

**POTAWATOMI LAW AND ORDER CODE**

**TITLE 7  
FAMILY RELATIONS**

**CHAPTER 7-1  
GENERAL**

**Section 7-1-1. Recording.**

All marriages and divorces where an Indian person is a party, whether consummated in accordance with the State law or in accordance with Tribal law or custom, may be recorded in Tribal Court within three (3) months. Such recording shall be requested in writing by both parties.

**Section 7-1-2. Marital Status.**

In any case where the marital status is at issue, the Court shall have full authority to determine the marital status of the parties and enter its declaratory judgment.

**Section 7-1-3. Traditional Adoptions.**

Traditional adoptions shall not be recognized for the purpose of probate of decedent's estates unless, prior to the death of the decedent, the traditional adoption was formalized by court action. A traditional adoption of a child does not terminate parental rights or deprive the natural parents of their ultimate right to the custody of child who is adopted pursuant to the traditions.

**Section 7-1-4. Paternity.**

The Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal District Court.

**CHAPTER 7-2  
DIVORCE**

**Section 7-2-1. Jurisdiction.**

The Court shall hear a petition for divorce wherein:

- (A) Both petitioner and respondent are Indians;

- (B) Petitioner is a non-Indian and respondent is an Indian;
- (C) Petitioner is an Indian and respondent is a non-Indian; provided, however, that the non-Indian respondent voluntarily submits to the jurisdiction of the Tribal Court.

**Section 7-2-2. Residency.**

The Court shall not hear any petition for divorce filed by a petitioner who has not resided and been physically present on the Reservation for at least six (6) months immediately preceding the filing of the petition.

**Section 7-2-3. Grounds.**

A marriage may be dissolved for any of the following reasons:

- (A) abandonment;
- (B) adultery;
- (C) pregnancy by another other than her husband and the husband was ignorant thereof at the time of their marriage;
- (D) extreme cruelty;
- (E) gross neglect of duty;
- (F) habitual drunkenness;
- (G) incompatibility;
- (H) by mutual consent of the parties.

**Section 7-2-4. Petition.**

A divorce proceeding shall be instituted by the filing of a petition for divorce and shall contain the following information and proof where required:

- (A) the names and addresses of the party's;
- (B) the date and place of the marriage;
- (C) the date of separation;
- (D) the names and ages of all children of the marriage, dependent on the parties for support and welfare, and the desired custody and support arrangements of petitioner;

(E) a statement of what property and debts are owned and what the petitioner expects from the proceedings;

(F) the reason for the petition for divorce as set forth in Section 7-2-3.

**Section 7-2-5. Attachments.**

The following documents shall be attached to the petition;

(A) marriage license of the parties unless, for good cause shown it is waived by the Court;

(B) certification of tribal enrollment, when applicable;

(C) petitioner's affidavit showing residency and physical presence on the Prairie Band of Potawatomi Reservation; and

(D) an affidavit by the non-Indian party to the proceedings showing their voluntary submission to the Tribal Courts jurisdiction, when applicable.

**Section 7-2-6. Service.**

A copy of the petition shall be personally served upon the respondent along with instruction that it shall be answered within thirty (30) days from the date of service. If personal service of the petition cannot be had then service may be had by publication in a local newspaper of general circulation for two (2) consecutive publication dates and answer must be made within ten (10) days after the last date of publication.

**Section 7-2-7. Hearing.**

After the hearing all the evidence and if the Court determines that a divorce should be granted, the Court shall provide for a fair and equitable settlement considering the following matters:

(A) property rights;

(B) debts and obligations;

(C) child custody and support payments;

(D) any other matters which the Court deems proper.

The Court's order shall be entered in the permanent records of the Court in the form of a final decree and a copy of such decree shall be served upon each party and all interested agencies.

**Section 7-2-8. Care and Custody of Children.**

The Tribal Court shall maintain continuing jurisdiction over child custody and support matters with regard to each child of the marriage until each child reaches the age of eighteen (18) years. For all past and current cases and orders providing for support to the age of 18, such support shall be automatically continued to the June 30<sup>th</sup> following the child's 18<sup>th</sup> birthday providing the child is a full-time, bona fide high school student pursuing a diploma or graduate equivalency diploma, unless such support is modified by the court. Support may be required to the 19<sup>th</sup> birthday for such student from a parent responsible for delays in the child's education. Support beyond the 18<sup>th</sup> birthday may also be made if otherwise agreed to by the parent and approved by the court. The Court shall make provisions for guardianship, custody, and support of the minor children, and may modify or change any order when circumstances render such change proper.

(Amended by PBP TC No. 2008-225, dated October 10, 2008)

**Section 7-2-9. Preference of Child.**

In any divorce action in which the Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and, if the Court so finds, then, the Court may consider the expression of preference by the child in determining custody, however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody.

**Section 7-2-10. Restoration of Wife's Maiden Name.**

When a divorce is granted, the wife shall be restored to her maiden name if she so desires, however, the retention of her married name must be with consent of the other party.

**Section 7-2-11. Effect of Divorce.**

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

**CHAPTER 7-3  
SEPARATION OF PROPERTY AND DEBTS**

**Section 7-3-1. Property Defined.**

Property includes real and personal property and the rent, and profits accruing upon that property. Community property means all property acquired by the husband and wife

during their marriage which is not separate property or separate property which becomes so commingled with community property that it cannot be identified as separate property.

**Section 7-3-2. Separate Property Defined.**

Separate property shall be:

- (A) acquired before the marriage or after the marriage is legally dissolved;
- (B) acquired by gift, bequest, devise or descent; or
- (C) designated by written agreement between the parties.

**Section 7-3-3. Separate Debts.**

A separate debt is:

- (A) incurred prior to the marriage or after the marriage is dissolved;
- (B) incurred during the marriage in which it is stated in writing to the creditor to be the separate debt of the husband or wife incurring it.

**Section 7-3-4. Sale/Transfer of Community Real Property.**

The spouse must join in all transfers, conveyances or mortgages or contracts to transfer, convey or mortgage any interest in community real property or separate real property owned by the husband and wife as joint tenants or tenants in common. Any conveyance made by either spouse in violation of this provision shall be void.

**Section 7-3-5. Community Personal Property.**

Community personal property may be managed and disposed of only by the husband and wife jointly, regardless of whose name appears on the document evidencing ownership of the property.

**Section 7-3-6. Court Ordered Payments.**

In any divorce proceeding, the Tribal Court shall be empowered to order the equitable assumption of the community indebtedness by the parties. The failure of a party to assume and pay a community debt shall give the other party the right to appear before the Court and seek enforcement of the Court's order to that party to pay the debt. The Court may not, by such an order to assume and pay a debt, relieve the other party from liability therefor should the assuming party default. The Court may not alter a legally binding agreement entered into by a married couple with a third party, unless one of the parties can prove that he or she was fraudulently induced to enter into the agreement.

(Title 7, enacted by PBP TC No. \_\_\_\_\_, \_\_\_\_\_; amended by PBP TC No. 2008-225, dated October 10, 2008)

