

**CITIZEN POTAWATOMI NATION  
DOMESTIC RELATIONS AND SUPPORT  
TITLE 13**

<b>Chapter</b>	<b>Section</b>
<b>1 FAMILY RELATIONS</b>	
Tribal Custom Marriages and Divorce	101
Tribal Custom Adoption	102
Determination of Paternity and Support	103
Determination of Heirs	104
Approval Wills	105
Marriage Defined	106
Who May Marry	107
Consanguinity	108
License Required	109
Judge or Clerk of District Court to Issue License	110
License-Contents	111
Solemnization of Marriages	112
Endorsement and Return of License	113
Records-Return of Original	114
Change of Name	115
<b>2 STATUTORY DIVORCE</b>	
Grounds for Divorce	201
Residence of Plaintiff or Defendant	202
Personal Jurisdiction	203
Custody of Children, Disposition of Property	204
Orders Concerning Property, Children, Support and Expenses	205
Care and Custody of Children	206
Preference of Child	207
Paternity Determination	208
Interest on Delinquent Payment	209
Restoration of Wife's Maiden Name	210
Disposition of Property	211
Effect of Divorce	212

Reserved	213
Reserved	214
Remarriage Within Six Months	215
Time When Judgment Final	216
Avoidance of Marriage of Incompetents	217
Alimony Without Divorce	218
Reserved	219
Setting Aside of Divorce Decree	220
Termination of Money Payments	221
Mailing of Alimony and Support Payments	222
Modification of Decree	223
Effect on Common Law Divorce	224

## **CHAPTER ONE FAMILY RELATIONS**

### **Section 13-1-101 Tribal Custom Marriage and Divorce**

- (A) Indians may become married or divorced by Tribal custom and common law. Indians who assume or claim a divorce by Tribal common law and custom shall not remarry until they have complied with Tribal common law, remain separated for six months and until they have recorded such divorce at the District Court.
- (B) The validity of Indian custom marriage and divorce shall continue to be recognized.
- (C) Where the marital status of an Indian is at issue, the Court shall have full authority to determine the marital status of the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment.
- (D) Marriage in the Citizen Potawatomi Nation shall consist only of the union of one man and one woman. Nothing in the tribal code or any other provision of tribal law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.
- (E) A marriage between persons of the same gender performed in another jurisdiction shall not be recognized as valid and binding in the Citizen Potawatomi Nation as of the date of the marriage.

### **Section 13-1-102 Tribal Custom Adoption**

Tribal Custom Adoptions shall be fully recognized without necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, child support and other family matters. However, Tribal common law adoptions shall not be recognized for probate of descendant's estates unless, prior to death of descendant, the common law adoption was formalized by the Court, or with adults, by a writing acknowledging adoption filed in the Court. A Tribal Common law adoption does not terminate parental rights nor deprive natural parents of their ultimate right to custody.

### **Section 13-1-103 Determination of Paternity and Support**

The Court shall have jurisdiction to determine paternity of a child and obtain a judgment for support. A judgment establishing the father shall be conclusive in all subsequent determinations of inheritance by the Department of the Interior or by the Court.

### **Section 13-1-104 Determination of Heirs**

- (A) When any member dies within Tribal jurisdiction or owning a non-trust interest in land within Tribal jurisdiction, leaving property other than an allotment or other trust property any person claiming to be an heir may bring suit to determine the heirs and divide such property. No determination of heirs shall be made unless all possible heirs known to the Court, and the claimant have been notified as in service of summons and given full opportunity to defend their interests. Possible heirs not residents of Tribal jurisdiction may be notified by certified mail, return receipt requested, and if notice is returned refused or unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating the action will proceed ten (10) days after mailing of the second notice. A copy of every such notice must be preserved.
- (B) In the determination of heirs the Court shall apply Tribal laws or custom, if such custom is proved and no law exists. Otherwise, the Court shall apply State law.

### **Section 13-1-105 Approval of Wills**

When any member dies domiciled within Tribal jurisdiction or owning a non-trust interest in land within Tribal jurisdiction, leaving a will disposing of property other than an allotment or other trust property the Court shall, at the request of any person named in the will or interested party, determine the validity of the will after giving notice and full opportunity to appear to all persons who might be heirs. A will shall be deemed valid if descendant had a same mind and understood what he was doing when he made the will and was not subject to undue influence of any kind and if made in accordance with Tribal law or custom or made in writing and signed by descendant in the presence of two (2) witnesses who also sign. If the will is validly executed, it shall order the property described to be given to the persons named or their heirs; but no distribution shall be made in violation of Tribal law or proven Tribal custom which restricts the privilege of Tribal members to distribute by will.

### **Section 13-1-106 Marriage Defined**

Marriage is an institution recognized by legal authorities whereby a man and a woman join themselves into a special kind of social and legal dependence for the purpose of founding and maintaining a family. The marriage relation shall only be entered into, maintained or abrogated as provided by law.

### **Section 13-1-107 Who May Marry**

Any unmarried person of the age of eighteen (18) years or older is capable of contracting and consenting to marriage with a person of the opposite sex unless disqualified by consanguinity as hereinafter defined.

### **Section 13-1-108 Consanguinity**

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in

cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited.

### **Section 13-1-109 License Required**

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage within Tribal jurisdiction without a license being first issued by the judge or clerk of the district court authorizing the marriage.

### **Section 13-1-110 Judge or Clerk of District Court to Issue License**

The judge or clerk of the district court, upon application in writing signed and sworn to in person before him by both of the parties to be married setting forth their places and residence and setting forth their full names and ages as the same appear upon a certified copy of a birth certificate, or upon a current motor vehicle operator's, chauffeur's or commercial license, or upon a current voter's registration certificate, or upon a current passport or visa or upon any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof, when each such document accepted as proof of identity and age is described with reasonable particularity in the application shall also set forth that such persons to be married are not disqualified or incapable of entering into the marriage relation, nor of the relationship prohibited by law, and being satisfied of the truth and sufficiency of such application and that there is no legal impediment to such marriage, and after application for such marriage license has issued, shall issue under his hand and the seal of his court, the license authorizing such marriage.

### **Section 13-1-111 License - Contents**

The license herein provided shall contain the date of its issuance, name of the court, the full names of the persons to be married thereunder, their ages, places of residence, and social security numbers, if any, and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony.

### **Section 13-1-112 Solemnization of Marriages**

- A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge, the Chairman, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained, or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.
- B. No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefore be first delivered into his possession nor

unless he has good reason to believe the persons presenting themselves before him for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that no legal objection or impediment exists to such marriage.

### **Section 13-1-113 Endorsement and Return of License**

The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his name; official or clerical designation; the court of which he is judge or the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary and signed by him with his official or clerical designation. The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and addresses. The license with such certificate thereon shall be transmitted without delay to the judge or the court clerk who issued the same.

### **Section 13-1-114 Records - Return of Original**

The judge or clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, microfilm, microfiche, or in a book kept by the judge or clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinafter required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

### **Section 13-1-115 Change of Name**

- (A) The District Court of the Citizen Potawatomi Nation shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents, guardian or next of friend of any minor, if at least one party is Native American or a Tribal Employee and is within the jurisdiction of the District Court.
- (B) The individual(s) petitioning the Court for change of name shall publish notice in a newspaper according to the rules of Civil Procedure in the Tribal Code of the Citizen Potawatomi Nation.

*Amended by Ordinance #13-06, enacted by the Citizen Potawatomi Legislature on May 30, 2013.*

## **CHAPTER TWO STATUTORY DIVORCE**

### **Section 13-2-101 Grounds for Divorce**

The District Court may grant a divorce for any of the following causes:

- (A) Abandonment for one (1) year;
- (B) Incompatibility;
- (C) Imprisonment in a State or Federal Prison for a felony at the time the petition is filed;
- (D) Insanity for a period of three (3) years. The fact and duration of insanity being proved by testimony of two physicians. Such divorce does not relieve the sane spouse from obligation and support and shall not be granted unless a guardian has been appointed.

### **Section 13-2-102 Residence of Plaintiff or Defendant**

The plaintiff or defendant must be an actual resident, in good faith, of Tribal jurisdiction for three (3) months next preceding the filing or a Tribal employee who has submitted to the Tribe's jurisdiction or a member.

### **Section 13-2-103 Personal Jurisdiction**

The Court may exercise personal jurisdiction over a person, whether or not a resident who lived within Tribal jurisdiction in a marital or parental relationship, or both, or who has submitted to the jurisdiction, as to all obligations for alimony and child support. When the person subject to the jurisdiction has departed he may be served outside of Tribal jurisdiction by any method that is authorized.

### **Section 13-2-104 Custody of Children, Disposition of Property**

Where the Court grants a divorce or where a divorce is refused, the Court may for good cause shown make such order for custody, maintenance and education of the children, and for control and equitable division and disposition of property.

### **Section 13-2-105 Orders Concerning Property, Children, Support and Expenses**

After a petition has been filed for divorce, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of property and for the use, management, and control thereof, or for the control of children and support of the wife or husband during pendency and make such order relative to the expenses of the suit and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other considering the means and property of each; provided the Court may make additional orders relative to expenses of any subsequent actions, for enforcement or modification of orders. Provided, no ex parte orders shall be issued unless such ex parte order provided instead of performing the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show cause why they should not comply.

### **Section 13-2-106 Care and Custody of Children**

A petition or cross-petition for divorce, legal separation, or annulment must state whether the parties have minor children of the marriage. If there are children, the Court shall make provision for guardianship, custody, support and education and may modify or change any order whenever circumstances change either before or after final judgment.

Any child, not emancipated shall be entitled to support by parents until the child reaches eighteen (18) years. If the Court determines the parents are unable to provide support it may order any person obligated to support the children by Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to support.

### **Section 13-2-107 Preference of Child**

In any divorce the child may express a preference as to custody. The Court may determine whether the best interest of the child will be served and if so then the Court may consider the expression of preference. The Court shall not be bound by that choice in awarding custody.

### **Section 13-2-108 Paternity Determination**

In a divorce, legal separation or annulment with children born to the parties, the Court may determine if the parties are the parents although the parties are not married; and if the parties are the parents, the Court may determine custody and it may award child support and order payment of costs and attorney's fees.

### **Section 13-2-109 Interest of Delinquent Payment**

Court-ordered child support payments and payments of suit monies shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and shall be collected as the payments upon which the interest accrues.

### **Section 13-2-110 Restoration of Wife's Maiden Name**

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

### **Section 13-2-111 Disposition of Property**

The Court may enter its decree confirming the property owned before marriage and the undisposed of property acquired after marriage. Alimony may be allowed from real or personal property, or a money judgment, payable in gross or installments. As to such property, whether real or personal, which has been acquired jointly during marriage, whether the title be in either or both the Court shall make division of the property in kind, or by setting the same apart and requiring the other to pay such sum. The Court may set apart a portion of the separate estate to the other spouse for support of children of the marriage.

### **Section 13-2-112 Effect of Divorce**

A divorce granted at the instance of one party shall operate as dissolution of the marriage as to both, and shall be a bar to any claim of either party in or to the other, except where actual fraud shall have been committed by or on behalf of the successful party.

### **Section 13-2-113 Reserved**

### **Section 13-2-114 Reserved**

### **Section 13-2-115 Remarriage Within Six Months**

A marriage wherein one of the parties had not been divorced for six months shall be ground for annulment.

### **Section 13-2-116 Time When Judgment Final**

Every decree of divorce shall recite the date judgment was rendered. If an appeal be taken that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment except the granting of the divorce, the divorce shall be final and take effect from the date rendered, that part appealed shall not become final and take effect until the appeal be determined.

### **Section 13-2-117 Avoidance of Marriage of Incompetents**

When either party is incapable of contracting marriage, the marriage may be declared void in an action brought by the incapable party or the parent or guardian. The children of such marriage before annulled, shall be legitimate. Cohabitation after such incapacity ceases is a defense.

### **Section 13-2-118 Alimony Without Divorce**

The wife or husband may obtain alimony without divorce, for any causes for which divorce may be granted. Either may defend the same as divorce, and may, obtain a divorce.

### **Section 13-2-119 Reserved**

### **Section 13-2-120 Setting Aside of Divorce Decrees**

The Court is authorized to dissolve divorce decrees, provided both parties file a petition, asking the decree be set aside. Both parties shall prove neither has married a third party since the decree.

### **Section 13-2-121 Termination of Money Payments**

- (A) For periodic alimony payments, the Court shall state, what dollar amount of each payment is designated as support, and as division of property. Upon death of the recipient, payments for support shall terminate, but division of property payments shall continue. The division of property payments shall be irrevocable. Upon proof of death, the Court shall order the payment of support terminated, and the lien released unless a claim is made for past due support within ninety (90) days from death. The Court shall also provide any payment of support shall terminate after remarriage unless the recipient shows some amount of support is still needed and payment is not inequitable. Provided the recipient shall commence an action for determination within ninety (90) days of remarriage.
- (B) An order continuing payments of support shall not be a lien against real property unless the order specifically provides a lien on real property or an arrearage in payments of support has been reduced to judgment.
- (C) The voluntary cohabitation of a former spouse shall be a ground to modify a final judgment or order for alimony. If voluntary cohabitation is alleged, the Court may reduce or terminate support payments upon substantial change of circumstances. Cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not a lawful marriage or not meeting all standards of a common law marriage. The petitioner shall make application and follow notification procedures used in divorce decree modification.

### **Section 13-2-122 Mailing of Alimony and Support Payments**

If a judicial order, judgment or decree directs payment of child support, alimony, temporary support or any payment be made to the Clerk, they shall transmit to the payee by first class mail. The payee shall furnish the Clerk any new address.

### **Section 13-2-123 Modification of Decree**

The Court may modify its judgment relative to child support or alimony, upon motion for modification filed and served with summons requiring an answer within twenty (20) days. Motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion shall be a final appealable order.

### **Section 13-2-124 Effect on Common Law Divorce**

This subchapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for those who prefer the statutory method or who cannot agree to matters necessary to effectuate a Tribal common law divorce.