

CHAPTER 49 – DISSOLUTION OF MARRIAGE

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CHAPTER 49 – DISSOLUTION OF MARRIAGE

49.1 **SECTION 1: AUTHORITY AND PURPOSE**

49.1.1 This code is enacted by the Red Cliff Tribal Council pursuant to the Red Cliff Constitution, Article VI, Section 1(p).

49.1.2 The purpose of this code is to establish procedures for the dissolution of marriage and the division of property thereafter.

49.2 **SECTION 2: JURISDICTION**

49.2.1 The Tribal Court shall have jurisdiction if all of the following conditions are met:

- a. one of the parties is a member, or is eligible for membership, of the Red Cliff Band of Lake Superior Chippewa;
- b. one of the parties' residence is located within the boundaries of the Red Cliff Reservation and that party has resided on the reservation for at least 90 days; and
- c. the marriage was performed by a judge in good standing of the Red Cliff Tribal Court.

49.2.2 The Court may exercise jurisdiction where the conditions of 49.2.1 are not met if both parties consent in writing to the jurisdiction of the Tribal Court and at least one of the parties' residence is located within the boundaries of the Red Cliff Reservation.

49.2.3 The Tribal Court shall have jurisdiction to make decisions regarding the following:

- a. custody and physical placement of minor children;
- b. property division;
- c. child support and maintenance payments;
- d. visitation rights;
- e. paternity determinations; and
- f. to enforce or modify any prior orders of the Court, or to order any such other actions as are necessary to an equitable resolution of the divorce.

49.2.4 Child support and family support shall be referred to the Bayfield County Child Support Agency until such date as the Red Cliff Tribe assumes responsibility over family and child support services.

49.3

SECTION 3: DEFINITIONS

49.3.1

The following terms as used in this chapter shall mean:

- a. “annulment” means the act of declaring a marriage null and void.
- b. “child” shall include natural born children of both parties and children adopted by both parties. The term shall not include children of one party from a previous marriage or relationship.
- c. “divorce” means the dissolution of a marriage other than an annulment.
- d. “legal custody” means the right to make major decisions concerning the child.
- e. “joint custody” means the condition under which both parties share legal custody and neither party’s legal custody rights are superior, except as provided by the Court.
- f. “marriage” means the partnership entered into between two persons as spouses, recognized by the Red Cliff Tribal Court or court of other competent jurisdiction.
- g. “minor” means a child under the age of 18 years.
- h. “parent” means the birth or adoption parent of a child.
- i. “paternity” means the biological mother or father.
- j. “physical placement” means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during the placement, routine daily decisions regarding the child’s care, consistent with major decisions made by a person having legal custody.
- k. “sole legal custody” means the condition under which one party has legal custody.
- l. “spouse” means a partner in marriage.

49.4

SECTION 4: ANNULMENT

49.4.1

The Tribal Court may annul a marriage under the following circumstances:

- a. either party is less than 18 years of age at the time of the marriage;
- b. either party lacked capacity at the time of the marriage;
- c. the consent of either party to the marriage was obtained by fraud or duress;
- d. the marriage is between parents and children, brothers and sisters of half or whole blood, uncles and nieces, aunts and nephews, or first cousins; or
- e. the marriage is contracted by a party already married to another at the time, unless the actor reasonably believed the original spouse to be dead at the time.

49.4.2

In any judgment of annulment the court shall consider, approve, or make provisions for the legal custody of any children, child support, the maintenance of either spouse, and the disposition of property.

49.5 SECTION 5: GROUNDS FOR DIVORCE, PLEADINGS, JUDGMENT

49.5.1 A complaint for divorce may be filed in the Tribal Court upon the allegation that there has been an irretrievable breakdown of the marriage.

49.5.2 The defendant, by answer, may either admit the grounds for divorce alleged or deny them without further explanation. An admission by the defendant is not binding on the Court's determination.

49.5.3 The Tribal Court shall enter a judgment of divorce if:

- a. evidence is presented that there has been an irretrievable breakdown of the marriage; and
- b. the Court has considered, approved, or made provision for the legal custody of any children, child support, the maintenance of either spouse, and the disposition of property.

49.6 SECTION 6: LEGAL CUSTODY OF MINOR CHILDREN

49.6.1 The Tribal Court shall presume that joint custody is in the best interest of the child.

49.6.2 The Tribal Court may grant sole legal custody if in the best interests of the child and both parties agree to sole legal custody with the same party.

49.6.3 If the parties disagree as to sole legal custody, the court may grant sole legal custody only if in the best interests of the child and any of the following apply:

- a. one party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child;
- b. one or more conditions exist at the time that would substantially interfere with the exercise of joint legal custody; or
- c. the parties will not be able to cooperate in the future decision making required under an award of joint custody.

49.7 SECTION 7: PHYSICAL PLACEMENT OF MINOR CHILDREN AND VISITATION RIGHTS OF PARENTS

49.7.1 A child is entitled to periods of physical placement with both parents unless the Tribal Court finds that physical placement with a parent would endanger the child's physical, mental, or emotional health. This section applies even if one parent has sole legal custody.

49.7.2 The Tribal Court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent

and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

- 49.7.3 If the child is physically placed with one parent for significantly more time than the other, the other parent shall have periodic visitation rights, as determined by the Tribal Court, unless visitation by a parent would endanger the child's physical, mental, or emotional health.

49.8 SECTION 8: PROPERTY DIVISION

- 49.8.1 The Tribal Court shall presume that all property, except property acquired individually by gift other than from a spouse or by inheritance, shall be divided equally between the parties.

- 49.8.2 The presumption in 49.8.1 may be overcome upon a showing that an unequal division of property is fair and just under the circumstances. Factors that may be considered by the Tribal Court in making this decision include, but are not limited to, the following:

- a. the length of the marriage;
- b. the property brought to the marriage;
- c. any substantial assets belonging to one party and not subject to division by the court;
- d. the contribution of each party to the marriage, giving appropriate economic value to each party's contribution in homemaking and child care services;
- e. the age and physical and emotional health of the parties;
- f. the contribution by one party to the education, training, or increased earning capacity of the other;
- g. the earning capacity of each party and the time and expense necessary to enable either party to acquire sufficient education or training to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
- h. each party's custodial responsibilities for children;
- i. the desirability of awarding the family home to the party with primary physical placement;
- j. the amount and duration of any maintenances or child support order;
- k. other economic circumstances, including pension benefits, vested and unvested; and
- l. the tax consequences to each party.

- 49.8.3 Any written agreement between the parties regarding the disposition of property upon divorce shall be binding unless the Tribal Court finds it to be inequitable to either party.

49.8.4 Assets shall be valued as of the date of divorce. “Value” as used in this section means fair market value.

49.9 SECTION 9: CHILD SUPPORT AND MAINTENANCE PAYMENTS

49.9.1 The Tribal Court may order either or both parents to pay an amount reasonable or necessary to fulfill a duty to support a child.

49.9.2 The Tribal Court may order either spouse to pay the other an amount necessary to enable that person to maintain a reasonable standard of living.

49.9.3 Child support or maintenance payments may be adjusted at any time by the Tribal Court due to a substantial change in circumstances. A “substantial change of circumstances” includes, but is not limited to, the following:

- a. a change in the payer’s income;
- b. a change in the needs of the child;
- c. a change in the needs of the former spouse.

49.9.4 The Tribal Court may order temporary child support or maintenance payments by either or both parties during the pendency of any action or proceeding under this Chapter.

49.10 SECTION 10: PATERNITY

49.10.1 If the paternity of a child is in doubt, the Tribal Court may order the child, mother, and any putative father to submit to genetic testing to determine actual paternity.

49.10.2 Any hearing, discovery proceeding, or trial under this section shall be closed to any person other than those necessary to the action or proceeding.

49.11 SECTION 11: COURT FEES AND COSTS

49.11.1 The following fees shall be paid to the Tribal Court upon filing an action for divorce or annulment under this Chapter:

- a. in an action for divorce or annulment with no request for support or maintenance the fee shall be \$50.
- b. in an action for divorce or annulment with a request for support or maintenance the fee shall be \$75.

49.11.2 The Tribal Court may, in its discretion, order either party to pay a reasonable amount for the cost to the other party of maintaining or responding to an action affecting the family and for attorney fees to either party.