

Chapter 5. Domestic Relations and Adoptions

Legislative History.

This revised chapter, which contains several new sections, was originally enacted by the Tribal Council on September 13, 1988.

Sec. 1. Recording of Marriages, Divorces and Adoptions.

All marriages, divorces and adoptions occurring within Fort McDermitt Indian Country shall be recorded within 30 days at the Clerk of Court's office and a copy of the proceedings shall be afforded interested federal and Nevada and Oregon state officials.

Sec. 2. Marriages, Divorces and Adoptions.

- (a) Marriages and Divorces; Law Applicable. All marriages and divorces shall hereafter be governed by the law of the states of Nevada or Oregon, depending on which state they occur in, with respect to marriages and divorces occurring in the Fort McDermitt Tribal Court, except as may be provided for otherwise in this chapter.
- (b) Adoptions; Law Applicable. The provisions of the Indian Child Welfare Act (CWA), codified at, Title 25, United States Code (U.S.C.A.), section 1902 et seq., shall hereafter be applied to all adoption proceedings occurring in the Fort McDermitt Tribal Court whether or not the ICWA specifically applies to Indian Court proceedings. As regards other aspects of the adoption process, the Fort McDermitt Tribal Court shall be governed by the law of the states of Oregon or Nevada, depending on which state they occur in.
- (c) Exercise of Jurisdiction in Foreign Court Adoptions. In all cases where, in accordance with the Indian Child Welfare Act, a court of another jurisdiction contacts the Fort McDermitt Tribal Court to determine whether the Tribal Court will declare jurisdiction over any proceedings provided for in the Indian Child Welfare Act, including any future amendments, involving a present member or person apparently eligible for membership, the Clerk of the Court shall cause to be issued a response in the affirmative and the judges of the Tribal Court shall exercise jurisdiction or otherwise cooperate with the foreign court.
- (d) Tribal Custom (Common Law) Marriage. If two Indians, of the opposite sex, shall have lived together for more than six months with the consent and blessing of the man and woman's parents or guardians at the time the union began, and children are born as a result of the union, the relationship between man and woman shall be considered a traditional Indian marriage and the spouse, upon the other's death, shall be considered the other's spouse as provided for by the laws of the state of Nevada in the case Ponica v. Leland, 185 Nev. 263, 454 P.2d 16 (1969), which holds that Indians living together off the reservation were validly married, although they had no ceremony, under circumstances resembling a common marriage. See. Homer H. Clark, Jr., Domestic Relations, Cases and Problems, Third Edition at 103 (West Publishing Co. 1984).

Sec. 3. Paternity and Support; Determination; Jurisdiction.

The Tribal Court of the Fort McDermitt Tribal Court shall exercise jurisdiction over all cases and controversies requiring a determination of the paternity of any child brought before it.

A judgment of the court establishing the identity of the father of the child or children shall be conclusive of that fact in all subsequent determinations of inheritance.

Sec. 4. Heirs and Non-Trust Property Distribution.

The Tribal Court of the Fort McDermitt Tribal Court shall exercise exclusive jurisdiction over all cases and controversies requiring a determination of heirs and distribution of non-trust property located within Fort McDermitt Indian Country at the time of a person's death where the Administrative Law Judge of Department of the Interior cannot, because of restrictions codified in the Code of Federal Regulations, exercise such jurisdiction.

Sec. 5. Definitions.

- (a) "Fort McDermitt Indian Country", as used in this chapter shall mean all lands owned by the Fort McDermitt Tribe whether or not held in trust by the United States or all lands owned by members of the Fort McDermitt Tribe or other Indians located within the geographical or contractual jurisdiction of the Tribal Court.
- (b) "Foreign court", as used in this chapter, shall mean any court or any Indian tribe, Indian group, territory or possession of the United States or any state or federal court.
- (c) "Non-trust property", as used in this chapter, shall mean any and all property of any Indian which is not held in trust by the United States for an individual Indian.

Sec. 6. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.