

Chapter 2. Dissolution of Marriage

Codification Note: Repeals and Replaces 2008-007 and 2015-013

13.201 PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians finds that the Tribe's interest over family relations is an integral part of tribal self-government and the Tribe's history and culture, that it is exceedingly important to the Tribe to support the preservation of families, that families thrive when they receive appropriate emotional and financial support, and that the lives of children and families improve by strengthening parental responsibility for family and child support. The Tribe encourages the protection and preservation of the continuity of family, but recognizes that in the event of dissolution of marriage, divorce proceedings need uniform, efficient and equitable ways to provide for the dissolution of the marriage. This Statute repeals and replaces Waganakising Odawak Statutes 2008-007 Dissolution of Marriage, and 2015-013 Amendment to WOS 2008-007 Dissolution of Marriage.

(Source: WOS 2023-001, March 2, 2023, Section I)

13.202 DEFINITIONS

- A. *"Court"* means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- B. *"Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians"* means *"areas referenced in Little Traverse Bay Bands Constitution, Article IV (A) ... lands which are now and hereafter owned or acquired by the Little Traverse Bay Bands of Odawa Indians or held in trust for the Tribe by the United States."*
- C. *"Tribe"* means the Little Traverse Bay Bands of Odawa Indians.

(Source: WOS 2023-001, March 2, 2023, Section II)

13.203 JURISDICTION

The Court shall have jurisdiction over divorce proceedings for the dissolution of marriage, including issues of child custody, child support, division of property, or alimony where at least one (1) party to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa

Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least 180 days prior to the filing of the action.

(Source: WOS 2023-001, March 2, 2023, Section III)

13.204 SIMPLE DISSOLUTION

A. An action for Simple Dissolution shall be commenced by the filing of a joint petition by the parties that contains the following:

- 1.** The full legal name, address, social security number and driver's license number of each party to the marriage;
- 2.** The Tribal Citizenship number of at least one of the parties;
- 3.** A statement that at least one of the parties have resided within the Tribal jurisdiction for six months immediately before the filing of the petition;
- 4.** A statement that the parties have no children under the age of 18, unless emancipated, or no dependent children together, and the wife is not pregnant,
- 5.** The maiden name of the wife and/or her name prior to the marriage if different;
- 6.** The date and location of the marriage;
- 7.** The date and location of the separation of the parties;
- 8.** A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one (1) year;
- 9.** A proposed division of marital property and debt that contains provisions about how personal belongings, assets, property, and their debts are going to be divided once the parties are no longer married. Or a statement that there are no personal belongings, assets, debts, or property such as homes, cars, etc.;
- 10.** A statement that neither party is requesting alimony.

B. A simple dissolution shall be granted by the Court without a hearing.

(Source: WOS 2023-001, March 2, 2023, Section IV)

13.205 DISSOLUTION OF MARRIAGE

A. A decree of dissolution of marriage shall be granted without regard to the fault of the parties and upon a finding that the marriage has broken down irretrievably, and that there remains no reasonable likelihood that the marriage can be preserved; or the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one (1) year immediately prior to the filing of the petition for divorce.

1. Fault of a party or basis for the breakdown of the marriage, is a relevant factor in awarding alimony or spousal support notwithstanding the decree of dissolution of marriage granted without regard to the fault of the parties.

B. An action for divorce shall be commenced by the filing of a petition by one of the parties and shall contain the following:

1. The full legal name, address, social security number and driver's license number of each party to the marriage;

2. The Tribal Citizenship number of at least one of the parties;

3. The names and birth dates of any children born of the marriage or of any children born prior to the marriage where the husband is asserted to be the father;

4. A statement as to whether or not the wife is pregnant at the time the petition is filed;

5. The maiden name of the wife and/or her name prior to the marriage if different;

6. The date and location of the marriage;

7. The date and location of the separation of the parties;

- 8.** A proposed division of marital property and debt, and custody of children, if any.
 - 9.** A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one (1) year.
- C.** The non-petitioning party may file a response to the petition within thirty (30) days of receipt of the petition.
 - D.** The response may state the facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property, child custody arrangement, or other relief different than that proposed by the petitioner.
 - E.** A copy of the response must be served on the petitioning spouse.
 - F.** Following a petition for divorce, and after the opportunity for the non-petitioning party to respond, the Tribal Court shall hold a hearing unless the parties have stipulated to all matters and issues pending.
 - G.** If the parties stipulate, and the Tribal Court is convinced that the stipulation is fair and equitable, the court may enter a decree without a hearing.
 - H.** If minor children are involved, the Court may order the parties to counseling, continue the action for a maximum of three months to enable the parties to reconcile, or take such other actions as may be in the best interests of the parties or the minor children of the marriage.
 - I.** Hearings shall be held within six (6) months of the date that the petition is filed, with actions involving the custody of minor children taking precedence over all other civil cases.
 - J.** At the hearing, both parties shall have the opportunity to testify, call witnesses, present evidence and cross-examine their spouse and any other witnesses.
 - K.** The intentional filing of groundless petitions shall result in the imposition of sanctions.
 - L.** A final order of the Tribal Court may be appealed in the same fashion and manner as any

other order of the Court.

(Source: WOS 2021-001, March 2, 2023, Section V)

13.206 DIVISION OF PROPERTY

When a divorce is granted, the Court shall order distribution of all real and personal property in an equitable fashion and shall allocate the marital financial obligations of the parties, in whole to either party, or partially to each party.

(Source: WOS 2023-001, March 2, 2023, Section VI)

13.207 ALIMONY

Alimony is a form of support to a dependent spouse. The spouse must be substantially dependent on the income of another spouse for the regular necessities of life. The amount of alimony or spousal support will vary with the disparity of the party's incomes and the length of the marriage. Alimony may be awarded for a term of years and/or upon the death or remarriage of the parties.

A. After the equitable distribution of assets and liabilities, the Court may grant alimony to either party, in a lump sum payment or in periodic payments or both.

B. The Court shall consider the length of the marriage, the age, physical and emotional conditions of each of the parties and all sources of available income to either party.

1. All sources of available income. The Court shall recognize all sources of current available separate household income when the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one (1) year immediately prior to the filing of the petition for divorce.

2. Such order may be modified, on motion of either party to reflect changes in either party's economic circumstances.

C. Groundless filings may result in the imposition of sanctions.

D. The Court, upon motion, shall terminate alimony to any spouse who has remarried or upon

the death of either party.

(Source: WOS 2023-001, March 2, 2023, Section VII)

13.208 CHILD CUSTODY, VISITATION AND SUPPORT

A. In any action for divorce, the Court shall have the authority to determine the custody of any child less than eighteen (18) years of age. Custody is the care, control and maintenance of a child which includes legal and physical custody.

1. Legal custody is the decision-making authority.
2. Physical custody is the caregiving authority.

B. The Court shall have jurisdiction to award custody of a minor child to one of the parents, or both of the parents.

C. The court must order joint physical custody of a child to both parents unless the court determines that joint physical custody is not in the best interests of the child as set forth in this Statute.

D. A person who is giving legal custody may make important life decisions for a child, such as health care, education, child care and general welfare.

1. Joint legal custody gives both parents the right to make these decisions.
2. Sole legal custody gives one parent all decision-making responsibilities.

E. A person who is giving physical custody has actual physical residency of a child.

1. Joint physical custody means that each parent will have specific times with a child.
2. Sole physical custody means that one parent provides for the day-to-day care for the child and the non-custodial parent may be given parenting time.

F. In determining the best interest of the child, the Court shall consider all relevant factors

including:

1. The love, affection, and other emotional ties existing between the parent involved and the child.
 2. The capacity and disposition of the parent to give the child love, affection, and guidance and to continue the child's education.
 3. The capacity and disposition of a parent, for reasons other than poverty, to provide adequate food, clothing, shelter, medical care, education, or supervision necessary for the child's health and well-being.
 4. The ability of a parent to provide a stable and satisfactory environment for the child.
 5. The mental and physical health of the parent.
 6. The home, school, and community record of the child.
 7. The wishes of the child may be weighed by the Court, but are not controlling to the Court's decision. The Judge will meet with the child in his or her chambers to discuss the child's wishes.
 8. The interaction and interrelationship of the child with siblings and any other person who may significantly affect the child's best interest.
 9. The willingness and ability of each of the parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
 10. Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
 11. Any other factor considered by the court to be relevant to a particular child custody dispute.
- G.** The Court shall not consider conduct of a proposed custodian that does not affect his or her

relationship to the child.

H. The Court shall have no presumption that one parent is better suited to be a custodian because of gender.

I. Differences in financial circumstances alone shall not be a deciding factor in the determination of custody.

J. The Court shall have the authority to require the non-custodial parent to pay such sum as the Court may determine appropriate and proper for the support and maintenance of the child.

K. The Court shall designate visitation for the non-custodial parent or parent(s) and shall provide for the foster and expansion of the relationship between the non-custodial parent(s) and the child whenever possible, unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental or emotional health.

L. The Court, upon petition of either parent to whom custody or visitation of the minor child may be awarded, may revise, amend or alter any order concerning the care, custody, support or visitation rights with any child consistent with the best interests of the child.

M. Changes in domicile where the custodial parent wants to move out-side of the Tribal Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the following factors:

1. Consent of both parents.
2. Prospective advantages of the move for improvement of the general quality of life for the custodial parent and child.
3. The likelihood of the custodial parent complying with the Tribal Court Order once he or she is no longer resides within the Tribal Territory.
4. The extent to which there will be a realistic opportunity for non-custodial visitation which can continued to foster the relationship between the non-custodial parent(s) and the child.

N. Both custodial and non-custodial parents shall notify the Court of any changes in domicile or residency.

O. When the Court has ordered periodic support payments under this code, and the parent does not pay as ordered, the Court shall use the same methods to collect these payments as it would to enforce any money judgment in a civil action, including contempt.

(Source: WOS 2023-001, March 2, 2023, Section VIII)

13.209 TEMPORARY INTERIM ORDERS

A. The Court may issue temporary orders during the pending of all proceedings involving child custody, child support, visitation, alimony and the possession of real and personal property.

B. Such orders may be granted upon the motion of either party or on the Court's own motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists or a party cannot be found, in which case such orders may be issued ex-parte.

C. Emergency may be interpreted to include, but not limited to:

1. a danger of physical abuse to the spouse or the party's child(ren);
2. severe emotional abuse;
3. a lack of means for interim subsistence; or
4. the danger that the child(ren) will be removed from jurisdiction.

D. If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

(Source: WOS 2023-001, March 3, 2023, Section IX)

12.210 ENFORCEMENT

When either party to a divorce proceeding shall fail willfully to comply with an order of the

Tribal Court, the other party may file a petition with the Court alleging such failure. The Court shall then issue notice to the party, which shall include a copy of the petition, and set a date for the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and issue any order which it shall deem just and proper under the circumstances

(Source: WOS 2023-001, March 2, 2023, Section X)

12.211 SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

(Source: WOS 2023-001, March 2, 2023, Section XI)

12.212 EFFECTIVE DATE

Effective upon signature of the Executive or 30 days from Tribal Council approval whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council override of the veto.

(Source: WOS 2023-001, March 2, 2023, Section XII)