

**KICKAPOO TRIBE OF OKLAHOMA
MARRIAGE AND DIVORCE ORDINANCE**

**MARRIAGE
CHAPTER A**

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KICKAPOO TRIBE OF OKLAHOMA MARRIAGE AND DIVORCE ORDINANCE

MARRIAGE CHAPTER A.

Implemented: October 3, 1992; KGC-92-07D
Revised: February 26, 2011; KTO-2011-15

ARTICLE 1. ENACTMENT CLAUSE

BE IT ENACTED BY THE COUNCIL OF THE KICKAPOO TRIBE OF OKLAHOMA THE ORDINANCE OF MARRIAGE AND DIVORCE FOR ALL MEMBERS OF THE KICKAPOO TRIBE OF OKLAHOMA.

ARTICLE 2. RECOGNIZED MARRIAGES FOR ADULTS

Any person over the age of eighteen, not otherwise legally incompetent, is capable of consenting and contracting into a marriage relationship with a person of the opposite sex. The Court will recognize the following marital relationships as valid:

- (A) Those marriages as performed and done with the approval of the Court.
- (B) Those marriages that are recognized by other jurisdictions, including foreign jurisdictions, that is authenticated by proper documentation that demonstrates consent of a marital relationship.
- (C) A marriage that is viewed by the community as a marital relationship in which the husband and wife have publicly declared each other to be husband and wife and have acted, in the view, of the community as husband and wife.
- (D) A traditional marriage that is recognized by the community as a traditional marriage.

ARTICLE 3. MARITAL RELATIONSHIP

A person can only be married to one person, of the opposite sex, at any given time. If the Court has cause to find that a person is already married, then the Court shall not issue a marriage license. If a marriage license has already been executed, the Court can declare such license null and void.

ARTICLE 4. RECOGNIZED MARRIAGES FOR MINOR CHILDREN

Children of either sex, under the age of sixteen (16), shall be prohibited from entering into a marriage unless the Court upon a finding of compelling interest determines otherwise.

Children, of either sex upon the age of sixteen (16) may have a valid marriage if one of the following conditions are met:

- (A) The consent of a parent or guardian expressed before the Court or the Court Clerk, of any competent Court, that had proper jurisdiction and that was a Court of record.
- (B) The acknowledged, written consent of a parent or guardian.
- (C) If no parent or guardian, Tribal Court will act in the best interest of the minor and may issue a marriage license.
- (D) Under special circumstances the Court may recognize or determine in the best interest of justice that a marriage does or did exist.

[History: Refer to Article 11. General Council – February 16, 2011; KTO-2011-15]

ARTICLE 5. PROCEDURE FOR OBTAINING MARRIAGE LICENSE

Marriages can be performed by any Judge or Justice of the Kickapoo Tribe of Oklahoma and any other person who is duly authorized or recognized by a Judge or Justice of the Kickapoo Tribe of Oklahoma.

- (A) All marriages done with the issuance of license within the jurisdiction of the Kickapoo Tribe of Oklahoma must be performed before two (2) witnesses.
- (B) The person who performed the marital ceremony must sign the marriage license, stating his/her authority, and the witnesses must sign the license. The license shall include the date of the marriage, the full and complete names of the person to be married, and the location of the performance of the marriage ceremony.
- (C) The license shall be duly filed with the Court Clerk, in a marital license book, with the license reflecting the name of the book and the page number. The Court Clerk shall make a copy of the license for the records of the Court.
- (D) Upon the filing of the license the original license shall be returned to the marital couple.

ARTICLE 6. APPLICATION FOR ISSUANCE OF LICENSE

The Court shall require that the couple seeking a marriage license fill out an application for a marriage license. The license shall include the following:

- (A) The complete and full names of the person.
- (B) The date of birth of each party.
- (C) A signed statement stating that each party seeks a marital relationship upon their own free will and without any coercion, and that each party at present has no other marital obligation.

ARTICLE 7. REQUIREMENT OF BLOOD TEST

The Court shall require a blood test showing that the couple seeking a marriage has performed a blood test with the results indicating no sexually transmitted disease.

[History: Repealed – General Council, February 26, 2011; KTO-2011-15. Refer to Article 9.]

ARTICLE 8. REVIEW OF LEGAL CAPACITY

If the Court has cause to doubt the legal capacity, or a legal impediment, of any person to marry, the Court may consider the following:

- (A) Examine witnesses to determine legal capacity.
- (B) Review a birth certificate, any other marriage certificate concerning a party that seeks a license, and any divorce decree that may concern a party that seeks a license.
- (C) Require affidavits concerning the legal capacity to enter into a marriage.
- (D) Professional health care providers concerning legal capacity on the mental and/or physical health of a person seeking a license.

If the Court is not satisfied with the legal capacity of any individual that is seeking a marriage license, the Court shall not issue a marriage license.

ARTICLE 9. REPEAL ARTICLE 7

Article 7 of this Ordinance, which is the requirement of a blood test prior to the issuance of a marriage certificate is hereby repealed in its entirety.

ARTICLE 10. CITIZEN AND/OR LEGAL RESIDENT OF THE UNITED STATES

The Judicial Court system of the Kickapoo Tribe of Oklahoma shall be permitted to marry only a couple upon a sufficient finding that both intended spouses are:

- (A) Legal citizens of the United States of America;

- (B) Legal residents of the United States of America; and/or
- (C) Have the legal right to be in the United States of America at the time of the marriage ceremony; and/or
- (D) Is a member of the Kickapoo Tribe of Oklahoma, or a member of any other U.S. Federally Recognized Native American government.

ARTICLE 11. UNDER THE AGE OF EIGHTEEN

If one or both of the individuals requesting a marriage certificate is under the age of eighteen (18), the Court before issuing a marriage certificate must find:

- (A) That the individual(s) are over the age of sixteen (16);
- (B) Have proper parental and/or guardianship authorization for the issuance of a marriage certificate; and
- (C) That the couple has received sufficient marriage counseling that is acceptable to the Court.

ARTICLE 12: PROHIBITION OF SAME SEX MARRIAGE

The Court is not authorized to conduct a marriage ceremony or issue a marriage certificate to a couple if they are of the same sex.

DIVORCE CHAPTER B.

ARTICLE 1: GROUNDS FOR DIVORCE

Tribal Court may grant a divorce for any of the following reasons:

- (A) Incompatibility
- (B) Irreconcilable differences.

The petition requesting the divorce may state the other specific causes in addition to those that have resulted in the couple having incompatible and/or irreconcilable differences. The Court shall determine if there is substantial justification for the dissolution of the marriage.

ARTICLE 2: JURISDICTION

In a divorce action, the Court shall have Personal and Subject Matter jurisdiction over the following individuals:

- (A) Members of the Kickapoo Tribe of Oklahoma;
- (B) Indians of a Federally Recognized Tribe that reside within the original jurisdiction of the Kickapoo Tribe of Oklahoma;
- (C) Those persons that reside on trust land within the original jurisdiction of the Kickapoo Tribe of Oklahoma; and
- (D) The Court may assume jurisdiction over those parties that consent to the jurisdiction of the Court.

ARTICLE 3. REQUIREMENTS OF THE DIVORCE PROCEEDING PETITIONS

The petition must be verified as true and shall be signed as an affidavit of the plaintiff. If any petition, including a cross petition is filed by the defendant, it must be verified as true and shall be signed as an affidavit of the defendant.

ARTICLE 4. SUMMONS

Upon a filing of divorce petition, the Court Clerk shall serve a notice of summons that a divorce petition has been filed and the party from whom a divorce is sought, the defendant, shall have the right to answer the petition filed by the plaintiff. The petition filed by the defendant can be

a cross-petition requesting divorce relief, answer specific charges, contest property divisions, or oppose on any relevant grounds the divorce action that has been filed by the plaintiff.

The hearing of the divorce petition shall be set at least twenty (20) days from the filing of the original petition; however, the defendant can request an additional twenty (20) days to prepare a petition or prepare a legal defense or any other counter claim.

ARTICLE 5: NOTICE REQUIREMENTS

Every reasonable, diligent effort shall be made to notify the Defendant that a divorce action has been filed. Costs of the notice will be the responsibility of the Plaintiff. The Tribe will assist in publication fees, if necessary with the agreement of a repayment schedule to the Tribe.

ARTICLE 6: EQUITABLE DIVISION OF PROPERTY

Upon the granting of a divorce decree the Court will order that the property of the marital estate be divided as equitable as possible. Only the property, both real and personal, that was jointly acquired during the marriage shall be subject to the division. Property acquired before the marriage shall not be subject to the division. Property that is of important family significance, such as heirlooms, artifacts, photograph, and other property that is of special interest to a family, shall remain with the spouse whose family contributed those materials to the marriage.

ARTICLE 7: MUTUAL AGREEMENT CONCERNING DIVISION OF PROPERTY

If the parties, before the Court have a mutual agreement regarding the division of the marital estate, the Court will make every reasonable effort to accept the agreement. If the Court finds that the proposed agreement is unfairly unjust to a particular spouse, or that the agreement was subject to undue influence, coercion, or lack of understanding by one particular spouse, the Court may set the agreement aside and enter a separate order for the division of the estate.

ARTICLE 8: PROTECTION OF PROPERTY ASSETS

The Court may issue an order for the protection, management, and control of property as is necessary for income of family members and until a final Divorce Order is granted to the parties.

ARTICLE 9: CUSTODY OF MINOR CHILDREN

In determining the custody of minor children the Court will consider the best interests of each minor child and place the child with that parent who can represent the best interests of each minor child. In regard to determining the best interests of each minor child the Court shall consider the physical and mental welfare of the child. The Court can request necessary information from each parent. Custody will be considered in the following manner:

- (A) There is no legal preference for joint custody or sole custody.
- (B) The Court will make an initial inquiry to determine if joint custody is preferred by the parents.
- (C) The Court will determine if it is in the best interests of the child to have joint or sole custody.
- (D) If no parent is able or capable to assume custody of the child, the Court may refer the matter to the Juvenile Court, or in accordance with Article 12 (G), place guardianship with a preferred family member, until such time a custody hearing can be held.

ARTICLE 10: JOINT CUSTODY

If possible, the Court may award joint custody, allowing each parent to be responsible for the care, custody, and control for the child. Joint custody shall be subject to the following conditions:

- (A) If both parents have requested joint custody, the parents shall submit a plan to the Court, either jointly or separate, that may show the living arrangements of the minor child, the financial support of the minor child, the education of the minor child, visitation right of a parent, obligations regarding health care, and other information of which the parents would like the Court to be made aware of.
- (B) In determining joint custody, the Court will consider what is in the best interests of the child. Upon a review of all information the Court will issue a final plan for such time and under such conditions as that would serve the interests of the child.

ARTICLE 11: SOLE CUSTODY

Where it is in the best interests of a child, the Court can order legal and physical custody with one parent. To assist that parent in providing for the child, the Court may require that the other parent provide necessary support for the care and well-being of the child.

ARTICLE 12: CARE AND CUSTODY OF A MINOR

If both parents, or one of the parents has custody of a minor, the respective parent will be responsible for the health, care, education, and shelter needs of the minor. The Court shall issue a custody order that is in the best interests of the minor. The Court may consider:

- (A) The preference of the child, without the parents present.
- (B) The ability and capability of a parent to provide for a minor.

- (C) Traditional approaches to determine who would have custody.
- (D) The recommendations of other family members.
- (E) The recommendation of the Tribal agency, as authorized by the Court to consider the best interests of a minor.
- (F) The recommendation of health professionals.
- (G) The recommendation of the parents regarding a family member who would be willing and able to provide for the care of the child.

ARTICLE 13: MODIFICATION OF CUSTODY ORDERS

The Court, at any time, to serve the best interests of a child may modify a custody order. A request for modification, shall require a hearing with notice made to all appropriate parties, with a hearing date set at least twenty (20) days from the filing of the request for modification. The request can come from one or both parents. The appropriate Tribal agency, as authorized by the Court, can make a recommendation concerning a re-modification request.

ARTICLE 14: CUSTODY DURING DIVORCE SEPARATION

The Court, shall place a child for a temporary length of time with one parent, or provide for joint custody, if it is in the best interest of the child, before a divorce order and custody order is final.

ARTICLE 15: VISITATION OF NON-CUSTODIAL PARENT

Unless, there is compelling reason otherwise, the final divorce order shall provide visitation privileges for the parent who was not given custody of a minor child. If necessary, the Court can issue appropriate orders for the enforcement of the visitation privileges.

ARTICLE 16: VISITATION OF GRANDPARENTS OR OTHER FAMILY MEMBERS

If a grandparent or another family member petitions the Court for visitation rights concerning a child's family member, the Court shall set a Court date of at least twenty (20) days, serve notice to all interested parties, to hear the request for visitation rights. The Court will determine if such visitation privileges is in the best interest of the child. The Court at any time may modify or suspend any visitation order.

ARTICLE 17: CHILD SUPPORT PAYMENTS

To assist in the care and well-being of the child, the Court, by order, can require child support payments, with an increase in payments based on new needs or an annual time basis, made by

that parent, who is in the best economic position to provide for the financial support of the minor. In determining the amount of support, the Court is to consider the following:

- (A) The Court will consider the expenses and needs of the child per month.
- (B) The economic ability of each parent.
- (C) The economic opportunities and disadvantages of each parent's work place.
- (D) The total assets of each parent and total liabilities of each parent.
- (E) Any other information that the Court may consider relevant in order to make a decision concerning support payments.
- (F) The ability of a parent to pay support until the child reaches the age of eighteen (18).

The Court can require that necessary forms be completed and other documents submitted that will provide information as needed by the Court to make a decision.

- (A) The Court, if necessary, may determine parentage.

ARTICLE 18: ENFORCEMENT OF SUPPORT PAYMENTS

The Kickapoo Tribe of Oklahoma may enter into agreements with any governing entity regarding the collection or enforcement of support payments, or to enforce criminal sections against a person who is delinquent in making support payments.

ARTICLE 19: ALIMONY OR MAINTENANCE SUPPORT

The Court may require financial support for that person who in the marriage will not be able to support themselves, once the divorce is final, until a set amount has been paid or until there has been sufficient time for the spouse to acquire the ability to provide for financial independence. The support of alimony or maintenance support may be considered in the division of the property settlement. The Court can require that necessary forms be completed and other documents submitted that will provide information as needed by the Court to make a decision regarding support payments.

ARTICLE 20: FAILURE TO OBEY AN ORDER OF THE COURT

Any order that is not obeyed, can be considered by the Court as Contempt of Court, and the Court can order appropriate legal enforcement measures.

ARTICLE 21: INTEREST RATE ON A DELINQUENT PAYMENT

Upon the delinquency of child support, alimony, or maintenance support payment(s). There is imposed a ten (10) percent interest rate on that amount not paid, from the date of a missed payment.

ARTICLE 22: RESTORATION OF WIFE’S MAIDEN NAME

The wife shall have her maiden name restored to her or her former name at her discretion.

ARTICLE 23: LEGAL EFFECT OF DIVORCE

Once a divorce order is final, there is no legal obligation between the former married spouses. The marriage, upon a final divorce order, is formally dissolved. The divorce shall be binding on both parties. Property assets, was committed by a former spouse with regard to the division of the marital property.

ARTICLE 24: FINAL DIVORCE ORDER

A divorce action shall not be final for a period of six (6) months, from the date the divorce order was approved by the Court. During the term of six (6) months, if the parties, so desire, they can petition the Court to vacate the divorce order. The Court shall vacate the divorce order; however, if no request is made within six (6) months the divorce order will be final. The Court, however, may vacate any divorce order at any time, if it so desires.