interest in the outcome of the action that is adverse to the interests of the partnership.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner.

Section 21-4-8. Actions Between Partners and Partnership.

1. A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

2. A partner may maintain an action against the partnership or another partner, with or without an accounting as to partnership business, to enforce the partner's rights and protect the partner's interests, including rights and interests under the partnership agreement, this Title, other law of the Tribe governing the partnership or arising independently of the partnership relationship. A partner maintaining a direct action under this subsection must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the partnership.

3. A right to an accounting on dissolution and winding up does not revive a claim barred by law.

4. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as partner.

Section 21-4-9. Records. A partnership shall maintain at its principal office the following information:

1. A current list showing the full name and last known street and mailing address of each partner and, in the case of a limited partnership, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order;

2. In the case of a limited liability partnership, a copy of the initial statement of qualification and all amendments to and restatements of the same, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

3. In the case of a limited partnership, a copy of the initial certificate of limited partnership and all amendments to and restatements of the same, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

4. A copy of any filed articles of merger, interest exchange, conversion, or domestication;

5. A copy of the partnership's Tribal, federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;

6. A copy of any written partnership agreement and any written amendment to any partnership agreement;

7. A copy of any financial statement of the partnership for the three most recent years;

8. A copy of the three (3) most recent annual reports delivered by the partnership to the Office of the Secretary pursuant to the laws of the Tribe;

9. A copy of any record made by the partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this Title or the partnership agreement; and

10. Unless contained in a written partnership agreement, a record stating:

a. A description and statement of the agreed value of contributions other than money made and agreed to be made by each partner;

b. The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

c. In the case of a limited partnership, for any person that is both a general partner and a limited partner, a

specification of what transferable interest the person owns in each capacity; and

d. Any events upon the happening of which the partnership is to be dissolved and its activities and affairs wound up.

CHAPTER 5
LIMITED PARTNERSHIPS

Section 21-5-1. Formation.

1. To form a limited partnership, a person must deliver a certificate of limited partnership to the Office of the Secretary for filing.

2. A partnership may become a limited partnership by complying with this Section and without accomplishing a conversion under the laws of the Tribe.

3. A limited partnership is formed when:

a. The certificate of limited partnership becomes effective;

b. At least two persons have become partners;

c. At least one person has become a general partner; and

d. At least one person has become a limited partner.

4. The Office of the Secretary's filing of the certificate of limited partnership of a limited partnership is conclusive proof that the limited partnership is organized and formed under this Title.

Section 21-5-2. Certificate of Limited Partnership.

1. A certificate of limited partnership must state all of the following:

a. A statement that the limited partnership is organized under this Title;

b. The name of the limited partnership that complies with the laws of the Tribe;

c. The principal address, which may be the same as the mailing address of the limited partnership's registered agent;

d. The name and street and mailing addresses in the territory of the Tribe of the limited partnership's registered agent;

e. The name and street and mailing addresses of each general partner;

f. Whether the limited partnership is a limited liability limited partnership;

g. Whether the limited partnership is a Tribal business entity; and

h. If the limited partnership is a Tribal business entity, whether the limited partnership enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. An initial certificate of limited partnership shall be signed by all general partners listed in the certificate.

3. A certificate of limited partnership may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

Section 21-5-3. Amendment or Restatement of Certificate.

1. A certificate of limited partnership may be amended or restated at any time.

2. To amend its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the limited partnership;

b. The date of filing of its initial certificate; and

c. The text of the amendment.

3. An amendment to the certificate of limited partnership adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate. Any other amendment to the certificate of limited partnership must be signed by:

a. At least one general partner listed in the certificate;

b. Each person designated in the amendment as a new general partner; and

c. Each person that the amendment indicates has dissociated as a general partner, unless the person is deceased or the person has previously delivered to the Office of the Secretary for filing a statement of dissociation.

4. To restate its certificate of limited partnership, a limited partnership must deliver to the Office of the Secretary for filing a restatement of the certificate, designated as such in its heading. A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this Section, the certificate must be signed in a manner that satisfies that subsection.

5. A limited partnership shall promptly deliver to the Office of the Secretary for filing an amendment to a certificate of limited partnership to reflect:

a. The admission of a new general partner;

b. The dissociation of a person as a general partner; or

c. The appointment of a person to wind up the limited partnership's activities and affairs under Title XIV of this Code.

6. A certificate of limited partnership shall be amended if there is a statement in the certificate that was false or erroneous when it was made.

7. If a general partner of a limited partnership knows that any information in a filed certificate of limited partnership was

inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the general partner shall promptly:

a. Cause the certificate to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

Section 21-5-4. Dual Capacity.

1. A person may be both a general partner and a limited partner.

2. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited partnership, and the partnership agreement for limited partners.

Section 21-5-5. Admission of Limited Partners.

1. Upon formation of a limited partnership, a person becomes a limited partner as agreed among the persons that are to be the initial partners.

2. After formation, a person becomes a limited partner:

a. As provided in the partnership agreement;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the partners.

3. A person may become a limited partner without:

a. Acquiring a transferable interest; or

b. Making or being obligated to make a contribution to the limited partnership.

Section 21-5-6. Person Erroneously Believing Limited Partner.

1. Except as otherwise provided in this Section, a person that makes an investment in a business entity and erroneously but in good faith believes that the person has become a limited partner in the business entity is not liable for the business entity's obligations by reason of making the investment, receiving distributions from the business entity, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

a. Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing; or

b. Withdraws from future participation as an owner in the business entity by signing and delivering to the Office of the Secretary for filing a statement of negation.

2. A person that makes an investment described in this Section is liable to the same extent as a general partner to any third party that enters into a transaction with the business entity, believing in good faith that the person is a general partner, before the Office of the Secretary files a statement of negation, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

3. If a person makes a diligent effort in good faith to file an appropriate certificate under this Section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the Office of the Secretary for filing, the person has the right to withdraw from the business entity by filing a statement of negation even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the business entity.

Section 21-5-7. Dissociation of Limited Partners.

1. A person does not have a right to dissociate as a limited partner in a limited partnership before the completion of the winding up of the limited partnership.

2. A person is dissociated as a limited partner when:

a. The person voluntarily withdraws as a limited partner and the limited partnership knows or has notice of the person's express will to withdraw as a limited partner, provided the person may designate a date of withdrawal as limited partner;

b. An event stated in the partnership agreement as causing the person's dissociation as a limited partner occurs;

c. The person is expelled as a limited partner pursuant to the partnership agreement or this Title or other law of the Tribe applicable to the limited partnership;

d. The person is expelled as a limited partner by the affirmative vote or consent of all the other partners if:

i. It is unlawful to carry on the limited partnership business with the person as a limited partner;

ii. There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes;

e. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent;

ii. Has been administratively dissolved or the equivalent;

iii. Had its charter or the equivalent revoked; or

iv. Had its right to conduct business suspended in its jurisdiction of formation;

f. If the person is a trust or estate or is acting as a limited partner by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire transferable interest in the limited partnership is distributed;

g. On application by the limited partnership or a partner in an action brought in Tribal Court, the person is expelled as a limited partner by order of the Tribal Court because the person:

i. Has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the limited partnership's activities and affairs;

ii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iii. Has committed willfully or persistently, or is committing willfully or persistently, a material breach of the partnership agreement, this Title, other law of the Tribe applicable to the limited partnership, or a duty or obligation to the limited partnership; or

iv. Has engaged or is engaging in conduct relating to the limited partnership's activities and affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a limited partner;

h. In the case of an individual, the individual dies;

i. In the case of a person that is not an individual, the existence of the person terminates;

j. The limited partnership participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The limited partnership does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a limited partner; or

k. The limited partnership dissolves and completes winding up.

3. In addition to all other consequences of dissociation as a partner, if a person is dissociated as a limited partner, the person does not have further rights as a limited partner.

Section 21-5-8. Management by Limited Partner. Unless the partnership agreement provides otherwise, a limited partner has no rights in the management and conduct of the limited partnership's business.

Section 21-5-9. Voting of Limited Partners. Except for matters requiring the vote of all partners under this Title or another law of the Tribe applicable to the limited partnership, limited partners have the right to vote on a matter of the partnership's activities only to the extent provided in the partnership agreement.

Section 21-5-10. Duties of Limited Partners.

1. Limited partners shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the limited partnership, or the partnership agreement consistently with the contractual obligation of good faith and fair dealing.

2. Except as otherwise provided in this Section, a limited partner does not have any duty to the limited partnership or to any other partner solely by reason of acting as a limited partner.

3. Unless the partnership agreement provides otherwise, if a limited partner enters into a transaction with a limited partnership, the limited partner's rights and obligations arising from the transaction are the same as those of a person that is not a partner.

4. A partnership agreement or other private organizational documents may impose duties on limited partners that are in addition to, but not in abrogation of, those provided in this Section.

Section 21-5-11. Limited Partner as Agent. In the case of a limited partner in a limited partnership, the following rules apply:

1. A limited partner is not an agent of a limited partnership solely by reason of being a limited partner; and

2. A person's status as a limited partner does not prevent or restrict a law of the Tribe other than this Title from imposing liability on a limited partnership because of the person's conduct.

Section 21-5-12. Knowledge of Limited Partner. A limited partner's knowledge or notice of a fact relating to the limited partnership is not effective as knowledge of or notice to the limited partnership.

Section 21-5-13. Rights to Information and Records.

1. Whenever this Title or a partnership agreement provides for a limited partner to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information that is known to the partnership and is material to the limited partner's decision.

2. In addition to any restriction or condition stated in its partnership agreement, a limited partnership, as a matter within the ordinary course of its business, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this Section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

Section 21-5-14. Liability to Third Parties.

1. A debt, obligation, or other liability of a limited partnership is not the debt, obligation, or other liability of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the limited partnership solely by reason of being or acting as a limited partner, even if the limited partner participates in the management and control of the limited partnership. This subsection applies regardless of the dissolution of the limited partnership.

2. The failure of a limited partnership to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a limited partner for a debt, obligation, or other liability of the limited partnership.

3. Nothing in this Section shall be construed as imposing any liability on the Tribe as a partner or as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

CHAPTER 6
CONTRIBUTIONS AND DISTRIBUTIONS

Section 21-6-1. Contributions.

1. A contribution may consist of money or property transferred to, services performed for, or another benefit provided to the partnership or an agreement to transfer money or property to, perform services for, or provide another benefit to the partnership.

2. The value of a partner's contribution shall be determined in the manner provided in the partnership agreement. If the partnership agreement does not fix a value to a contribution, the value of a contribution shall be approved by a majority of the partners and be properly reflected in the records and information kept by the partnership under this Title. The value of contributions so determined shall be binding and conclusive on the partnership and its partners.

3. An obligation of a person to make a contribution to a partnership is not enforceable unless specified in a writing signed by the person. A person's obligation to make a contribution to a partnership is not excused by the person's death, disability, termination, or other inability to perform personally.

4. If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the partnership to contribute money equal to the value of the part of the contribution which has not been made.

5. The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the partners. If a creditor of a partnership extends credit or otherwise acts in reliance on an obligation to make a contribution without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

Section 21-6-2. Allocation of Profits and Losses.

1. The profits and losses of a partnership shall be allocated among the partners in the manner provided in its partnership agreement.

2. If the partners do not enter into a partnership agreement or the partnership agreement does not provide for allocation of profits and losses, profits and losses shall be allocated on the basis of value of the contributions made by each partner.

Section 21-6-3. Distributions Generally.

1. Any distribution made by a partnership before its dissolution and winding up must be:

a. In the case of a limited partnership, shared among the partners on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner; and

b. In the case of all other partnerships, in equal shares among partners, except to the extent necessary to comply with an effective transfer of a transferable interest in the partnership under this Chapter or a charging order in effect under this Chapter.

2. Subject to the requirements to buyout a person's interest upon dissociation that does not result in the dissolution and winding up of the partnership, a person has a right to a distribution before the dissolution and winding up of a partnership only if the partnership decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a partnership in any form other than money. Except as otherwise provided in the laws of the Tribe, a partnership may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a partner becomes entitled to receive a distribution, the partner has the status of, and is entitled to all remedies available to, a creditor of the partnership with respect to the

distribution. However, the partnership's obligation to make a distribution is subject to offset for any amount owed to the partnership by the partner or a person dissociated as partner on whose account the distribution is made.

Section 21-6-4. Limitations on Distributions.

1. A limited liability partnership or limited partnership may not declare or make a distribution if, after the distribution:

a. The partnership would not be able to pay its debts as they become due in the ordinary course of the partnership's activities and affairs; or

b. The partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed to satisfy the preferential rights, if any, of partners upon dissolution and winding up.

2. A limited liability partnership or limited partnership may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. A limited liability partnership's or limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this Section is equivalent to the partnership's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement. This subsection does not affect the validity or priority of a security interest in a limited liability partnership's or limited partnership's property that is created to secure the indebtedness to the partner.

Section 21-6-5. Liability for Improper Distributions.

1. A partner that is not the Tribe who votes or assents to a distribution in violation of this Chapter is personally liable to the partnership for the amount of the excess distribution, subject to contribution from all other partners participating in such action.

2. To the extent the partnership agreement expressly relieves a partner of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other partners, the liability stated in this Section applies to the other partners and not the partner relieved of the authority and responsibility.

3. A person that receives a distribution knowing that the distribution violated this Chapter is personally liable to the partnership but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this Chapter.

4. A partner who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other partner who could be held liable under this Section for the unlawful distribution; and

b. Each partner for the amount the partner accepted knowing the distribution was made in violation of this Chapter.

5. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than two (2) years after the date of the distribution.

6. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

APPROVED 9/20/22
RESOLUTION 22-60

PONCA TRIBE OF NEBRASKA
TITLE XXII
COOPERATIVES

CHAPTER 1
GENERAL PROVISIONS

Section 22-1-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Articles of organization" means the articles filed under this Title to organize and establish a cooperative and includes the articles as amended or restated.

2. "Board of directors" means the group of persons vested with the management of the affairs of a domestic or foreign cooperative irrespective of the name by which the group is designated.

3. "Bylaws" means the code of rules adopted for the regulation or management of the affairs of a domestic or foreign cooperative irrespective of the name by which those rules are designated.

4. "Contribution" means property or a benefit that is provided by a person to a cooperative to become a member or in the person's capacity as a member.

5. "Cooperative" means, except when used in the phrase foreign cooperative, an entity that is formed under this Title or that becomes subject to this Title and, unless the context requires otherwise, includes a limited cooperative, a worker cooperative, and a limited worker cooperative.

6. "Distribution" means a direct or indirect transfer of money or other property from a cooperative to or for the benefit of its members or in the person's capacity as a member because of the member's financial rights, but does not include:

a. Patronage refunds;

b. Amounts constituting reasonable compensation for present or past service; or

c. Payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

7. "Financial rights" means the right to participate in allocations and distributions of a cooperative, including patronage refunds, but does not include rights or obligations under a marketing contract.

8. "Foreign cooperative" means an entity that is formed under the law of a jurisdiction other than the Tribe and that would be a cooperative if the entity were formed under the laws of the Tribe.

9. "Governance rights" means the right to participate in governance of a cooperative.

10. "Investor member" means a member that has made a contribution to a limited cooperative and is not required or not permitted by the organizational documents to conduct patronage with the cooperative in the member's capacity as an investor member in order to receive the member's interest.

11. "Limited cooperative" means, except in when used in the phrase foreign limited cooperative, a cooperative formed under this Title or that becomes subject to this Title and has or is authorized to have investor members and, unless the context requires otherwise, includes a limited worker cooperative.

12. "Limited worker cooperative" means, except in when used in the phrase foreign limited worker cooperative, a worker cooperative formed under this Title or that becomes subject to this Title and has or is authorized to have investor members.

13. "Marketing contract" means a contract between a cooperative and another person, that need not be a member:

a. Requiring the other person to sell, or deliver for sale or marketing on the person's behalf, a specified part of the person's products, commodities, or goods exclusively to or through the cooperative or any facilities furnished by the cooperative; or

b. Authorizing the cooperative to act for the person in any manner with respect to the products, commodities, or goods.

14. "Member" means a person that both:

a. Has become a member, including a patron member or investor member, of a cooperative or was a member when the cooperative became subject to this Title; and

b. Has not dissociated under this Title.

15. "Member's interest" means the interest of a member.

16. "Patron" means a person who may, but need not, be a member of a cooperative who utilizes the business of the cooperative through the purchase, sale, or other provision of property or services to or from the cooperative.

17. "Patronage" means business transactions between a cooperative and a patron which entitle the patron to receive financial rights based on the value or quantity of business done between the cooperative and the patron.

18. "Patron member" means a member that has made a contribution to a cooperative and is required or permitted by the organizational documents to conduct patronage with the cooperative in the member's capacity as a patron member in order to receive the member's interest.

19. "Patronage refund" means a portion of a cooperative's receipts from operations less expenses therefor paid or allocated to a patron based on the patron's patronage.

20. "Voting group" means any combination of one or more voting members in one or more districts or classes that under the organizational documents or this Title are entitled to vote and be counted together collectively on a matter at a members meeting.

21. "Voting member" means a member that, under the organizational documents, has a right to vote on matters subject to vote by members under the organizational documents.

22. "Voting power" means the total current power of members to vote on a particular matter for which a vote may or is to be taken.

23. "Worker" means a natural person contributing labor, services, or other work to a worker cooperative.

24. "Worker cooperative" means a cooperative formed under this Title where the patron members are workers and includes a limited worker cooperative.

25. Terms used in this Title and not defined herein, but defined in Title XIV of this Code have the meanings defined in Title XIV of this Code.

Section 22-1-2. Governing Laws.

1. Unless displaced by particular provisions of this Title, the relevant provisions of Title XIV of this Code supplement this Title and shall apply to all cooperatives.

2. This Title shall apply to all cooperatives to which Title XIV of this Code applies.

Section 22-1-3. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 22-1-4. Sovereign Immunity. Nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees or as establishing or acknowledging any liability of the Tribe under any law.

CHAPTER 2
FORMATION

Section 22-2-1. Formation.

1. One or more persons may act as organizers to form a cooperative by delivering to the Office of the Secretary for filing the articles of organization.

2. A cooperative is formed when the articles of organization become effective. However, to begin business, a cooperative must have at least two (2) patron members unless the sole member is another cooperative. The organizers of a cooperative need not be members at the time of organization or thereafter.

3. The Office of the Secretary’s filing of the articles of organization of a cooperative is conclusive proof that the cooperative is organized and formed under this Title.

Section 22-2-2. Articles of Organization.

1. The articles of organization must state all of the following:

a. A statement that the cooperative is organized under this Title;

b. The name of the cooperative that complies with the laws of the Tribe;

c. The purposes for which the cooperative is formed;

d. A statement that the cooperative's business shall be conducted on a cooperative basis for the mutual benefit of the cooperative's members;

e. The principal address, which may be the same as the mailing address of the cooperative's registered agent;

f. The name and street and mailing addresses in the territory of the Tribe of the cooperative's registered agent;

g. The name and address of each person organizing the cooperative;

h. Whether the cooperative is a Tribal business entity; and

i. If the cooperative is a Tribal business entity, whether the cooperative enjoys the Tribe's sovereign immunity and the scope of any waiver of that immunity.

2. The articles of organization shall be signed by all organizers.

3. The articles of organization may contain statements as to matters other than those required in this Section which are not inconsistent with the laws of the Tribe or not prohibited by the laws of the Tribe.

4. A cooperative, by the affirmative vote of a majority of the board of directors taken at a meeting for which the purpose is stated in the notice of the meeting, may adopt restated articles of organization that contain the original articles as previously amended. Restated articles may contain amendments if the restated

articles are adopted in the same manner and with the same vote as required for amendments to the articles under this Title. To restate its articles of organization, a cooperative must deliver to the Office of the Secretary for filing a restatement of the articles, designated as such in its heading. Upon filing, restated articles supersede the existing articles and all amendments.

Section 22-2-3. Bylaws.

1. The initial board of directors of a cooperative shall adopt initial bylaws for the cooperative.

2. Bylaws must be in writing and, if not stated in the articles of organization, must include:

a. A statement of the capital structure of the cooperative, including:

i. The classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

ii. The rights to share in profits or distributions of the cooperative;

b. A statement of the qualifications for membership, method for admission of members, and conditions for suspension, withdrawal, or expulsion;

c. A statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

d. A statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;

e. A statement concerning the manner in which profits and losses are allocated and distributions are made among members;

f. A statement concerning:

i. Whether persons that are not members but conduct business with the cooperative may be permitted

to share in allocations of profits and losses and receive patronage refunds and distributions; and

ii. The manner in which profits and losses are allocated and patronage refunds and distributions are made with respect to those persons; and

g. A statement of the number and terms of directors or the method by which the number and terms are determined.

3. The bylaws of a cooperative may contain any provision for managing the activities and regulating the affairs of the cooperative that is not inconsistent with applicable law or the articles of organization.

4. The initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Section 22-2-4. Amendment of Articles and Bylaws.

1. Once a cooperative has admitted members, the organizational documents of a cooperative may only be amended at a members meeting. An amendment may be proposed by either:

a. A majority of the board of directors, or a greater percentage if required by the organizational documents; or

b. One (1) or more petitions signed by at least ten percent (10%) of the patron members.

2. The board of directors shall call a members meeting to consider an amendment proposed pursuant to this Section. The meeting must be held not later than ninety (90) days following the proposal of the amendment by the board or receipt of a petition. The board must mail or otherwise transmit or deliver in writing to each member:

a. The proposed amendment or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in writing may be reasonably obtained by a member;

b. A recommendation that the members approve the amendment or, if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

c. A statement of any condition of the board's submission of the amendment to the members; and

d. Notice of the meeting at which the proposed amendment will be considered, which must be given in the same manner as notice for a special meeting of members.

3. A change to a proposed amendment of the organizational documents may not be made at the members meeting at which a vote on the amendment occurs and need not be separately voted upon by the board of directors. A vote to adopt a change to a proposed amendment to the organizational documents must be by the same percentage of votes required to pass a proposed amendment.

4. If the organizational documents provide for voting by district or class, or if there is one or more identifiable voting groups that a proposed amendment to the organizational documents would affect differently from other members, approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required of all members to pass the proposed amendment.

5. Subject to subsection 4 of this Section:

a. An amendment to the articles of organization must be approved by at least two-thirds (2/3) of the voting power of members present at the members meeting called to consider the amendment; and

b. Unless otherwise provided in this Title or the organizational documents require a greater percentage, an amendment to the bylaws must be approved by at least a majority vote of the voting power of all members present at the members meeting called to consider the amendment.

6. The vote required to amend bylaws must satisfy the requirements of an amendment to the articles of organization if the proposed amendment modifies:

a. The equity capital structure of the cooperative, including the rights of the cooperative's members to share in profits or distributions or receive patronage refunds;

b. The relative rights, preferences, and restrictions granted to or imposed upon one or more districts, classes, or voting groups of similarly situated members;

c. The transferability of a member's interest;

d. The manner or method of allocation of profits or losses among members;

e. The quorum for a meeting and the rights of voting and governance; or

f. Unless otherwise provided in the organizational documents, the terms for admission of new members.

7. The organizational documents may require that the percentage of votes to amend the organizational documents be:

a. A different percentage that is not less than a majority of members voting at the meeting;

b. Measured against the voting power of all members; or

c. A combination of the foregoing.

8. Consent in writing by a member must be delivered to a cooperative before delivery of an amendment or restatement of the articles of organization for filing, if as a result of the amendment the member will have:

a. Personal liability for an obligation of the cooperative; or

b. An obligation or liability for an additional contribution.

9. Except for the matters described in subsection 6, the articles of organization may delegate amendment of all or a part of the bylaws to the board of directors without requiring member approval. If the articles of organization delegate amendment of the bylaws to the board of directors, the board shall provide a description of any amendment of the bylaws made by the board of directors to the members in writing not later than thirty (30) days after the amendment, but the description may be provided at the next annual members meeting if the meeting is held within the thirty (30) day period.

10. To amend its articles of organization, a cooperative must deliver to the Office of the Secretary for filing an amendment stating:

a. The name of the cooperative;

b. The date of filing of its initial articles of organization; and

c. The text of the amendment.

11. The articles of organization shall be amended if there is a statement in the articles that was false or erroneous when it was made.

12. If a director or, before the initial meeting of the board, an organizer of a cooperative knows that any information in filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances, the director or organizer shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, deliver to the Office of the Secretary for filing a statement of change or a statement of correction.

CHAPTER 3
MEMBERS

Section 22-3-1. Admission of Members.

1. A cooperative must have at least two (2) patron members, provided that a cooperative may have a sole member that is another cooperative.

2. Subject to the provisions its organizational documents, a cooperative:

a. May limit admission of members only to persons engaged in the particular business, utilizing the goods or services provided by or through the cooperative, or providing the goods or services utilized by the cooperative; or

b. May admit as members any person meeting uniform terms and conditions stated in its organizational documents.

3. If a cooperative is to have only one other cooperative member upon formation, the other cooperative becomes a member as agreed by the other cooperative and the organizer of the cooperative. The other cooperative and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the other cooperative member.

4. If a cooperative is to have more than one (1) member upon formation, those persons become members as agreed by the persons before the formation of the cooperative. The organizer acts on behalf of the persons in forming the cooperative and may be, but need not be, one of the persons.

5. After formation of a cooperative, a person becomes a member:

a. As provided in the organizational documents;

b. As the result of a merger, interest exchange, conversion, or domestication; or

c. With the affirmative vote or consent of all the members.

Section 22-3-2. Districts and Classes.

1. The organizational documents may provide for the formation of geographic districts of members and:

a. For the conduct of member meetings by districts and the election of directors at the meetings; or

b. That districts may elect district delegates to represent and vote for the district at members meetings.

2. The organizational documents may provide for the establishment of classes of members, for the preferences, rights, and limitations of the classes, and:

a. For the conduct of members meetings by classes and the election of directors at the meetings; or

b. That classes may elect class delegates to represent and vote for the class in members meetings.

3. A delegate elected under this Section has one (1) vote unless voting power is otherwise allocated by the organizational documents.

Section 22-3-3. Dissociation.

1. A member is dissociated as a member when:

a. The person voluntarily withdraws as a member and the cooperative knows or has notice of the person's express will to withdraw as a member, provided the person may designate a date of withdrawal as a member;

b. An event stated in the organizational documents as causing the person's dissociation occurs;

c. The person is expelled as a member pursuant to the organizational documents or this Title or other law of the Tribe applicable to the cooperative;

d. The person's entire interest is transferred in a foreclosure sale under this Title;

e. The person is expelled as a member by the board of directors because:

i. It is unlawful to carry on the cooperative's business and affairs with the person as a member; or

ii. There has been a transfer of all the member's financial rights in the cooperative, other than a transfer for security purposes or a charging order in effect under this Title which has not been foreclosed;

f. The person is an entity and:

i. Has filed a statement of dissolution or the equivalent and fails to revoke the statement of dissolution within ninety (90) days written notice from the cooperative;

ii. Has been dissolved and its activities and affairs are being wound up;

iii. Has been administratively dissolved or the equivalent;

iv. Had its charter or the equivalent revoked;

v. Had its right to conduct business suspended in its jurisdiction of formation; or

vi. Has been liquidated;

g. In the case of a trust or estate or a person acting as a member by virtue of being a trustee of a trust or personal representative of an estate, the trust's or estate's entire financial interest in the cooperative is distributed;

h. In the case of an individual:

i. The individual dies;

ii. The individual is adjudged incapacitated; or

iii. A court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this Title or the organizational documents;

i. In the case of a person that is not an individual, the existence of the person terminates;

j. The cooperative participates in a merger, interest exchange, conversion, or domestication under Title XIV of this Code and:

i. The cooperative does not survive the transaction; or

ii. Otherwise as a result of the transaction, the person ceases to be a member; or

k. The cooperative dissolves and completes winding up.

2. A person has the power to dissociate as a member of a cooperative at any time, rightfully or wrongfully.

3. Unless the organizational documents provide otherwise, a member's dissociation from a cooperative is wrongful only if:

a. It is in breach of an express provision of the organizational documents, this Title, or other law of the Tribe applicable to the cooperative;

b. It occurs before the termination of the cooperative and:

i. The person is expelled as a member under this Section; or

ii. In the case of a person that is not a trust, estate, or individual, the person is expelled or otherwise dissociated because it willfully dissolved or terminated.

4. Unless the organizational documents provide otherwise, a person that wrongfully dissociates as a member is liable to the cooperative and to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or liability of the person to the cooperative. In addition to pursuing any remedies otherwise available under the organizational documents or applicable law, if a person wrongfully dissociates as a member, the cooperative may offset the damages against the amount otherwise distributable to the member.

5. When a person is dissociated as a member:

a. The person's right to participate as a member in the management and conduct of the cooperative's business and affairs terminates, except to the extent the member participates in winding up the cooperative's business and affairs pursuant to a dissolution; and

b. Subject to any provision in this Title or other law of the Tribe applicable to the cooperative, any financial rights owned by the person in the person's capacity as a member immediately before dissociation are owned by the person as a transferee.

6. A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the cooperative or the other members which the person incurred while a member.

Section 22-3-4. Meetings of Members.

1. Members shall meet annually at a time provided in the organizational documents or set by the board of directors not inconsistent with the organizational documents. The board of directors shall report, or cause to be reported, at the

cooperative's annual members meeting the cooperative's business and financial condition as of the close of the most recent fiscal year. Failure to hold an annual members meeting does not affect the validity of any action of the cooperative.

2. A special meeting of members may be called only:

a. As provided in the organizational documents;

b. By a majority vote of the board of directors on a proposal stating the purpose of the meeting;

c. By demand in writing signed by members holding at least twenty percent (20%) of the voting power of the persons in any district or class entitled to vote on the matter that is the purpose of the meeting stated in the demand; or

d. By demand in writing signed by members holding at least ten percent (10%) of the total voting power of all the persons entitled to vote on the matter that is the purpose of the meeting stated in the demand.

3. A demand for a special meeting must be submitted to the officer of the cooperative charged with keeping its records. Any voting member may withdraw its demand for a special meeting before receipt by the cooperative of demands sufficient to require a special meeting of members.

4. Only business within the purpose or purposes stated in the notice of a special meeting may be conducted at the meeting.

5. A meeting of members may be held inside or outside the territory of the Tribe at the place stated in the organizational documents or selected by the board of directors not inconsistent with the organizational documents.

6. Unless the organizational documents provide otherwise, members may attend or conduct a members meeting through any means of communication if all members attending the meeting can communicate with each other during the meeting.

7. Unless the organizational documents provide otherwise, the board of directors shall designate the presiding officer of a members meeting.

8. Unless the organizational documents otherwise require a greater number of members or percentage of the voting power, five

percent (5%) of the total number of members or thirty (30) members present at a members meeting, whichever is less, constitutes a quorum.

9. A cooperative shall notify each member of the time, date, and place of a members meeting at least fifteen (15) and not more than sixty (60) days before the meeting. Notice may be given by mail, personal delivery, or electronic transmission. Unless the organizational documents provide otherwise, notice of an annual members meeting need not include any purpose of the meeting. Notice of a special meeting of members must include each purpose of the meeting as contained in the demand for the special meeting or as voted upon by the board of directors calling for the special meeting.

10. A member may waive notice of a members meeting before, during, or after the meeting. A member's participation in a members meeting is a waiver of notice of that meeting unless the member objects to the meeting at the beginning of the meeting or promptly upon the member's arrival at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 22-3-5. Member Action Without a Meeting.

1. Unless the organizational documents require that action be taken only at a members meeting, any action that may be taken by the members may be taken without a meeting if each member entitled to vote on the action consents in writing to the action.

2. Consent under this Section may be withdrawn by a member in writing at any time before the cooperative receives a consent from each member entitled to vote.

3. Consent to any action may specify the effective date or time of the action.

Section 22-3-6. Voting of Members.

1. Except as otherwise provided in this Section, each member has one vote.

2. The organizational documents may allocate voting power among members on the basis of one or a combination of the following:

a. One member, one vote;

b. Use or patronage;

c. Equity; or

d. If a member is a cooperative, the number of its members.

3. The organizational documents may provide for the allocation of member voting power by districts or class, or any combination thereof.

4. Unless the organizational documents provide otherwise, voting by a proxy at a members meeting is prohibited. This subsection does not prohibit delegate voting based on district or class. If voting by a proxy is permitted, a patron member may appoint only another patron member as a proxy. The organizational documents may provide for the manner of and provisions governing the appointment of a proxy.

5. The organizational documents, or a resolution of the board with respect to a particular issue, may provide for voting on any question by ballot delivered by mail or voting by other means on questions that are subject to vote by members.

Section 22-3-7. Member Transactions with Cooperative. Except as otherwise provided in the organizational documents or a specific contract relating to a transaction, a member may lend money to and transact other business with a cooperative in the same manner as a person that is not a member.

Section 22-3-8. Member as Agent.

1. A member is not an agent of a cooperative solely by reason of being a member.

2. A person's status as a member does not prevent or restrict law other than this Title from imposing liability on a cooperative because of the person's conduct.

Section 22-3-9. Direct Action by Member.

1. A member may maintain a direct action against another member, director, or the cooperative to enforce the member's rights and protect the member's interests, including rights and interests under the organizational documents or this Title or arising independently of the membership relationship.

2. A member maintaining a direct action under this Section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the cooperative.

Section 22-3-10. Member Dissent.

1. A member is entitled to dissent from and obtain payment of the fair value of the member's membership in the event of any of the following cooperative actions:

a. Consummation of plan of merger, conversion, domestication, division, or interest exchange where, following the merger, conversion, domestication, division, or interest exchange, there will be members of any cooperative involved in the proposed transaction who would no longer be eligible for membership or other voting interest in the surviving or resulting entity;

b. A proposed disposition of assets which requires approval of the members under this Title or the organizational documents;

c. An amendment of the articles of organization that materially and adversely affects the member's governance rights or financial rights; or

d. Any other cooperative action taken pursuant to a member vote to the extent the organizational documents or a resolution of the board of directors provides that members are entitled to dissent and obtain payment for their membership.

2. A member entitled to dissent and obtain payment for the member's membership under this Section may not challenge the cooperative action creating the member's entitlement unless the action is fraudulent or fails to comply with this Title or the organizational documents with respect to the member or the cooperative.

3. The right of a dissenting member to obtain payment of the fair value of the member's membership shall terminate upon the occurrence of any of the following events:

a. The proposed cooperative action is abandoned or rescinded; or

b. The member's demand for payment is withdrawn with the written consent of the cooperative.

4. If proposed cooperative action creating dissenters' rights is submitted to a vote at a members meeting, the meeting notice must state that members are or may be entitled to assert dissenters' rights under this Section. If cooperative action creating dissenters' rights is taken without a vote of members, the cooperative, within ten (10) days after the effective date of such cooperative action, shall notify in writing all members entitled to assert dissenters' rights that the action was taken and send them written dissenters' notice as provided in this Section.

5. If proposed cooperative action creating dissenters' rights under this Section is submitted to a vote at a members meeting, a member who wishes to assert dissenters' rights shall both deliver written notice to the cooperative before the vote is taken of the member's intent to demand payment for the member's membership if the proposed action is effectuated and not vote in favor of the proposed action. A member who does not satisfy the requirements of this subsection is not entitled to payment for the membership under this Section. The cooperative shall deliver a written dissenters' notice to all members who satisfied the requirements of this subsection.

6. Dissenters' notice required in this Section must be sent within ten (10) days after the effective date of the cooperative action and shall:

a. State where the payment demand must be sent and where and when any certificates for membership must be deposited; and

b. Set a date by which the cooperative must receive the payment demand, which date may not be fewer than thirty (30) nor more than sixty (60) days after the date the dissenters' notice is delivered.

7. A member sent a dissenters' notice must demand payment and deposit any membership certificate in accordance with the terms of the notice. A member who demands payment and deposits the member's membership certificate retains all other rights of a member until the proposed cooperative action is affected. A member who does not demand payment or deposit the member's membership certificate where required by the date set in the dissenters'

notice is not entitled to payment for the member's membership under this Section.

8. Within thirty (30) days of the later of the effective date of the proposed cooperative action or the date the payment demand is received, the cooperative shall pay each dissenter who demanded payment and deposited the member's membership certificate in accordance with the notice the amount the cooperative estimates to be the fair value of the membership plus accrued interest. The payment must be accompanied by:

a. The cooperative's balance sheet as of the end of a fiscal year ending not more than sixteen (16) months before the date of payment, an income statement for that year, a statement of changes in members' equity for that year, and the latest available interim financial statements, if any;

b. An explanation of how the cooperative estimated the fair value of the membership;

c. An explanation of how the interest was calculated; and

d. A statement of the dissenter's right to dispute the payment amount under this Section.

9. Provided a demand for payment under this subsection is made in writing within thirty (30) days after the cooperative made or offered payment for the dissenter's membership, a dissenter may notify the cooperative in writing of the dissenter's own estimate of the fair value of the dissenter's membership and amount of interest due and demand payment of the dissenter's estimate, less any payment made under this Section, and demand payment of the dissenter's estimate of the fair value of the dissenter's membership and interest due, if:

a. The dissenter believes that the amount paid under this Section is less than the fair value of the dissenter's membership or that the interest due is incorrectly calculated;

b. The cooperative fails to make payment under this Section within sixty (60) days after the date set for demanding payment; or

c. The cooperative does not affect the proposed action and does not return any deposited membership certificates

within sixty (60) days after the date set for demanding payment.

10. If a dissenter's demand for payment under subsection 9 of this Section remains unsettled:

a. The cooperative shall commence a proceeding within sixty (60) days after receiving the payment demand and petition the Tribal Court to determine the fair value of the membership and accrued interest;

b. If the cooperative does not commence the proceeding within such sixty (60) day period, it shall pay each dissenter whose demand remains unsettled the amount demanded;

c. The Tribal Court may appoint one (1) or more persons as appraisers to receive evidence and recommend a fair valuation to the Tribal Court;

d. Appraisers appointed by the Tribal Court shall have the powers described in the order appointing them or in any amendment to it;

e. The dissenters shall be entitled to the same discovery rights as parties in other civil proceedings;

f. Each dissenter made a party to the proceeding shall be entitled to judgment for the amount, if any, by which the Tribal Court finds the fair value of the dissenter's membership plus interest exceeds the amount paid by the cooperative;

g. The Tribal Court shall determine all costs of the proceeding, including the reasonable compensation and expenses of the appraisers appointed by the Tribal Court and assess the costs against the cooperative, except that the Tribal Court may assess the costs against all or some of the dissenters, other than dissenters who are the Tribe or a Tribal business entity, in amounts the Tribal Court finds equitable, to the extent the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment;

h. Except for a party that is the Tribe or a Tribal business entity, the Tribal Court may assess fees and expenses of legal counsel and experts for the respective parties in amounts the Tribal Court finds equitable:

i. Against the cooperative and in favor of any or all dissenters if the cooperative did not substantially comply with the requirements of this Section; or

ii. Against the cooperative or a dissenter if the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided in this Section.

11. Under this Section, fair value with respect to a dissenter's membership shall be determined as the value of the membership immediately before the effective date of the cooperative action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the cooperative action unless exclusion would be inequitable.

12. If the Tribe is a member in a cooperative, any right to dissent as a member may only be exercised by the Tribe and no individual member of the Tribe or the Tribal Council shall have any right of member dissent under this Section even if the membership of the Tribe is voted by individual members of the Tribal Council.

13. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe as a member or otherwise or waiving the sovereign immunity of any Tribal business entity.

Section 22-3-11. Derivative Actions.

1. A member may maintain a derivative action to enforce a right of a cooperative if:

a. Unless such a demand would be futile, the member first makes a demand on the board of directors requesting that they cause the cooperative to bring an action to enforce the right; and

b. The board of directors do not bring the action within a reasonable time.

2. In a derivative action, the complaint must state with particularity:

a. The date and content of plaintiff's demand and the response to the demand by the board of directors; or

b. Why demand should be excused as futile.

3. A derivative action to enforce a right of a cooperative may be maintained only by a person that is a member at the time the action is commenced and:

a. Was a member when the conduct giving rise to the action occurred; or

b. Whose status as a member devolved on the person by operation of law or pursuant to the terms of the organizational documents from a person that was a member at the time of the conduct.

4. If a cooperative is named as or made a party in a derivative proceeding, the cooperative may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the cooperative. If the cooperative appoints a special litigation committee, on motion by the committee made in the name of the cooperative, the court shall, except for good cause shown, stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

a. Enforcing a person's right to information under this Title; or

b. Granting a temporary restraining order or preliminary injunction.

5. A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members. A special litigation committee may be appointed by the affirmative vote or consent of a majority of the directors not named as parties in the proceeding or, if all directors are named as parties, a majority of all the directors.

6. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the cooperative that the proceeding:

a. Continue under the control of the plaintiff;

b. Continue under the control of the committee;

c. Be settled on terms approved by the committee; or

d. Be dismissed.

7. After making a determination how to proceed, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination. The special litigation committee shall serve each party with a copy of the determination and report. If the court finds the committee has proven that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve any stay entered pursuant to this Section and allow the action to continue under the control of the plaintiff.

8. A derivative action on behalf of a cooperative may not be voluntarily dismissed or settled without the court's approval.

9. Subject to the award of expenses provided in this Section:

a. Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the cooperative and not to the plaintiff; and

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the cooperative.

10. Unless the cooperative is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable legal counsel's fees and costs, from the recovery of the cooperative.

11. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or waiving the sovereign immunity of any Tribal business entity.

Section 22-3-12. Financial Statements.

1. On written demand from a member, a cooperative shall furnish that member with financial statements for its latest completed fiscal year within a reasonable time after receipt of the demand. The financial statements may be consolidated or combined statements of the cooperative and one or more of its subsidiaries, as appropriate, and that include a balance sheet as

of the end of the fiscal year and a statement of operations for the year. If financial statements are prepared for the cooperative on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

2. If the annual financial statements are reported on by a certified public accountant, that report shall accompany them. If not, the statements shall be accompanied by a statement of the person responsible for the cooperative's accounting records both:

a. Stating that person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

b. Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

3. If a cooperative indemnifies or advances expenses to a director or officer with respect to a proceeding where the director or officer was a party, the cooperative shall report the indemnification or advance in writing to the members. Failure to report under this subsection does not invalidate otherwise valid indemnification.

Section 22-3-13. Rights to Information and Records.

1. On reasonable request, a member is entitled to inspect and copy, during regular business hours at the cooperative's principal place of business, any of the records of the cooperative required to be maintained at such principal place of business under this Title or other law of the Tribe applicable to the cooperative. A member need not have any particular purpose for seeking the information. The cooperative is not required to provide the same information to the same member more than once during a six (6) month period.

2. The cooperative shall furnish to each member, on reasonable and good faith demand, any other true and full information concerning the cooperative's activities, affairs, financial condition, and other circumstances.

3. A former member is entitled to information to which the member was entitled while a member if:

a. The information pertains to the period during which the person was a member;

b. The former member seeks the information in good faith; and

c. The former member satisfies the requirements of this Section.

4. The cooperative may impose reasonable restrictions on the confidentiality, use, or distribution of records subject to inspection and copying by members under this Section.

5. The right of inspection granted by this Section may not be abolished or limited by a cooperative's organizational documents.

6. A member's agent or legal representative has the same inspection and copying rights as the member it represents.

7. The rights stated in this Section do not extend to a person as transferee.

8. The organizational documents may require a cooperative to provide more information than required by this Section and may establish conditions and procedures for providing the information.

9. If a cooperative does not allow within a reasonable time a member to inspect and copy any record subject to inspection and copying under this Section, on application of the member, the Tribal Court may summarily order inspection and copying of the records demanded at the cooperative's expense.

10. Unless the cooperative is a Tribal business entity and the plaintiff is not the Tribe or a Tribal business entity, if the Tribal Court orders inspection and copying of the records demanded, it shall also order the cooperative to pay the member's costs, including reasonable legal counsel fees, incurred to obtain the order, unless the cooperative proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded. Unless the member is the Tribe or a Tribal business entity, the Tribal Court may order a member to pay all or a portion of the cooperative's costs, including reasonable legal counsel fees, if the demand to inspect is denied in whole or in material part.

11. If the Tribal Court orders inspection and copying of records pursuant to this Section, it may impose reasonable restrictions on the use or distribution of the records by the member.

12. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a cooperative that is a Tribal business entity.

CHAPTER 4
BOARD OF DIRECTORS

Section 22-4-1. Board of Directors.

1. The affairs of a cooperative must be managed by, or under the direction of, a board of directors. The board may adopt policies and procedures that do not conflict with the organizational documents of the cooperative or this Title or other law of the Tribe applicable to the cooperative.

2. The board of directors of a cooperative must have at least three (3) individuals, unless the cooperative has fewer than three (3) members. If the cooperative has fewer than three (3) members, the number of directors may not be fewer than the number of members.

3. Initial directors may be named in the articles of organization, elected by the members, or, prior to the admission of members, elected by the incorporators. An initial director serves until a successor is elected and qualified or the director is removed, resigns, is adjudged incapacitated, or dies. Initial directors need not be members. Thereafter, directors shall be elected at the annual meeting of the members. Unless the articles of organization provide otherwise, the initial directors may cause the cooperative to accept members, including those necessary for the cooperative to begin business.

4. Unless the organizational documents provide otherwise and other than initial directors, each director of a cooperative must be an individual who is a member of the cooperative or an individual who is designated for purposes of qualifying and serving as a director by a member that is not an individual. If the organizational documents provide for nonmember directors, the number of nonmember directors may not exceed:

a. One (1), if there are two (2) to four (4) directors;

b. Two (2), if there are five (5) through eight (8) directors; or

c. One-third (1/3) of the total number of directors if there are at least nine (9) directors.

5. Subject to the requirements of this Section, the organizational documents may provide for the election of all or a specified number of directors by one or more districts or classes of members. Subject to the requirements of this Section, the organizational documents may provide for the nomination or election of directors by districts or classes, directly or by district delegates. If a class of members consists of a single member, the organizational documents may provide for the member to appoint a director or directors.

6. The organizational documents may provide qualifications for directors in addition to those in this Section.

7. Except as otherwise provided by the organizational documents or elsewhere in this Title, directors must be elected at an annual members meeting. Unless the organizational documents provide otherwise, cumulative voting for directors is prohibited. Unless the organizational documents provide otherwise, a director may be an officer or employee of the cooperative.

8. Unless the organizational documents provide otherwise, the term of a director expires at the annual members meeting following the director's election or appointment. The organizational documents may provide for longer terms for directors, but the term of a director may not exceed three (3) years. Unless the organizational documents provide otherwise, a director may be reelected.

9. A director continues to serve until a successor director is elected or appointed and qualifies or the director is removed, resigns, is adjudged incapacitated, or dies. However, unless the organizational documents provide otherwise, a director does not serve the remainder of the director's term if the director ceases to qualify to be a director.

10. Unless the organizational documents provide otherwise, the following rules apply to removal of a director:

a. Members may remove a director with or without cause;

b. A member or members holding at least ten percent (10%) of the total voting power entitled to be voted in the election of a director may demand removal of the director by one or more signed petitions submitted to the officer of the cooperative charged with keeping its records;

c. Upon receipt of a petition for removal of a director, an officer of the cooperative or the board of directors shall:

i. Call a special meeting of members to be held not later than ninety (90) days after receipt of the petition by the cooperative; and

ii. Mail or otherwise transmit or deliver in writing notice of the meeting to the members entitled to vote on the removal and to the director to be removed; and

d. A director is removed if the votes in favor of removal are equal to or greater than the votes required to elect the director.

11. A board of directors may suspend a director if, considering the director's course of conduct and the inadequacy of other available remedies, immediate suspension is necessary for the best interests of the cooperative and the director is engaging, or has engaged, in:

a. Fraudulent conduct with respect to the cooperative or its members;

b. Gross abuse of the position of director;

c. Intentional or reckless infliction of harm on the cooperative; or

d. Any other behavior, act, or omission as provided by the organizational documents.

12. A suspension of a director is effective for thirty (30) days unless the board of directors calls and gives notice of a special meeting of members for removal of the director before the end of the thirty (30) day period, in which case the suspension is effective until adjournment of the meeting or the director is removed.

13. A director may resign at any time by giving notice in writing to the cooperative. Unless the notice states a later effective date, a resignation is effective when the notice is received by the cooperative.

14. Unless the organizational documents provide otherwise, a vacancy on the board of directors must be filled:

a. Within a reasonable time by majority vote of the remaining directors until the next annual members meeting or a special meeting of members called to fill the vacancy; and

b. For the unexpired term of the vacating director.

15. Unless the organizational documents provide otherwise, if a vacating director was elected or appointed by a class of members or a district:

a. The new director must be of that class or district; and

b. The selection of the director for the unexpired term must be conducted in the same manner as would the selection for that position without a vacancy.

16. If a member appointed a vacating director, the organizational documents may provide for that member to appoint a director to fill the vacancy.

17. Unless the organizational documents provide otherwise, the board of directors may fix the compensation of directors and nondirector members of board committees.

18. A board of directors shall meet at least annually and, unless the organizational documents provide otherwise, may hold meetings inside or outside the territory of the Tribe. Unless the organizational documents provide otherwise, a board of directors may permit directors to attend or conduct board meetings through the use of any means of communication, if all directors attending the meeting can communicate with each other during the meeting.

19. Unless the organizational documents provide otherwise, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

20. Unless the organizational documents provide otherwise, notice of the time, date, and place of a special meeting of a board of directors must be given to all directors at least three (3) days before the meeting, the notice must contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

21. Unless the articles of organization provide for a greater number, a majority of the total number of directors specified by the organizational documents constitutes a quorum for a meeting of the directors. If a quorum of the board of directors is present at the beginning of a meeting, any action taken by the directors present is valid even if withdrawal of directors originally present results in the number of directors being fewer than the number required for a quorum. A director present at a meeting but objecting to notice as provided in this Section does not count toward a quorum.

22. Each director shall have one vote for purposes of decisions made by the board of directors. Unless a law applicable to the cooperative or the organizational documents provide for a greater number generally or for any particular act of the board of directors, the affirmative vote of a majority of directors present at a meeting is required for action by the board of directors.

23. Unless the organizational documents provide otherwise, a director may waive any required notice of a meeting of the board of directors in writing before, during, or after the meeting. Unless the organizational documents provide otherwise, a director's participation in a meeting is a waiver of notice of that meeting unless:

a. The director objects to the meeting at the beginning of the meeting or promptly upon the director's arrival at the meeting and does not thereafter vote in favor of or otherwise assent to any action taken at the meeting for which notice has not been given; or

b. The director promptly objects upon the introduction of any matter for which notice has not been given and does not thereafter vote in favor of or otherwise assent to the action taken on the matter.

24. Unless prohibited by the organizational documents, any action that may be taken by a board of directors may be taken without a meeting if each director consents in writing to the action. Consent under this subsection may be withdrawn by a

director in writing at any time before the cooperative receives consent from all directors. A record of consent for any action under this subsection may specify the effective date or time of the action.

Section 22-4-2. Board Committees.

1. Unless the organizational documents provide otherwise, a board of directors may create one or more committees and appoint one or more individuals to serve on a committee.

2. Unless the organizational documents provide otherwise, an individual appointed to serve on a committee of a cooperative need not be a director or member.

3. An individual who is not a director and serves on a committee has the same rights, duties, and obligations as a director serving on the committee.

4. Unless the organizational documents provide otherwise, each committee of a cooperative may exercise the powers delegated to it by the board of directors, but a committee may not:

a. Approve allocations or distributions except according to a formula or method prescribed by the board of directors;

b. Approve or propose to members action requiring approval of members; or

c. Fill vacancies on the board of directors or any of its committees.

Section 22-4-3. Officers.

1. A cooperative has the officers:

a. Provided in the organizational documents; or

b. Established by the board of directors in a manner not inconsistent with the organizational documents.

2. The organizational documents may designate or, if the organizational documents do not designate, the board of directors shall designate, one of the cooperative's officers for preparing all records required by this Title and for the authentication of records of the cooperative.

3. Unless the organizational documents provide otherwise, the board of directors shall appoint the officers of the cooperative.

4. Officers of a cooperative shall perform the duties the organizational documents prescribe or as authorized by the board of directors not in a manner inconsistent with the organizational documents or this Title.

5. The election or appointment of an officer of a cooperative does not of itself create a contract between the cooperative and the officer.

6. Unless the organizational documents provide otherwise, an individual may simultaneously hold more than one office in a cooperative.

7. The board of directors may remove an officer at any time with or without cause.

8. An officer of a cooperative may resign at any time by giving notice in writing to the cooperative. Unless the notice specifies a later time, the resignation is effective when the notice is given.

Section 22-4-4. Duties of Directors and Officers.

1. All directors and officers owe fiduciary duties to the cooperative and the members.

2. The fiduciary duties of a director or officer include:

a. To act in a manner the director or officer reasonably believes to be in the best interests of the cooperative and the members;

b. To discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances;

c. To disclose, or cause to be disclosed, to the other directors or officers information not already known by them but known by the director or officer to be material to the discharge of the decision-making or oversight functions of the directors, unless disclosure would violate another duty

imposed under applicable law, a legally enforceable obligation of confidentiality, or a professional ethics rule;

d. To account to the cooperative and hold as trustee for it any property, profit, or benefit derived by the director or officer:

i. In the conduct or winding up of the cooperative's activities and affairs;

ii. From a use by the director or officer of the cooperative's property; or

iii. From the appropriation of a cooperative opportunity;

e. To refrain from dealing with the cooperative in the conduct or winding up of the cooperative's activities and affairs as or on behalf of a person having an interest adverse to the cooperative;

f. To refrain from competing with the cooperative in the conduct of the cooperative's activities and affairs before the dissolution of the cooperative;

g. To refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, a violation of any law involving moral turpitude, or knowing violation of other applicable law;

h. To refrain from a willful failure to deal fairly with the cooperative or its members in connection with a matter in which the director or officer has a material conflict of interest; and

i. To refrain from a transaction from which the director or officer may derive an improper personal profit.

3. Unless the articles of organization provide otherwise, in considering the best interests of a cooperative, a director discharging the duties of director, in conjunction with considering the long and short term interest of the cooperative and its patron members as well as the other interests required under the laws of the Tribe, may consider:

a. The interests of employees, customers, and suppliers of the cooperative;

b. The interests of the community in which the cooperative operates; and

c. Other cooperative principles and values that may be applied in the context of the decision.

4. All directors and officers shall discharge their duties and obligations and exercise any rights under this Title, any other law of the Tribe applicable to the cooperative, and the organizational documents consistently with the contractual obligation of good faith and fair dealing.

5. In discharging the director's or officer's duties, unless the director or officer has knowledge that would make reliance unwarranted, a director or officer is entitled to rely on:

a. One or more other directors, officers, or employees of the cooperative whom the director or officer reasonably believes to be reliable and competent in the matters presented;

b. Legal counsel, public accountants, or other persons retained by the cooperative as to matters involving skills or expertise the director or officer reasonably believes are within the person's professional or expert competence; or

c. A committee of the board of which the director or officer is not a member if the director or officer reasonably believes the committee merits confidence.

6. The members of a cooperative may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the fiduciary duties in this Section.

7. Every director and officer shall account to the cooperative and hold as trustee for it any improper personal profit derived by that director or officer without the consent of a majority of the disinterested directors from:

a. A transaction connected with the organization, conduct, or dissolution and winding up of the cooperative; and

b. A use by a director or officer of the property of the cooperative, including confidential or proprietary information, or other matters entrusted to the person as a result of the person's status as a director or officer.

8. A cooperative's organizational documents may impose duties on its directors and officers that are in addition to, but not in abrogation of, those provided in this Section.

Section 22-4-5. Conflicts of Interest.

1. A director or officer shall not vote or participate in any discussion or action of the board of directors concerning a matter where the director or officer or any of their immediate family has a business or personal interest which conflicts with the interests of the cooperative.

2. A transaction with the cooperative in which a director has an interest is voidable by the cooperative solely because of the director's interest in the transaction unless:

a. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the board of directors at the time of approval of the transaction and a majority of the directors approved or ratified the transaction, provided that any director with an interest in the transaction does not vote on the approval or ratification and is not counted toward the minimum number of directors required to constitute a quorum;

b. The material facts of the transaction and the director's interest in the transaction were disclosed to or known by the members entitled to vote and the members authorized, approved, or ratified the transaction by a majority vote of the members entitled to vote, excluding any members who is also a director and has an interest in the transaction; or

c. The transaction was fair to the cooperative at the time it was approved.

3. A cooperative shall not lend any money to or guarantee the personal debts or obligations of any director or officer of the cooperative unless:

a. The members approve the loan or guarantee by a majority vote of the members entitled to vote, excluding any

member who is also a director and has an interest in the transaction; or

b. The board of directors determines the loan or guarantee benefits the cooperative and a majority of the directors approve the loan or guarantee, provided that any director with an interest in the transaction does not vote on the approval and is not counted toward the minimum number of directors required to constitute a quorum.

4. Notwithstanding anything to the contrary in this Title, a director does not have a conflict of interest under this Section or the organizational documents solely because the director's conduct relating to the duties of the director may further the director's own interest.

Section 22-4-6. Directors and Officers as Agent. An individual is not an agent for a cooperative solely by being a director or officer.

Section 22-4-7. Representations of Directors and Officers. An admission or representation made by a director or officer concerning the affairs of a cooperative within the scope of the director's or officer's authority may be used as evidence against the cooperative in any legal proceeding.

Section 22-4-8. Knowledge of Director or Officer. The following operates as notice to or knowledge of a cooperative:

1. Notice to any director or officer of any matter relating to the business of the cooperative;

2. Knowledge of the director or officer acting in the particular matter acquired while a director or officer or known by the person at the time of becoming a director or officer; and

3. Knowledge of any other director or officer who reasonably could and should have communicated it to the acting director or officer.

Section 22-4-9. Right to Information.

1. A director or a member of a committee may obtain, inspect, and copy all information regarding the state of activities and financial condition of the cooperative and other information regarding the activities of the cooperative if the information is reasonably related to the performance of the director's duties as

director or the committee member's duties as a member of the committee.

2. Information obtained in accordance with this Section may not be used in any manner that would violate any duty of or to the cooperative.

CHAPTER 5
LIMITED COOPERATIVES

Section 22-5-1. Requirements for Formation.

1. To form a limited cooperative:

a. In addition to any other requirements for articles of organization of the cooperative in this Title, the articles of organization of a limited cooperative must state all of the following:

i. That the cooperative is a limited cooperative; and

ii. That the cooperative is authorized to have investment members; and

b. In addition to the requirements for bylaws of cooperatives generally in this Title, the bylaws of the limited cooperative must include a statement concerning the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members.

2. An existing cooperative may become a limited cooperative by amending its articles of organization and bylaws in accordance with the provisions of this Title to include the requirements in this Section.

3. A limited cooperative is formed when:

a. The articles of organization complying with this Section becomes effective; and

b. The requirements for a cooperative generally to be formed have been met.

4. The Office of the Secretary's filing of the articles of organization of a limited cooperative is conclusive proof that the limited cooperative is organized and formed under this Title.

Section 22-5-2. Dual Capacity.

1. A person may have a patron member's interest and an investor member's interest in a limited cooperative.

2. A person that is both a patron member and investor member has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents in each of those capacities. When the person acts as a patron member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents for patron members. When the person acts as an investor member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the limited cooperative, and the organizational documents for investor members.

Section 22-5-3. Voting of Investor Members.

1. Unless the organizational documents provide otherwise, each investor member has one vote. The organizational documents may provide for the allocation of investor member voting power by class, classes, or any combination of classes.

2. If a limited cooperative has both patron and investor members, the following rules apply:

a. The total voting power of all patron members may not be less than a majority of the entire voting power entitled to vote;

b. Action on any matter is approved only upon the affirmative vote of at least a majority of:

i. All members voting at the meeting unless more than a majority is required by this Title, other law of the Tribe applicable to the cooperative, or the organizational documents; and

ii. All votes cast by patron members, unless the organizational documents require a larger affirmative vote by patron members; and

c. The organizational documents may provide for the percentage of the affirmative votes that must be cast by investor members to approve the matter.

3. If voting by a proxy is permitted, an investor member may appoint only another investor member as a proxy.

Section 22-5-4. Approval of Actions. Subject to and in addition to requirements in this Title governing cooperatives generally, the following rules apply to approval of actions in a limited cooperative with investor members:

1. Unless the organizational documents require a greater percentage of votes by patron members, an amendment to the articles of organization must be approved by at least a majority of the votes cast by patron members.

2. Unless the organizational documents require a greater percentage of votes by patron members, an amendment to the bylaws must be approved by a majority of the votes cast by patron members.

3. Unless the organizational documents require a greater percentage of votes by patron members, a proposed disposition of assets which requires approval of the members must be approved by at least a majority of the votes cast by patron members.

Section 22-5-5. Board of Directors. The following rules apply to the number of directors in a limited cooperative with investor members:

1. Unless the organizational documents require a greater number:

a. The number of directors that must be patron members may not be fewer than:

i. One (1), if there are two (2) or three (3) directors;

ii. Two (2), if there are four (4) or five (5) directors;

iii. Three (3), if there are six (6) through eight (8) directors; or

iv. One-third (1/3) of the directors if there are at least nine (9) directors;

2. A majority of the board of directors must be elected exclusively by patron members; and

3. The directors who are not elected exclusively by patron members may be elected by the investor members.

Section 22-5-6. Interest in Limited Cooperative. In a limited cooperative with investor members, while a person is a member of the cooperative, the person:

1. If admitted as a patron member, remains a patron member;

2. If admitted as an investor member, remains an investor member; and

3. If admitted as a patron member and investor member remains a patron and investor member if not dissociated in one of the capacities.

Section 22-5-7. Removal of Limited Cooperative Status.

1. A limited cooperative may become a cooperative that is not a limited cooperative without formal conversion by:

a. Amending its organizational documents to eliminate any matters which establish the cooperative as a limited cooperative, including any authorization for investor members; and

b. Dissociating any investor members in accordance with this Title and the organizational documents last in effect while the cooperative was a limited cooperative.

2. A limited cooperative becomes a cooperative that is not a limited cooperative when:

a. The organizational documents complying with this Section becomes effective; and

b. The cooperative has only patron members.

CHAPTER 6
WORKER COOPERATIVES

Section 22-6-1. Requirements for Formation.

1. To form a worker cooperative, in addition to the requirements for articles of organization of cooperatives generally in this Title, the articles of organization of a worker cooperative must state that the cooperative is a worker cooperative.

2. To form a worker cooperative:

a. In addition to any other requirements for articles of organization of the cooperative in this Title, the articles of organization of a worker cooperative must state all of the following:

i. That the cooperative is a worker cooperative; and

ii. That the workers of the cooperative will be the members; and

b. In addition to the requirements for bylaws of cooperatives generally in this Title, the bylaws of the worker cooperative must include a statement concerning the manner in which patronage will be determined for members.

3. An existing cooperative may become a worker cooperative by amending its articles of organization and bylaws in accordance with the provisions of this Title to include the requirements in this Section and otherwise comply with the requirements of this Chapter.

4. A worker cooperative is formed when:

a. The articles of organization complying with this Section becomes effective; and

b. The requirements for a cooperative generally to be formed have been met.

5. The Office of the Secretary's filing of the articles of organization of a worker cooperative is conclusive proof that the worker cooperative is organized and formed under this Title.

Section 22-6-2. Members as Employees. The existence of a cooperative as a worker cooperative does not, by itself, establish that members who are workers are employees of the cooperative for any purpose.

Section 22-6-3. Limited Worker Cooperatives.

1. A worker cooperative may be or become a limited worker cooperative by complying with the requirements for formation of a limited cooperative under this Title in addition to the requirements for formation of a worker cooperative under this Chapter.

2. In a limited worker cooperative, at least fifty-one percent (51%) of the members must be workers.

3. In a limited worker cooperative, the requirements of this Chapter and all requirements governing limited cooperatives apply to the cooperative.

Section 22-6-4. Collective Board Worker Cooperatives.

1. A collective board worker cooperative is a worker cooperative:

a. That is not a limited worker cooperative;

b. Where all members are workers; and

c. Where all members are members of the board of directors.

2. In a collective board worker cooperative, the following rules apply:

a. Every member is both a director and a member;

b. A member may be an officer in addition to being a director and member;

c. A member has the rights, powers, duties, and obligations provided by this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents in each of the capacities as a member, a director, and, if an officer, an officer;

d. When a member acts as a member, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents for members;

e. When a member acts as a director, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents for directors;

f. When a member who is an officer acts as an officer, the person is subject to the obligations, duties, and restrictions under this Title, other laws of the Tribe applicable to the cooperative, and the organizational documents for officers;

g. Notwithstanding anything else to the contrary in this Title, a collective board worker cooperative shall not be required to hold an annual meeting of members or any other meeting of members, but may hold such meetings in the manner provided in this Title; and

h. Unless the organizational documents require that action be taken at a members meeting and not a directors meeting, any action that may be taken by the members of a cooperative may be taken by the board of directors, provided the act of the board of directors complies with any requirements for quorum and number of members or percentage of voting power for a members meeting required to take the action.

Section 22-6-5. Patronage. Patronage in a worker cooperative may be measured by work performed, including, but not limited to, wages earned, number of hours worked, number of jobs created, or some combination of these measures.

Section 22-6-6. Removal of Worker Cooperative Status.

1. A worker cooperative may become a cooperative that is not a worker cooperative without formal conversion by amending its organizational documents to eliminate any matters which establish the cooperative as a worker cooperative.

2. A worker cooperative becomes a cooperative that is not a worker cooperative when the organizational documents complying with this Section becomes effective.

CHAPTER 7
DEALING WITH COOPERATIVE

Section 22-7-1. Nature of Cooperative. The relations between a cooperative and its members are consensual. A cooperative is an entity distinct from its members.

Section 22-7-2. Cooperatives Not Restraint of Trade. No cooperative formed under or subject to this Title shall solely by its organization and existence be deemed to be a conspiracy or a combination in restraint of trade, an illegal monopoly, or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing or purchasing contracts and agreements between any cooperative and its members or any agreements authorized in this Title be considered illegal as such, an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

Section 22-7-3. Marketing Contracts.

1. If a marketing contract provides for the sale of products, commodities, or goods to a cooperative, the sale transfers title to the cooperative upon delivery or at any other specific time expressly provided by the contract.

2. A marketing contract may:

a. Authorize a cooperative to create an enforceable security interest in the products, commodities, or goods delivered; and

b. Allow the cooperative to sell the products, commodities, or goods delivered and pay the sales price on a pooled or other basis after deducting selling costs, processing costs, overhead, expenses, and other charges.

3. Some or all of the provisions of a marketing contract between a member and a cooperative may be contained in the organizational documents.

4. The initial duration of a marketing contract may not exceed ten (10) years, but the contract may be self-renewing for additional periods not exceeding five (5) years each. Unless the contract provides for another manner or time for termination, either party may terminate the contract by giving notice in writing at least ninety (90) days before the end of the current term.

5. Damages to be paid to a cooperative for breach or anticipatory repudiation of a marketing contract may be liquidated, but only at an amount or under a formula that is reasonable in light of the actual or anticipated harm caused by the breach or repudiation. A provision that so provides is not a penalty.

6. Upon a breach of a marketing contract, whether by anticipatory repudiation or otherwise, a cooperative may seek:

a. An injunction to prevent further breach; and

b. Specific performance.

7. The remedies in this Section are in addition to any other remedies available to a cooperative under any other applicable law.

8. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe, including a cooperative that is a Tribal business entity.

Section 22-7-4. Interests in Cooperative.

1. A member's interest in a cooperative:

a. Is personal property;

b. Consists of:

i. Governance rights;

ii. Financial rights; and

iii. The right or obligation, if any, to do business with the cooperative; and

iv. May be in certificated or uncertificated form.

2. Unless a cooperative is a limited cooperative with investor members, a member's interest is a patron member's interest.

3. Unless a transfer is restricted or prohibited by the organizational documents:

a. A member may transfer its financial rights in the cooperative; and

b. A member's interest other than financial rights is not transferable.

4. The terms of any restriction on transferability of financial rights must be:

a. Set forth in the organizational documents and the member records of the cooperative; and

b. Conspicuously noted on any certificate evidencing a member's interest.

5. A transfer of a member's financial rights in violation of a restriction on transfer contained in the organizational documents is ineffective if the intended transferee has actual or constructive notice of the restriction at the time of transfer.

6. If the transfer of a member's financial rights are not restricted:

a. A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions and patronage refunds to the member transferring the interest to the same extent as the transferring member;

b. A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the cooperative; and

c. A cooperative need not give effect to a transfer under this Section until the cooperative has notice of the transfer.

7. A member or transferee may create an enforceable security interest in its financial rights in a cooperative.

8. Unless the organizational documents provide otherwise, a member may not create an enforceable security interest in the member's governance rights in a cooperative.

9. The organizational documents may provide that a cooperative has a security interest in the financial rights of a

member to secure payment of any indebtedness or other obligation of the member to the cooperative. A security interest provided for in the organizational documents is enforceable under the laws of the Tribe.

10. Unless the organizational documents provide otherwise, a member may not compel the cooperative to offset financial rights against any indebtedness or obligation owed to the cooperative.

Section 22-7-5. Charging Membership Interest.

1. On application to a court having valid jurisdiction over a member and the subject matter by a judgment creditor of the member, such court may enter a charging order against the financial rights of the member, other than a member which is the Tribe or a Tribal business entity, for the unsatisfied amount of the judgment.

2. Except as otherwise provided in this Section, a charging order constitutes a lien on the member's financial rights and requires the cooperative to pay over to the person to which the charging order was issued any distribution that otherwise would be paid to the member. The judgment creditor has only the rights of an assignee of the member's financial rights.

3. At any time before foreclosure under this Section, the member whose financial rights are subject to a charging order under this Section may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

4. At any time before foreclosure under this Section, a cooperative or one or more members whose financial rights are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order. Unless the organizational documents provide otherwise, the cooperative may act under this subsection only with the consent of all members whose financial rights are not subject to the charging order.

5. Upon a showing that distributions and patronage refunds under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the financial rights of the member. Except as otherwise provided in this Section, the purchaser at the foreclosure sale obtains only the financial rights, does not thereby become a

member, and has only the rights of an assignee of the member's financial rights.

6. This Section shall not be construed to deprive any member of the benefit of any exemption of an interest in a cooperative that may exist under applicable law.

7. This Section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member may satisfy the judgment from the member's interest.

8. In no event shall the Tribe's interest in a cooperative be attachable, chargeable, or subject to lien or encumbrance without the Tribe's express written consent or express waiver of its sovereign immunity.

Section 22-7-6. Property of Cooperative.

1. Property may be acquired, held, and conveyed in the name of a cooperative.

2. All property originally transferred to or acquired by a cooperative is property of the cooperative and not the members individually.

3. Property acquired with funds of a cooperative is presumed to be property of the cooperative.

4. Subject to any limitations in its articles of organization, its bylaws, this Title, or other law of the Tribe applicable to the cooperative, the property of a cooperative may be transferred by an instrument executed by a director in the name of the cooperative.

Section 22-7-7. Disposition of Assets.

1. Except as otherwise provided in this Section, unless the articles of organization provide otherwise, member approval is not required for a cooperative to:

a. Sell, lease, exchange, license, or otherwise dispose of all or any part of the assets of the cooperative in the usual and regular course of business; or

b. Mortgage, pledge, dedicate to the repayment of indebtedness, or encumber in any way all or any part of the

assets of the cooperative whether or not in the usual and regular course of business.

2. Any sale, lease, exchange, license, or other disposition of assets of a cooperative which would leave the cooperative without significant continuing business activity requires approval of the cooperative's members as follows:

a. A majority of the board of directors, or a greater percentage if required by the organizational documents, must approve the proposed disposition; and

b. The board of directors must call a members meeting to consider the proposed disposition, hold the meeting not later than ninety (90) days after approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in writing to each member:

i. The terms of the proposed disposition;

ii. A recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

iii. A statement of any condition of the board's submission of the proposed disposition to the members; and

iv. Notice of the meeting at which the proposed disposition will be considered, which must be given in the same manner as notice of a special meeting of members.

c. Subject to a different requirement in the organizational documents which complies with this Section, the proposed disposition must be approved by at least two-thirds (2/3) of the voting power of members present at a members meeting called under this subsection.

3. The organizational documents may require that the percentage of votes required under this Section to approve a proposed disposition is:

a. A different percentage that is not less than a majority of members voting at the meeting;

b. Measured against the voting power of all members; or

c. A combination of the foregoing.

4. Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a cooperative may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

a. As provided in the contract or the resolution; and

b. Except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

5. The voting requirements for districts, classes, or voting groups apply to approval of a disposition of assets under this Section.

Section 22-7-8. Liability to Third Parties.

1. A debt, obligation, or other liability of a cooperative, whether arising in contract, tort, or otherwise, is solely the debt, obligation, or other liability of the cooperative. This subsection applies regardless of the dissolution of the cooperative.

2. A member, director, or officer is not personally liable, directly or indirectly, by way of contribution or otherwise, for an act, debt, obligation, or other liability of the cooperative solely by reason of being or acting as a member, director, or officer. This subsection applies regardless of the dissolution of the cooperative.

3. The failure of a cooperative to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member, director, or officer for an act, debt, obligation, or other liability of the cooperative.

Section 22-7-9. Parties to Actions. A member of a cooperative is not a proper party to a proceeding by or against a cooperative solely by reason of being a member, except if:

1. The object of the proceeding is to enforce a member's right against or liability to the cooperative; or

2. The action is brought by a member under this Title.

Section 22-7-10. Authority to Sue.

1. Unless otherwise provided in its organizational documents, an action on behalf of a domestic or foreign cooperative may be brought in the name of the cooperative by:

a. One or more members as a derivative action in accordance with this Title; or

b. One or more directors, if authorized by the board of directors, unless otherwise directed by a majority vote of the members entitled to vote, excluding members who have an interest in the outcome of the action that is adverse to the interests of the cooperative.

2. Nothing in this Section shall be construed as authorizing actions of any kind whatsoever against the Tribe or a Tribal business entity, as a member or otherwise.

Section 22-7-11. Records.

1. A cooperative shall keep at its principal place of business all of the following:

a. A record of its members in a form that permits preparation of a list of the names and addresses of all members in alphabetical order by district or class of members showing each current member in a district or class;

b. A list of the names and business addresses of its current directors and officers;

c. A copy of its articles of organization and all amendments thereto and restatements thereof together with executed copies of any powers of attorney under which any articles were executed;

d. A copy of its bylaws and all amendments thereto and restatements thereof;

e. A copy of its most recent annual report delivered to the Office of the Secretary;

f. A copy of all other organizational documents of the cooperative, documents filed with the Office of the Secretary, and all amendments thereto and restatements thereof;

g. Any notices to members on which a document filed with the Office of the Secretary is dependent;

h. Resolutions adopted by its board of directors;

i. All written communications within the past three (3) years to members;

j. Minutes of all meetings of its members and board of directors, a record of all actions taken by the members or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors;

k. All annual financial statements prepared for the cooperative for its last three (3) fiscal years and any audit or other reports with respect to such financial statements; and

l. A record of all matters referred to in this Title or other law of the Tribe applicable to the cooperative as maintained in such records which are not otherwise specified in the articles of organization or bylaws.

2. A cooperative shall maintain accounting records in a form that permits preparation of its financial statements.

3. The organizational documents may require that more information be maintained.

4. Failure of a cooperative to keep or maintain any of the records required under this Section shall not be grounds for imposing liability on any person for the debts and obligations of the cooperative.

CHAPTER 8
CONTRIBUTIONS AND DISTRIBUTIONS

Section 22-8-1. Contributions.

1. The organizational documents of a cooperative must establish the amount, manner, or method of determining any contribution requirements for members or must authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

2. Unless the organizational provide otherwise, the contributions of a member to a cooperative may consist of money or property transferred to, services performed for, or another benefit provided to the cooperative or an agreement to transfer money or property to, perform services for, or provide another benefit to the cooperative.

3. The receipt and acceptance of contributions and the valuation of contributions must be reflected in a cooperative's records.

4. Unless the organizational documents provide otherwise, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

5. Except as otherwise provided in the agreement, the following rules apply to an agreement made by a person before formation of a cooperative to make a contribution to the cooperative:

a. The agreement is irrevocable for six (6) months after the agreement is signed by the person unless all parties to the agreement consent to the revocation;

b. If a person does not make a required contribution:

i. The person is obligated, at the option of the cooperative, once formed, to contribute money equal to the value of that part of the contribution that has not been made, and the obligation may be enforced as a debt to the cooperative; or

ii. The cooperative, once formed, may rescind the agreement if the debt remains unpaid more than twenty (20) days after the cooperative demands payment from the person, and upon rescission neither the person nor the cooperative have any further rights or obligations with respect to each other under the agreement.

6. Unless the organizational documents or an agreement to make a contribution other than money to a cooperative provide otherwise, if a person does not make a required contribution to a cooperative, the person or the person's estate is obligated, at the option of the cooperative, to contribute money equal to the value of the part of the contribution which has not been made.

Section 22-8-2. Allocation of Profits and Losses.

1. The organizational documents of a cooperative may provide for allocating profits of a cooperative among members, among persons that are not members but conduct business with the cooperative, to an unallocated account, or to any combination thereof. Unless the organizational documents provide otherwise, losses of the cooperative must be allocated in the same proportion as profits.

2. Unless the organizational documents provide otherwise, all profits and losses of a cooperative must be allocated to patron members.

3. If a cooperative is a limited cooperative with investor members, the organizational documents may not reduce the allocation to patron members to less than fifty percent (50%) of profits. For purposes of this subsection, the following rules apply:

a. Amounts paid or due on contracts for the delivery to the cooperative by patron members of products, goods, or services are not considered amounts allocated to patron members; and

b. Amounts paid, due, or allocated to investor members as a stated fixed return on equity are not considered amounts allocated to investor members.

4. Unless prohibited by the organizational documents, in determining the profits for allocation under this Section, the board of directors may first deduct and set aside a part of the profits to create or accumulate:

a. An unallocated capital reserve; and

b. Reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

5. Subject to the provisions of this Section and the organizational documents, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under this Section:

a. To patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

b. If the cooperative is a limited cooperative with investor members, in the ratio of each investor member's contributions to the total contributions of all investor members.

6. For purposes of allocation of profits and losses or specific items of profits or losses of a cooperative to members, the organizational documents may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

7. The allocations of amounts remaining after any deduction or setting aside of profits for unallocated reserves under this Section shall be distributed as patronage refunds to the members at least once every twelve (12) months on an equitable basis as determined by the board of directors or in accordance with the organizational documents. This subsection shall not be construed as prohibiting the retention of amounts allocated to members as a means of providing capital for the cooperative.

8. If a cooperative has retained funds allocated to members as authorized under this Section, the board of directors shall have the right, in accordance with the organizational documents and policies established by the board of directors, to redeem or retire the funds so retained. All decisions relating to the redemption or retirement of such funds shall be made solely by the board of directors.

Section 22-8-3. Distributions Generally.

1. Unless the organizational documents provide otherwise and except as provided in this Chapter, the board of directors may authorize, and the cooperative may make, distributions to members.

2. Unless the organizational documents provide otherwise, distributions to members may be made in any form, including money, capital credits, allocated patronage equities, revolving fund certificates, and the cooperative's own or other securities.

Section 22-8-4. Redemption or Repurchase. Property distributed to a member by a cooperative, other than money, may be redeemed or repurchased as provided in the organizational documents but a redemption or repurchase may not be made without authorization by the board of directors. The board may withhold authorization for any reason in its sole discretion. A redemption or repurchase is treated as a distribution for purposes of this Chapter.

Section 22-8-5. Limitations on Distributions.

1. A cooperative may not declare or make a distribution if, after the distribution:

a. The cooperative would not be able to pay its debts as they become due in the ordinary course of the cooperative's activities and affairs; or

b. The cooperative's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the cooperative were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of persons receiving the distribution.

2. A cooperative may base a determination that a distribution is not prohibited under subsection 1 on:

a. Financial statements and other financial data prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

b. A fair valuation or other method that is reasonable under the circumstances.

3. A cooperative's indebtedness to a member incurred by reason of a distribution made in accordance with this Section is equivalent to the cooperative's indebtedness to its general unsecured creditors, except to the extent subordinated by written agreement.

4. A cooperative's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection 1 if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this Section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

5. For purposes of this Section, "distribution" does not include:

a. Reasonable compensation for present or past services;

b. Payments made in the ordinary course of business for commodities or goods; or

c. Payments made under a bona fide retirement or other bona fide benefits program.

Section 22-8-6. Liability for Improper Distributions.

1. If a director of a cooperative consents to a distribution made in violation of this Chapter and in consenting to the distribution fails to comply with the duties of directors under the laws of the Tribe, the director is personally liable to the cooperative for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this Chapter.

2. A person that receives a distribution knowing that the distribution violated this Chapter is personally liable to the cooperative but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this Chapter.

3. A director who is held liable under this Section for an unlawful distribution is entitled to contribution from:

a. Every other director who could be held liable under this Section for the unlawful distribution; and

b. Each person for the amount the person accepted knowing the distribution was made in violation of this Chapter.

4. An action to recover under this Section may be brought in the Tribal Court. An action under this Section is barred unless commenced no later than two (2) years after the date of the distribution.

5. Nothing in this Section shall be construed as limiting, waiving, or abrogating the sovereign immunity of the Tribe.

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