



**HO-CHUNK NATION CODE (HCC)  
TITLE 2 – GOVERNMENT CODE  
SECTION 13 – ARBITRATION ORDINANCE**

**ENACTED BY LEGISLATURE: DECEMBER 28, 2004**

**CITE AS: 2 HCC § 13**

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**1. Authority.**

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(i) of the Constitution grants the Legislature the power to negotiate and enter into treaties, compacts, contracts, and agreements with other governments, organizations, or individuals.

**2. Scope.**

a. This Ordinance applies to any written contract, agreement or other instrument entered into by the Ho-Chunk Nation (Nation), by any subdivision, instrumentality, wholly owned entity or affiliate of the Tribe or by any other person in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim dispute or controversy arising out of such contract, agreement or

other instrument. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Ordinance are hereby repealed to the extent of any such inconsistency.

b. As used in this Ordinance the term “Tribal Forum” shall mean any present or future tribal court or other dispute resolution established by the Nation.

**3. Agreements to Arbitrate are Enforceable.** An agreement in any written contract, agreement, or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

**4. Law to be Applied.**

a. In any contract, agreement or instrument described in Section 2, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

b. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Forum shall apply the procedural rules of the Tribal Forum and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Forum shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

c. In any proceeding under this Ordinance, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Forum shall apply the substantive law of the Tribe, including any applicable choice of law principles.

**5. Stay of Proceedings and Order to Proceed with Arbitration.**

a. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 2, the Tribal Forum shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

b. A party to any contract, agreement or instrument described in Section 2 of this Ordinance claiming the neglect or refusal of another party thereto to proceed with an

arbitration thereunder may make application to the Tribal Forum for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Forum shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

**6. Advice of the Court.** At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Forum for advice on any question of tribal or state law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

**7. Time Within Which Award Shall be Rendered.**

a. If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

b. An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

**8. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.**

a. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Forum for an order confirming the award.

b. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the clerk (or other appropriate representative) of the Tribal Forum for entry of judgment thereon, file the following papers with the clerk (or other appropriate representative): (1) the agreement to arbitrate; (2) the selection or appointment, if any, of the arbitrator(s); (3) any written agreement requiring the reference of any question as provided in Section 5; (4) each written extension of the time, if any, within which to make the award; (5) the award; (6) each notice and other paper used upon an application to confirm; and (7) a copy of each order of the Tribal Forum upon such an application.

c. An arbitration award shall not be subject to review or modification by the Tribal Forum, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Forum. When the award

requires the performance of any other act than the payment of money, the Tribal Forum may direct the enforcement thereon in the manner provided by law.

**9. Arbitration Award Not Appealable.** No further appeal may be taken from an order issued by the Tribal Forum pursuant to this Ordinance enforcing an agreement to arbitrate or an award issued by an arbitrator.

**10. Jurisdiction of the Tribal Forum in Actions to which the Tribe is a Party.**

a. The Tribal Forum shall have jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 2 to which the Nation or any subdivision, instrumentality, wholly owned entity or affiliate of the Nation is a party; provided that in any such actions brought against the Nation or any other entity so authorized shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Forum from exercising jurisdiction thereunder.

b. To the extent allowed by federal law, the jurisdiction of the Tribal Forum under this Ordinance shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Nation or any subdivision, instrumentality, wholly owned entity or affiliate of the Nation shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 2 of this Ordinance to which the Nation or any subdivision, instrumentality, wholly owned entity or affiliate of the Nation is a party shall be valid and enforceable in accordance with its terms.

**11. Severability.** If any section or part thereof of this Ordinance or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Ordinance shall not be affected thereby and shall remain in full force and effect.

**12. No Waiver of Sovereign Immunity.** Nothing in this Ordinance shall be interpreted to provide a waiver of the sovereign immunity of the Nation, any subdivision, instrumentality, wholly owned entity or affiliate of the Nation or any of their respective officers, employees or agents acting within the scope of their authority.

**13. Additional Enforcement Provisions.** All police or other law enforcement officials of the Nation shall carry out any orders that may be entered by any Tribal Forum pursuant to this Ordinance.

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Legislative History:

9/8/04 Legislature enacts Arbitration Ordinance by Legislative Resolution 9/8/04D.

**Ho-Chunk Nation Legislature**  
**Arbitration Ordinance**  
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- 9/22/04 Legislature rescinds Legislative Resolution 9/8/04D and places draft Arbitration Ordinance out for 45-Day Public Review.
- 12/11/04 45-Day Public Review ends.
- 12/28/04 Enacted as 2 HCC § 13 by Legislative Resolution 12/28/04A.