

Title 7 – Domestic Relations
Chapter 3 – Dissolution of Marriage, Legal Separation and
Declaration of Invalidity of Marriage

Sec.

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Legislative History

Enacted:

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

Repealed or Superseded:

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (repealing any and all prior domestic relations ordinances).

Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38) (Chapter III).

7-03.010 Civil Procedure to Govern - Designation of Proceedings.

- (A) Except as otherwise specified herein, the Rules of Civil Procedure, found at Chapter 3-02, shall govern all proceedings under this Title, except the trial shall be held before a judge rather than in front of a jury.
- (B) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled “In re the marriage of _____ and _____.”

- (C) The initial pleading in all proceedings under this Title shall be designated a petition. A responsive pleading shall be designated a response.
- (D) A decree of dissolution or legal separation or a declaration concerning the validity of a marriage 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.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.020 Pleadings - Contents - Defense - Joinder of Parties.

- (A) The petition in a proceeding for dissolution of marriage, legal separation or a declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth:
 - (1) The name, last known address and tribal enrollment, if any, of each party and the length of domicile in this community;
 - (2) The date of the marriage and the place at which the marriage ceremony was performed;
 - (3) If the parties are separated, the date on which the separation occurred;
 - (4) The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant;
 - (5) The details of any agreements between the parties as to the parenting and support of the children and maintenance of a spouse;
 - (6) A statement specifying whether the Tribal Court needs to divide property between the parties; and
 - (7) The relief sought.
- (B) Either or both parties to the marriage may initiate the proceeding.
- (C) The only defense to a petition for declaration of invalidity of marriage shall be that the marriage is legally valid.
- (D) The Tribal Court may join additional parties necessary for the exercise of its authority.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.030 Informal Dispute Resolution.

- (A) In any proceeding under this Chapter, an informal resolution of the contested issues may be arranged with the Tribal Court's permission at or before the time the matter is set for a hearing.
- (B) The informal resolution process may include: counseling, mediation or any tribally accepted process that is consistent with the customs and traditions of the Swinomish Indian Tribal Community.
- (C) The purpose of the informal dispute resolution process is to encourage cooperation, reduce acrimony and develop an agreement that to the extent possible meets the needs and best interests of all the parties involved consistent with the provisions of this Title and the customs and traditions of the Swinomish Indian Tribal Community.
- (D) Informal dispute resolution proceedings shall be held in private and shall be confidential. No one shall testify in Tribal Court as to any aspect of the proceedings; provided that if an agreement is reached by the parties it shall be reduced to writing, signed by the parties and filed with the Tribal Court.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.040 Temporary Order or Preliminary Injunction - Effect.

- (A) **Request for temporary orders.** In a proceeding for dissolution of marriage, legal separation, declaration of invalidity or parenting and support hearing, either party may move for temporary maintenance or support of a child, or a parenting plan. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the relief requested.
- (B) **Preliminary injunction.** As a part of a motion for temporary spousal maintenance or child support or by independent motion accompanied by affidavit, either party may request that the Tribal Court issue a preliminary injunction for any of the following relief:
 - (1) 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 to notify the moving party of any proposed extraordinary expenditures made after the order is issued;
 - (2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;
 - (3) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result;

- (4) Enjoining a party from removing a child from the jurisdiction of the Tribal Court; and
 - (5) Providing other injunctive relief proper under the circumstances.
- (C) **Temporary restraining order.** The Tribal Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving party's 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. No bond shall be required unless the Tribal Court deems it appropriate.
- (D) On the basis of the showing made, and in conformity with the computation factors for maintenance and support under this Title, the Tribal Court may issue a preliminary injunction and issue an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.
- (E) Restraining orders issued under this Section restraining the person from molesting or disturbing another party or from entering a party's home shall clearly state: **"Violation of this order with actual notice of its terms is a criminal and civil offense under Swinomish Law and may subject a violator to arrest."**
- (F) A temporary order or preliminary injunction:
- (1) Does not prejudice the rights of the parties or any child that are to be adjudicated at the subsequent hearings in the proceedings;
 - (2) May be revoked or modified, before a final decree is issued, on a showing by affidavits of the facts necessary for revocation or modification of a final decree; or
 - (3) Terminates when the final decree is entered or when the petition for dissolution of marriage, legal separation, or declaration of invalidity is dismissed.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.050 Separation Agreement - Effect.

- (A) To promote amicable settlement of disputes between parties to a marriage or parental relationship attendant upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, 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 the parenting plan and support for their children.

- (B) In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, the terms of the separation agreement, except for those terms providing for a parenting plan for the children, shall be binding upon the Tribal 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 Tribal Court, that the separation agreement is unfair. Child support may be included in the separation agreement and shall be reviewed in any subsequent proceeding as to its reasonableness consistent with Chapter 7-06.
- (C) If the Tribal Court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or maintenance.
- (D) If the Tribal Court finds that the separation agreement is not unfair as to disposition of property or maintenance, and that it is reasonable as to the parenting plan and child support, the separation agreement shall be set forth or incorporated by reference in the decree of dissolution, legal separation, or declaration of invalidity, and the parties shall be ordered to comply with the terms. If the separation agreement provides that its terms shall not be set forth in the decree or declaration, the decree or declaration shall identify the separation agreement as incorporated by reference and state that the Tribal Court has found the terms as to property disposition and maintenance not unfair and the parenting plan and child support reasonable.
- (E) Terms of the agreement set forth or incorporated by reference in the decree or declaration shall be enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.
- (F) Except for terms concerning the maintenance of either party or the parenting plan and support for their children, entry of the decree or declaration shall thereafter preclude the modification of the terms of the decree or declaration, and the property settlement, if any, set forth or incorporated by reference therein.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.060 Decree of Legal Separation - Findings Necessary.

- (A) The Tribal Court shall enter a decree of legal separation if it finds each of the following:
 - (1) That one (1) of the parties is an enrolled member of the Swinomish Indian Tribal Community and at the time the action was commenced was domiciled within the reservation region for at least ninety (90) days;
 - (2) That the marriage is irretrievably broken in accordance with Section 7-03.090; and

- (3) That the other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the Tribal Court shall direct one (1) of the parties to amend the pleadings to seek a dissolution of the marriage.
- (B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a decree of legal separation under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 7-06, or for maintenance in accordance with Section 7-03.120.
- (C) At the time the Tribal Court issues a decree of legal separation under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 7-03.100.
- (D) If the issue of child custody is before the Tribal Court at the time it issues a decree of legal separation under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 7-04 and Chapter 7-08.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.070 Dissolution of Marriage - Findings Necessary.

- (A) The Tribal Court shall enter a decree of dissolution if it finds each of the following:
 - (1) That one (1) of the parties is an enrolled member of the Swinomish Indian Tribal Community and at the time the action was commenced was domiciled within the reservation region for at least ninety (90) days; and
 - (2) That the marriage is irretrievably broken in accordance with Section 7-03.090.
- (B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a decree of dissolution under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 7-06, or for maintenance in accordance with Section 7-03.120.
- (C) At the time the Tribal Court issues a decree of dissolution under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 7-03.100.
- (D) If the issue of child custody is before the Tribal Court at the time it issues a decree of dissolution under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 7-04 and Chapter 7-08.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.080 Declaration of Invalidity of Marriage - Findings Necessary.

- (A) The Tribal Court shall enter a declaration of invalidity of marriage if the Tribal Court finds each of the following:
 - (1) That one (1) of the parties is an enrolled member of the Swinomish Indian Tribal Community and, at the time the action was commenced, was domiciled within the reservation region for at least ninety (90) days; and
 - (2) The marriage should not have been contracted because of the age of one (1) or both of the parties, lack of required parental or Tribal Court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage and that the parties have not ratified their marriage by voluntarily cohabitating after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.
- (B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 7-06, or for maintenance in accordance with Section 7-03.120.
- (C) At the time the Tribal Court issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 7-03.100.
- (D) If the issue of child custody is before the Tribal Court at the time it issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 7-04 and Chapter 7-08.
- (E) If the Tribal Court finds that a marriage contracted in a jurisdiction other than this Tribe was void or voidable under the law of the place where the marriage was contracted and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it shall declare the marriage invalid as of the date of the marriage.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.090 Irretrievable Breakdown - Finding.

- (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 Tribal Court, shall make a finding that the marriage is irretrievably broken and enter a decree of dissolution.
- (B) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Tribal Court shall, upon hearing, consider all relevant factors as to the prospect of reconciliation, and shall either:
 - (1) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution; or
 - (2) Continue the matter for further hearing, not more than ninety (90) days later. The Tribal Court, at the request of either party, or on its own motion, may order a reconciliation conference. At the rescheduled hearing the Tribal Court shall:
 - (a) Find that the parties have agreed to reconciliation and dismiss the petition; or
 - (b) Find that the parties have not reconciled and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the Tribal Court shall enter a decree of dissolution of the marriage.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.100 Disposition of Property.

In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court shall, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including:

- (A) The nature and extent of the community property;
- (B) The nature and extent of the separate property;
- (C) The nature and extent of any trust or restricted property, which is subject to the jurisdiction of the United States;
- (D) The duration of the marriage; and
- (E) The economic circumstances of each spouse at the time the division of property is

to become effective including: (1) the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time; and (2) the desirability of ensuring that both spouses' ability to continue working in their chosen field/livelihood is not unreasonably jeopardized (e.g., court ordered sale of fishing boat or equipment).

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.110 Modification and Termination of Property Disposition.

The provisions as to property disposition may not be revoked or modified, unless the Tribal Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Swinomish Indian Tribal Community.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.120 Spousal Maintenance - Computation Factors.

- (A) In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court may grant a maintenance order for either spouse only if the Tribal Court finds that the spouse seeking maintenance:
 - (1) Lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs; or
 - (2) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.

- (B) The maintenance order shall be in such amounts and for such periods of time as the Tribal Court deems just, without regard to marital misconduct, and after considering all relevant factors, including:
 - (1) The financial resources of the party seeking maintenance, including marital property apportioned to him or her and his or her ability to meet his or her other needs independently;
 - (2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
 - (3) The standard of living established during the marriage;
 - (4) The duration of the marriage;
 - (5) The age and the physical and emotional condition of the spouse seeking maintenance;

- (6) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance; and
- (7) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.130 Payment of Spousal Maintenance - Records.

- (A) The Tribal Court may upon its own motion or upon motion of either party, order maintenance payments be made to:
 - (1) The person entitled to receive the payments; or
 - (2) The clerk of the Tribal Court for remittance to the person entitled to receive the payments.
- (B) If payments are made to the clerk of the Tribal Court:
 - (1) The clerk 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
 - (2) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address.
- (C) If the person obligated to pay support has left or is beyond the jurisdiction of the Tribal Court, any party may institute any other proceeding available under the laws of the Swinomish Indian Tribal Community for enforcement of the duties of support and maintenance.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.140 Modification and Termination of Spousal Maintenance.

- (A) Except as otherwise provided in Section 7-03.050 (F), the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and, except as otherwise provided in Section 7-03.140 (B), only upon a showing of changed circumstances that are substantial and continuing.
- (B) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party

or the remarriage of the party receiving maintenance.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.150 Costs and Expenses.

The Tribal Court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this Chapter. For the purpose of this Section, costs and expenses may include fees of a lay advocate or attorney, deposition costs and such other reasonable expenses as the Tribal Court finds necessary to the full and proper presentation of the action, including any appeal. The Tribal Court may order all such amounts paid directly to the attorney or lay advocate, who may enforce the order in his or her name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.160 Decree – Finality - Restoration of Maiden Name.

- (A) A decree of dissolution of marriage or legal separation, or declaration of invalidity of marriage is final when entered, subject to the right of appeal. An appeal from a decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of the provision of the decree that dissolved the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or minor child(ren) shall not be suspended or the execution thereof stayed pending the appeal.
- (B) The Tribal Court may, upon hearing within six (6) months after the entry of a decree of legal separation, convert the decree of legal separation to a decree of dissolution of marriage.
- (C) The Tribal Court shall, upon motion of either party after expiration of six (6) months from the entry of a legal separation, convert the decree of legal separation to a decree of dissolution of marriage.
- (D) Upon request by a party whose marriage is dissolved or declared invalid, the Tribal Court shall order his or her former name restored.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

7-03.170 Independence of Provisions of Decree or Temporary Order.

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 comply with a parenting plan is not suspended, but he or she may move the Tribal Court to grant an appropriate order.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).