

WAGANAKISING ODAWAK STATUTE # 2008-007
DISSOLUTION OF MARRIAGE

SECTION I. 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.

SECTION II. DEFINITIONS

1. "*Court*" means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

2. "*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*" means "*areas referenced in Public Law 103-324, 25 USC Section 1300k-2(b)(2)(A) as the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs 'third and fourth' of the Treaty of 1855, 11 Stat.621.*" Little Traverse Bay Bands Constitution, Article V(A)(1)(a).

3. "*Tribe*" means the Little Traverse Bay Bands of Odawa Indians.

SECTION III. 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.

SECTION IV. SIMPLE DISSOLUTION

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

- a)** The full legal name, address, social security number and drivers license number of each party to the marriage;
- b)** The Tribal Citizenship number of at least one of the parties;
- c)** 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;
- d)** 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,
- e)** The maiden name of the wife and/or her name prior to the marriage if different;
- f)** The date and location of the marriage;
- g)** The date and location of the separation of the parties;
- h)** 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;
- i)** 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;
- j)** A statement that neither party is requesting alimony.

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

SECTION V. DISSOLUTION OF MARRIAGE

1. 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.

- 2.** An action for divorce shall be commenced by the filing of a petition by one of the parties and shall contain the following:
 - a)** The full legal name, address, social security number and drivers license number of each party to the marriage;
 - b)** The Tribal Citizenship number of at least one of the parties;
 - c)** 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;
 - d)** A statement as to whether or not the wife is pregnant at the time the petition is filed;
 - e)** The maiden name of the wife and/or her name prior to the marriage if different;
 - f)** The date and location of the marriage;
 - g)** The date and location of the separation of the parties;
 - h)** A proposed division of marital property and debt, and custody of children, if any.
 - i)** 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.
- 3.** The non-petitioning party may file a response to the petition within thirty (30) days of receipt of the petition.
- 4.** 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.
- 5.** A copy of the response must be served on the petitioning spouse.
- 6.** 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.
- 7.** 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.
- 8.** 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.

9. 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.
10. At the hearing, both parties shall have the opportunity to testify, call witnesses, present evidence and cross-examine their spouse and any other witnesses.
11. The intentional filing of groundless petitions shall result in the imposition of sanctions.
12. A final order of the Tribal Court may be appealed in the same fashion and manner as any other order of the Court.

SECTION VI. 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.

SECTION VII. ALIMONY

1. 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.
2. 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, and fault shall not be a consideration.
3. Such order may be modified, on motion of either party to reflect changes in either party's economic circumstances.
4. Groundless filings may result in the imposition of sanctions.
5. The Court, upon motion, shall terminate alimony to any spouse who has remarried or upon the death of either party.

SECTION VIII. CHILD CUSTODY, VISITATION AND SUPPORT

- 1.** In any action for divorce, the Court shall have the authority to determine the custody of any children under eighteen (18) years of age. The Court shall have jurisdiction to award custody of the minor children of the marriage to one of the parties or to a third person.
- 2.** The Court may grant custody to one (1) parent, or may grant joint custody. The court shall specify the period(s) when each parent shall have custody and shall determine the visitation rights (if any) of the non-custodial parent. The Court shall determine custody in accordance with the best interest of the child and shall consider all relevant factors including:
 - a)** the wishes of the child(ren)'s parent or parents as to the custody;
 - b)** the wishes of the child(ren) as to custody, provided that the child(ren) are of sufficient age to exercise discretion. These wishes may be weighed by the Court, but are not controlling to the Court's decision. The Judge will meet with the child(ren) in his or her chambers to discuss the child(ren)'s wishes;
 - c)** the interaction and interrelationship of the child with his or her parent or parents, siblings and any other person who may significantly affect the child's best interest;
 - d)** the child's adjustment to his or her home, school and the tribal community;
 - e)** the mental and physical health of all individuals involved;
 - f)** the capacity and disposition of the custodian parent to allow the child frequent and continuing contact with the non-custodial parent(s) and the child(ren) whenever possible.
- 3.** The Court shall not consider conduct of a proposed custodian that does not affect his or her relationship to the child.
- 4.** The Court shall have no presumption that one parent is better suited to be a custodian because of gender.
- 5.** Differences in financial circumstances alone shall not be a deciding factor in the determination of custody.
- 6.** 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(ren).

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

8. The Court, upon petition of either party, or any third party to whom custody or visitation of the minor child(ren) may be awarded, may revise, amend or alter any order concerning the care, custody, support or visitation rights with any minor child(ren) consistent with the best interests of the child or children.

9. 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:

- a)** consent of both parents;
- b)** prospective advantages of the move for improvement of the general quality of life for the custodial parent and child(ren);
- c)** the likelihood of the custodial parent complying with the Tribal Court Order once he or she in no longer resides within the Tribal Territory;
- d)** 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(ren).

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

11. 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.

SECTION IX. TEMPORARY INTERIM ORDERS

1. 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.

2. 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.
3. Emergency may be interpreted to include, but not limited to:
 - a) a danger of physical abuse to the spouse or the parties child(ren);
 - b) severe emotional abuse;
 - c) a lack of means for interim subsistence; or
 - d) the danger that the child(ren) will be removed from jurisdiction.
4. If the initial order is issued ex-parte, a full hearing on the temporary order shall be held within fourteen (14) days.

SECTION X. 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

SECTION XI. 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.

SECTION XII. EFFECTIVE DATE

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

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly passed by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on May 4, 2008 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 0 abstentions, and 1 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Harrington, Jr.	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Melvin L. Kiogima	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Dexter McNamara	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Marvin Mulholland	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Shirley Oldman	<u> </u>	<u> </u>	<u> </u>	<u>X</u>
Alice Yellowbank	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Gerald V. Chingwa	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Regina Gasco Bentley	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
Beatrice A. Law	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

Date: _____

 Beatrice Law, Legislative Leader

Date: _____

 Regina Gasco Bentley, Secretary

Received by the Executive Office on _____ by _____

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: _____

 Frank Ettawageshik, Tribal Chairperson