

TITLE TWO  
DOMESTIC RELATIONS

Chapter 1 - Divorce and Separate Maintenance

Chapter 2 - Adoption

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Chapter 4 - Marriage of Tribal Members

## CHAPTER ONE

### DIVORCE AND SEPARATE MAINTANCE

2-1-1 TERMINATION OF MARRIAGE--A valid marriage is terminated only

(1) By the death of one of the parties; or

(2) By the judgement of a Court of competent jurisdiction decreeing a divorce of the parties. The effect of such decree is to restore the parties to the state of unmarried person.

2-1-2 GROUNDS OF DIVORCE--Divorces shall be granted for only the following reasons:

(1) Adultery;

(2) Extreme Cruelty;

(3) Wilful Desertion;

(4) Wilful Neglect;

(5) Habitual Intemperance;

(6) Conviction of felony

(7) Irreconcilable Differences.

2-1-3 EXTREME CRUELTY DEFINED--Extreme Cruelty is the infliction of grievous bodily injury or grievous mental suffering upon the other by one party to the marriage.

2-1-4 WILFUL DESERTION DEFINED--Wilful Desertion is the voluntary separation of one of the married parties from the other with the intent to desert.

Persistent unreasonable refusal to have reasonable matrimonial intercourse as husband and wife is desertion.

The unjustified or unreasonable refusal of either party to dwell in the same house with the other party is desertion.

Departure or absence of one party from the family dwelling caused by cruelty or threats of bodily harm from which danger could be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the party causing the cruelty or making the threats.

Separation by agreement is not desertion. However, such circumstance could ripen into desertion. For example, if one of the parties offered to return for the purpose of attempting reconciliation and such offer was refused, such refusal could constitute desertion.

2-1-5 WILFUL NEGLECT DEFINED--Wilful Neglect is the wilful failure of the husband to provide for his wife the common necessities of life, he having the ability to do so. It is also the husband's failure to do so by reason of idleness or dissipation of extravagance.

2-1-6 HABITUAL INTEMPERANCE DEFINED--Habitual Intemperance is the state of alcoholism or that degree of intemperance by the use of alcoholic beverages or controlled drugs or substances which disqualifies the person a significant portion of the time from properly attending to business or which would reasonably inflict a course of significant mental anguish upon the innocent party.

2-1-6.1 IRRECONCILABLE DIFFERENCES DEFINED--Irreconcilable Differences as used in this chapter is that state of relationship between the parties to a marriage when differences of opinion or conflict have developed between the parties which cannot be resolved other than by a termination of the marriage.

2-1-7 TIME PERIOD FOR CERTAIN GROUNDS--Wilful Desertion, Wilful Neglect, or Habitual Intemperance must continue for either one year or since the inception of the marriage before either is a ground for divorce.

2-1-8 CHRONIC MENTAL ILLNESS--In the case of incurable chronic mental illness of either spouse having existed for two years or more, while under confinement by order of a Court of record or a Board of Mental Illness as provided by law, the Court may in its discretion grant a divorce.

2-1-9 RESIDENTIAL REQUIREMENTS--The Plaintiff in an action for divorce must at the time the action is commenced be a resident of the reservation of the Rosebud Sioux Tribe and remain a resident throughout the proceeding until the decree of divorce is entered. Further, one of the parties to the marriage must be a member of the Rosebud Sioux Tribe.

2-1-10 WAITING PERIOD BEFORE TRIAL OF DIVORCE--No action for divorce shall be heard, tried, or determined by the Court until at least sixty days have elapsed from the completed service of the Plaintiff's Summons and Complaint therein. During said waiting period, the Court may issue all Orders reasonably necessary to provide in the Court's discretion for alimony, temporary child support, restraining orders for protection of the parties and their property, and temporary custody of the children during the waiting period and subsequently until the decree is entered or the action is dismissed. This section shall not be construed to prohibit the taking of depositions or other discovery prior to hearing or trial.

2-1-11 ALIMONY PENDING DECREE--While an action for divorce is pending, the Court may, in its discretion, require one spouse to pay as alimony any money necessary to support the other spouse or the children of the parties or to prosecute or defend the action.

2-1-12 DECREE OF SEPARATE MAINTENANCE AUTHORIZED--Although a judgement of divorce is denied, the Court may in an action for divorce provide for maintenance of a spouse and the children of the parties or any of them by the other spouse.

2-1-13 ACTION FOR SEPARATE MAINTENANCE--An action for separate maintenance may be maintained without a request for a divorce upon any grounds which would be grounds for a divorce. In such cases the Court shall have the same powers with regard to alimony, support and temporary

orders as if the action were for divorce. An action for separate maintenance shall be pursued in the identical manner as an action for divorce.

2-1-14 ALLOWANCE FOR SUPPORT WHEN DECREE ENTERED--Where a divorce or separate maintenance is granted, the Court may compel one party to make such suitable allowance to the other party for support during the life of the other party or for a shorter period as the Court may deem just, having due regard to circumstances of the parties represented. The Court may from time to time modify its Orders in these respects.

2-1-15 SECURITY FOR PAYMENTS--The Courts may require a spouse to give security for providing maintenance or making any payments for support, alimony, or property division required under the provisions of this chapter. The Court may enforce the same by the appointment of a receiver or by other reasonable remedies. When a spouse has a separate estate sufficient to give that spouse proper support, the Court may in its discretion withhold any allowance to that spouse out of the separate property of the other spouse.

2-1-16 SUPPORT PAYMENTS TO CLERK OF COURTS OR SOCIAL SERVICES--If a Decree of Divorce or separate maintenance awards child support payments the Court may order the same to be paid through the Clerk of Courts. The Clerk shall forthwith disburse the money received to the party entitled thereto. Upon receipt of written notice of assignment of support obligations to the State of South Dakota or other social services agency, the Clerk shall pay the support payments to the appropriate department of social services so long as the assignment remains in existence. The Clerk of Courts shall maintain adequate records in the original divorce file so that proof will exist of the payments due and the history of payments made and disbursements to either the spouse or the department of social services.

~~2-1-17 PROPERTY DIVISION--In a decree for divorce or separate maintenance, the Court shall have full power to make an equitable division of the property belonging to either party or both parties whether the title to such property is in the name of the husband or the wife. In making such division of the property, the Court shall have due regard for the equity and circumstances of the parties and the contributions by each at the time of the marriage. The degree of fault by each of the parties should not be a significant factor in determining property division. However, maintenance of children may be considered by the Court in awarding property.~~

2-1-18 NOTIFICATION OF CHILD PROVISIONS AUTHORIZED--In any action for divorce or separate maintenance, the Court may before or after entry of decree enter such Orders regarding the custody, care, and education of the children of the marriage as may to the Court be in the best interests of the children including modification of child support payments and may at any time vacate or modify the same. Fault shall not be considered in determining custody of children except as may be relevant to the fitness of either parent in determining the best interests of the children.

2-1-19 PRIOR NAME RETURNED TO WOMAN--During any action for divorce, the woman involved in the proceeding may request and have her maiden name restored to her or such other name as she legally used prior to her marriage to the other party to the divorce in the discretion of the Court.

2-1-20 REPORT OF DIVORCES TO STATE HEALTH DEPARTMENT--The Clerk of the Tribal Court shall report information of each divorce decree filed in the office of the clerk on forms prescribed and furnished by the South Dakota Department of Health.

2-1-21 VISITATION RIGHTS FOR GRANDPARENTS--The Tribal Court may grant grandparents reasonable rights of visitation with their grandchildren with or without petition of the grandparents if it is in the best interests of the grandchildren.

The grandparents of the child may petition the Tribal Court for grandchild visitation rights if the parents of the child are divorced or legally separated, or an action for divorce or separate maintenance has been commenced by one of the parents of the child, or if the parent of the child who is the child of the grandparent is dead. The Tribal Court may grant a petition for grandchild visitation rights only upon a finding that such visitation is in the best interests of the child.

Petitions for visitations by grandparents may be denied by the Court in circumstances where the child has been placed for adoption with a person other than the child's stepparent or grandparent.

## CHAPTER TWO

### ADOPTION

2-2-1 AUTHORITY OF THE COURT--The Rosebud Juvenile Court shall have the authority to hear any Petition for adoption involving any Indian child whose domicile or actual residence is within the exterior boundaries of the Rosebud Sioux Tribe or within Indian Country within the original boundaries of the Rosebud Sioux Tribe Reservation, or where jurisdiction is conferred upon the Tribal Court by the Federal Indian Child Welfare Act Public Law 95-608.

2-2-2 AGE OF CHILD AND ADOPTIVE PARENT--Any child under the age of 18 years may be adopted by any adult pursuant to the provisions of this Code if the proposed adoptive parent is at least ten years older than the child to be adopted.

2-2-3 STATUS OF CHILDREN BORN TO UNMARRIED WOMEN--If the natural father of a child born to an unmarried women publicly acknowledges said child as his own and receives said child into his own family and authorizes or allows his name to be placed upon the birth certificate of the child as the father of the child, he thereby becomes the father of said child for all purposes as if he had been married to the mother of said child at the time of the birth of said child. No further proceedings are necessary to be instituted pursuant to this Chapter to establish said person as the legitimate father of said child.

2-2-4 CONSENT--If the child to be adopted is the age of 12 years or more, the written consent of said child is necessary to its adoption.

2-2-5 CONSENT OF PARENTS--No child can be adopted without the consent of both of the natural parents, if living, provided that in the following cases consent shall not be necessary:

- (1) From any parent whose paternal rights have been judicially determined and terminated, provided that such terminations shall be final on appeal or that the time for such an appeal shall have expired; or
- (2) From any parent who has been adjudged by a Court of competent jurisdiction to be mentally incompetent or mentally ill, or
- (3) From any parent who has abandoned his or her child for a consecutive period in excess of one year from the date of filing of the Petition of adoption.

2-2-6 MULTIPLE ADOPTIONS--The adoption of two or more children by the same adopting parent or parents may be included in one proceeding provided that a separate Order of Adoption shall be entered and filed by the Court as to each child adopted.

2-2-7 ECAGWAYA or TRADITIONAL ADOPTION--means according to Tribal custom, the placement of a child by his natural parent(s) with another family but without any Court involvement. After a period of two years in the care of another family, the Court, upon petition of the adoptive parents, will recognize that the adoptive parents in a custom or traditional adoption have certain rights over a child even

through parental rights of the natural parents have never been terminated. Traditional adoption must be attested to by two reliable witnesses. The Court, in its discretion, on a case by case basis, shall resolve any questions that arise over the respective rights of the natural parent(s) and the adoptive parent(s) in a custom adoption. The decision of the Court shall be based on the best interests of the child and on recognition of where the child's sense of family is. Ecagwaya is to raise or to take in as if the child is a biological child.

2-2-8 WAITING PERIOD--No Petition for adoption shall be granted and approved until the child shall have lived within the proposed adoptive home for a period of at least six months prior to the entry of the Order of Adoption.

2-2-9 PETITION FOR ADOPTION--A Petition for adoption shall be filed with the Tribal Clerk of Courts and shall include the following information:

- (1) The name, address, residence, birthdate, social security number, and race of the person or persons requesting adoption.
- (2) The name, address, birthdate, race, and residence of the child to be adopted.
- (3) The length of time that the child to be adopted has been living in the proposed adoptive home.
- (4) The name, address, residence, birthdate, and race if known of the natural mother and natural father of the child to be adopted.
- (5) A statement as to whether or not one or both of the natural parents of the child to be adopted have consented to the proposed adoption, and if so, the written documents indicating the consent should be attached to the Petition.
- (6) If the consent of one or both of the natural parents has not been obtained, a statement shall be included in the Petition as to why the consent is not necessary and allege the facts in support of that position.
- (7) A full description and statement of value of all property owned or possessed by the child to be adopted, and
- (8) A statement by the proposed adoptive parent or parents that they will treat said child in all respects as if said child were their natural child.

2-2-10 INVESTIGATION OF PETITION--Upon receipt of a Petition for adoption pursuant to this Code, the Clerk shall notify the appropriate Tribal judge who shall enter an Order directed to the Bureau of Indian Affairs or Tribal Social Services Department or a State division of Social Services or some other competent agency or person appointed by the Court to make a careful and thorough investigation of the Petition and the proposed adoptive home and adoptive parents and natural parents and report his findings to the Court in writing including therein a recommendation as to whether or not the adoption should or should not be granted.

2-2-11 NOTICE OF HEARING--Upon receipt of the Petition for adoption, and the investigation and recommendation, the Court shall fix the time and place for hearing the Petition for adoption which shall be in written form and which shall state that the parental rights of said child held by any natural parents will be terminated if the Petition for adoption is granted. The notice shall also state the time, date, and place of the hearing and that the natural parents may attend the hearing and show cause if any exists why such adoption should not be granted.

A copy of the Petition for adoption and Order for Hearing shall be personally served upon the proposed adoptive parents and upon the natural parents personally at least ten days before the date fixed for hearing. Proof of regular service required by this Section shall be made of record by the Affidavit of the person completing service or by a service return of a process server.

2-2-12 SERVICE BY PUBLICATION--In the event that personal service as required by the above Section is not possible because the person to be served cannot be located after a reasonably diligent attempt to locate said person or because one of the natural parents cannot be identified, such facts and circumstances shall be set forth in an Affidavit presented to the Court. If the Court is satisfied that a reasonable effort has been made to locate and identify the person to be served and that such reasonable effort has been unsuccessful, the Court may enter an Order authorizing service by publication or posting.

Service by publication or posting shall be done by posting a copy of the Notice of Hearing at the post office serving the community of the person's last known residence on the reservation or by publication of said notice of hearing in a legal newspaper designated by the Tribal Council for such purposes at least 10 days prior to the date fixed for hearing. A copy of the Notice of Hearing shall also be posted in the Tribal Courthouse and in at least one conspicuous place in the Tribal Building in Rosebud, South Dakota. In either case, a copy of the Notice and Petition shall be mailed to said person at his last known post office address by first class mail so that the same can be forwarded. The fact of completed service shall be made to appear by affidavit of the person having posted or mailed the notices and by Affidavit of Publication from the legal newspaper if publication was ordered by the Court.

2-2-13 APPEARANCES--At the time fixed for hearing the Petition for adoption, the proposed adoptive parent, the child to be adopted, and any spouse of the proposed adoptive parent must appear before the Court and execute consents to the adoption. The natural parents may appear at said hearing for the purpose of either consenting to the adoption or resisting the adoption if the Petition alleges that the adoption should take place without their consent pursuant to Section 2-2-5 of this Code. All persons except the proposed adoptive child and the proposed adoptive parents may enter their appearances through Power of Attorney.

Also at the time of hearing the Petition for adoption, the proposed adoptive parents must execute an agreement with the Court that said parent shall treat the child to be adopted in all respects as a natural and lawful child should be treated.

2-2-14 EXAMINATION AND FINDINGS BY THE COURT--The Court shall examine all persons appearing at the hearing on the Petition for adoption and satisfy himself from such examination, and such reports as he may have received, including recommendations, that the child is suitable for adoption and that the proposed adoptive parent is financially and morally qualified to provide the care and



training of said child and that all the requirements of law have been met, including notices, and that the interests of the child will be promoted by the adoption.

If the Court so finds, he must enter Findings of Fact in writing and make an Order of Adoption, including a declaration that said child thenceforth shall be the adopted child of the person petitioning for adoption and shall be regarded and treated in all respects as the natural child of such person. Said Order shall also include the adoptive name, date of birth, sex, color, or race and place of birth of the adoptive child and the name, date of birth, citizenship, residence, race, birthplace, and occupation of the adoptive parent or parents.

Such child when adopted pursuant to this Chapter may take the family name of the adoptive parents. After the approval of the adoption, the adoptive child and the adoptive parent shall maintain towards each other the legal relationship of parent and child and shall have such rights and responsibilities as are ordinarily present in such relationships.

The natural parents of such adopted child are from the time of the adoption relieved of all parental responsibility in relationship to said child and shall have no rights with regard to said child except in case where a natural parent consents to the adoption of such child by the natural parent's spouse and where the natural parent and the adoptive parent are maintaining a husband-wife relationship and the child is residing in the same home.

2-2-15 ENROLLMENT NOT AFFECTED—The fact of adoption shall not in any manner effect the adoptive child's qualifications and right to be enrolled in the Rosebud Sioux Tribe. However, such enrollment shall be based upon the child's natural parents.

## CHAPTER THREE

### PROTECTION FROM ADULT ABUSE

2-3-1 DEFINITION--For the purpose of this chapter, the following terms shall have the following meanings, unless the context clearly indicates otherwise:

A. "Abuse" means inflicting or attempting to inflict physical injury on an adult by other than accidental means, physical restraint, or malicious damage to the personal property of the abused party;

B. "Adult" means any person eighteen (18) years of age or older or who is otherwise emancipated;

C. "Court" means the Rosebud Sioux Tribal Court;

D. "Family or household member" means spouse, persons living with spouses, persons related by blood or marriage, and other persons jointly residing in the same dwelling unit who are eighteen (18) years of age or older, or who are emancipated;

E. "Petitioner" means person alleging abuse in a petition for order of protection;

F. "Respondent" means person alleged to have abused another in a petition for order of protection.

2-3-2 JURISDICTION--This ordinance shall be construed to invoke the civil jurisdiction of the Rosebud Sioux Tribal Courts over Indian and Non-Indian persons subject to the Court' jurisdiction. The jurisdiction of the Court shall remain in effect until such time as a complaint for divorce is filed and the Court orders the dissolution or modification of any order of protection.

2-3-3 PETITION FOR RELIEF--Any and all who have been subjected to or threatened to abuse by a present adult family or household member may seek relief under this chapter by filing a sworn petition alleging such abuse by the Respondent.

2-3-4 ASSISTANCE IN FILING PETITION-EXTENSION-HEARING-COSTS AND ATTORNEY FEES--Upon the filing of a petition under this chapter, the Court may immediately, for good cause shown, issue an ex parte order of protection. An immediate and present danger of abuse to the Petitioner shall constitute good cause for purposes of this section. With ten (10) days of service of such an order on the Respondent under this Chapter, a hearing shall be held, at which time the Court shall either dissolve any ex parte order which has been issued, or shall, if the Petitioner has provided the allegation of abuse by preponderance of the evidence, extend the order of protection for a definite period of time not to exceed one (1) year.

Any ex parte order protection shall be in effect until the time of hearing. If no ex parte order of protection has been issued as of the time of hearing, and the Petitioner has proved the allegation of abuse by a preponderance of the evidence, the Court may at that time, issue an order of protec-

tion for a definite period of time not to exceed one (1) year. The Court shall cause a copy of the petition and notice of the date set for the hearing on such petition, as well as copy of any ex parte order of protection, to be served upon the Respondent at least five (5) days prior to such hearing. Such notice shall advise the Respondent that he may be represented by counsel. If the Court, after the hearing, issues or extends an order of protection, Petitioner's Court costs and attorney's fees shall be assessed against the Respondent.

2-3-5 SCOPE OF PROTECTION ORDER--Any order of protection granted under this chapter to protect the Petitioner from abuse may include, but is not limited to:

(1) Directing the Respondent to refrain from abusing or threatening to abuse the Petitioner;

(2) Granting to Petitioner possession of the residence or household to the exclusion of the Respondent by evicting the Respondent, by restricting possession to Petitioner or by both;

(3) Directing the Respondent to provide suitable housing for the Petitioner when the Respondent is the sole owner or lessee of the residence or household;

(4) Awarding temporary custody of, or establishing temporary visitation rights with regard to any minor children born to or adopted by the parties; or

(5) Awarding financial support to the Petitioner and such persons as the Respondent has the duty to support. Relief granted pursuant to paragraphs (2) through (5) of this section shall be ordered only after the Petitioner or Respondent have been given an opportunity to be heard by the Court.

2-3-6 STATEMENT OF PENALTY FOR VIOLATION INCLUDED IN PROTECTION ORDER--Any order of protection issued under this chapter shall include the statement of the maximum penalty which may be imposed pursuant to 2-3-11 for violating such order.

2-3-7 PROTECTION ORDER NOT TO AFFECT TITLE TO REAL PROPERTY--No order of protection made under this chapter shall in any manner affect title to any real property.

2-3-8 EXECUTION OF BOND NOT REQUIRED--The Court shall not require the execution of a bond by the Petitioner to issue any order of protection under this chapter.

2-3-9 DURATION OF PROTECTION ORDER-MODIFICATION--All orders of protection shall be effective for a fixed period of time, not to exceed one (1) year. The Court may modify its order at any time upon subsequent motion filed by either party together with an affidavit showing a change of circumstances sufficient to warrant the modification.

2-3-10 COPIES OF PROTECTION ORDER TO BE ISSUED--A copy of any order of protection granted under this chapter shall be issued to the Petitioner, the Respondent, and all tribal law enforcement agencies.

2-3-11 PENALTY FOR VIOLATION OF ORDER OR A CONSENT AGREEMENT-CIVIL CONTEMPT--Upon violation of the order of protection or a Court approved consent agreement, the Court may hold the Respondent in civil contempt and punish him in accordance with the law.

3-12 ARREST FOR VIOLATION OF PROTECTION ORDER-ARREST WITHOUT WARRANT

A. An arrest for violation of an order of protection issued pursuant to this chapter may be with or without warrant. Any law enforcement officer may arrest the Respondent without a warrant if:

- (1) The officer has proper jurisdiction over the area in which the moving party resides;
- (2) The officer has reasonable cause to believe the Respondent has violated or is in violation of an order of protection; and
- (3) The officer has verified whether an order of protection is in effect against the Respondent. If necessary, the police officer may verify the existence of an order of protection by telephone or radio communication with an appropriate law enforcement department.

B. No ex parte order of protection can be enforced under this section until the Respondent has been served with the order of protection or otherwise has acquired actual knowledge thereof.

~~2-3-13 ARRESTEE TO ANSWER CHANGE OF CONTEMPT HEARING BOND NOTIFICATION TO PROTECTED PARTY-A person arrested pursuant to this chapter shall be brought before the Court or a magistrate within forty-eight (48) hours to answer a charge of contempt for violation of the order of protection and the Court or magistrate shall:~~

- (1) Set a time certain for a hearing on the alleged violation of the order of protection within seventy-two (72) hours after arrest, unless extended by the Court on the motion of the arrest person;
- (2) Set a reasonable bond pending the hearing on the alleged violation of the order of protection; and
- (3) Notify the person who has procured the order of protection and direct the party to show cause why a contempt order should be issued.

2-3-14 LEAVING RESIDENCE, NECESSARY FORCE NOT TO EFFECT RIGHT TO RELIEF

A. The Petitioner's right to relief under this chapter shall not be affected by Petitioner's leaving the residence or household to avoid abuse.

B. The Petitioner's right to relief under this Chapter shall not be affected by use of such physical force against the Respondent as is reasonably believed to be necessary to defend the Petitioner or another from imminent physical injury or abuse.

TITLE TWO  
DOMESTIC RELATIONS  
CHAPTER FOUR  
MARRIAGE OF TRIBAL MEMBERS

*2-4-1 Jurisdiction*

The Rosebud Sioux Tribe hereby assumes jurisdiction over matters of marriage between tribal members. Nothing herein shall, however, impede the power of the Tribe and Tribal Courts to recognize marriages validity entered into under the laws of other jurisdictions.

*2-4-2 Marriage by Tribal Customs*

The Rosebud Sioux Tribe and its courts shall recognize the sanctity and validity of marriage by tribal custom and traditional practice, without requirements of oath, affirmation or ceremony or involvement of religious or civil authority. Under traditional practice, and the meaning of this section, such marriages and legal recognition thereof shall require only mutual commitment and prolonged cohabitation along with actual or implied recognition of the same by the parties and their families.

*2-4-3 Access to Tribal Courts*

The remedy and procedure of declaratory judgment shall be available in the Rosebud Sioux Tribal Court for purposes of determining the validity and existence of marital relationships as provided under the terms of this chapter. Nothing herein shall limit the power of the court to also rule on the validity of marriages in other proceedings, including but not limited to probate proceedings.

The Tribal Court is also empowered to perform civil ceremonies of marriage under such rules and procedures as adopted by the Chief Judge of the Rosebud Sioux Tribal Court.

*2-4-4 Effect of Prior Enactments*

Any prior resolutions, ordinances, pronouncements, or decrees set forth by this governing body or any authority whatsoever which is contrary to the terms of this chapter, is now and always was void as being inconsistent with the practices of the Rosebud Sioux People.