

TITLE III

CHAPTER 1

DOMESTIC RELATIONS

Part 1

3-1-101. Marriages. The Tribal Court of the Confederated Salish and Kootenai Tribes shall have jurisdiction over marriages of Indians residing on the Flathead Reservation and of other persons who consent to the Court's jurisdiction. Judges of the Tribal Court are authorized to perform marriage ceremonies.

3-1-102. Annulment. (1) The Tribal Court of the Confederated Salish and Kootenai Tribes shall have jurisdiction to hear and determine matters of annulment upon the application of one of the parties:

- (a) when either party to the marriage shall be incapable of consenting thereto.
- (b) when the consent was obtained by force or fraud.
- (c) when the party making application was of unsound mind at the time of the marriage.
- (d) when either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing.
- (e) when the marriage was invalid on one of the grounds as set in Section 40-1-402 of the Montana Code Annotated, which grounds are incorporated herein by reference.

(2) If, after termination of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.

(3) Procedures for annulment must be instituted by the party laboring under the disability or upon whom the force or fraud is imposed.

(4) The legitimacy of children conceived or born prior to judgment shall be conclusive only as against the parties to the action and those claiming under them.

3-1-103. Divorce or separation. (1) A marriage may be dissolved by divorce or legal separation in the Tribal Court of the Confederated Salish and Kootenai Tribes for incompatibility of the parties for whatever reason using the guidelines of the Uniform Marriage and Divorce Act set forth in the Montana Code Annotated.

(2) During the pendency of proceedings for divorce or legal separation or for annulment, the Tribal Court may order:

- (a) the husband and wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just upon application therefor;
- (b) the care, custody and maintenance of the minor children of the marriage,
- (c) the restraint of either spouse from in any manner threatening or interfering with the other or the minor children.

(3) In addition to the dissolution of marriage by decree, the Tribal Court shall have the power to impose judgment as follows:

- (a) for future custody and care of the minor children of the marriage as may be in the interest of the children.
 - (b) for the recovery from either spouse and to allow for the care and custody of such children an amount of money that may be just and proper for the party to contribute toward the education and support of the children.
 - (c) for the recovery from either spouse an amount of money or personal property as may be just and proper for the party to contribute to the maintenance of the other.
 - (d) for the recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the giving of judgment.
 - (e) or whatever equitable distribution of marital property as the Court deems just and proper based on considerations of age of the parties, health, education and skills, financial circumstances of each, and the duration of the marriage.
 - (f) for the restoration of the maiden name of the wife.
- (4) If a party requests a decree of legal separation rather than a decree of divorce, the Court shall grant the decree in that form unless the other party objects and a legal separation shall convert into a divorce decree upon request of either party. *(Rev. 4-15-03)*

3-1-104. Procedure. (1) All proceedings for the annulment, separation or divorce shall be commenced in the manner provided in Rule 8 of the Rules of Practice, Title I, Ch. 2, Part 7, of the CSKT Laws Codified.

(2) The complaint shall allege the grounds for annulment; or in a proceeding for separation or divorce that the parties are incompatible; and shall set forth:

- (a) the age, occupation and residence of each party and his/her length of residence in this state;
 - (b) the date of the marriage and the place at which it was registered;
 - (c) that the jurisdictional requirements exist in that either the parties are Indian or that the parties have consented to the Court's jurisdiction;
 - (d) the names, ages and addresses of all living children of the marriage and whether the wife is pregnant;
 - (e) any arrangements as to support, custody and visitation of the children and maintenance of a spouse; and
 - (f) the relief sought.
- (3) Either or both parties to the marriage may initiate the proceeding. If one party commences the proceeding, the other party must be served in the manner set forth in Rule 9 of the Rules of Practice, Title I, Ch. 2, Part 7, of the CSKT Laws Codified, and may, within fourteen days after the date of service, file a verified response. No decree may be entered until twenty days after the date of service.

(4) The Court may join additional parties proper for the exercise of its authority to implement this act. *(Rev. 4-15-03)*

3-1-105. Separation agreement. The parties in an action for legal separation or divorce may enter into a separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children. The terms of the separation agreement, except those providing for support, custody and visitation of the children, are binding on the Court, unless the Court finds the agreement to be unconscionable.

3-1-106. Adoption. (1) The Tribal Court shall have jurisdiction to hear, pass upon and approve applications for family adoption of or by members of the Confederated Salish and Kootenai Tribes.

(2) Adoption proceedings shall be initiated by filing a petition with the Court, which shall conduct the proceedings in a manner that shall assure that all concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(3) A petition for adoption shall be signed by petitioners, witnessed by a Judge of the Tribal Court, and shall specify:

(a) the full names, ages and place of residence of the petitioners, and if married the place and date of the marriage.

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency.

(c) the date and place of birth of the child, if known.

(d) the name used for the child in the proceeding, and if a change in name is desired, the new name.

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child.

(f) a full description and statement of value of all property owned or possessed by the child.

(g) facts, if any, which excuse consent on the part of a parent, to the adoption.

(4) Any surviving natural parent must consent in writing, unless the Court determines that the necessity of consent has been waived by acts of a natural parent that constitute willful abandonment of the child, or if the parent has been judicially deprived of the custody of the child on account of abuse or neglect.

(5) The person or persons seeking to adopt the child shall appear before the Court and be examined and the Court may require a report to be prepared by the Tribal Social Services Division or the Bureau of Indian Affairs or public agency or person designated by the Court to make such a report on the qualifications of the adoptive person or persons.

(6) If the child is over the age of 14 years, the child must also appear before the Court and consent in writing to such adoption.

(7) Unless the Court shall otherwise order, all hearings held in proceedings under this act shall be confidential and shall be held in closed Court without admittance of any person other than interested parties and their counsel. All papers, records and files pertaining to the adoption shall be kept as a permanent record by the Court and withheld from inspection. No person shall have access to such records except on order of the Judge of the Court for good cause shown.

(8) After the Court has heard all the facts in such an adoption proceeding, and believes that it is in the best of the child to be adopted, it shall enter an Order accordingly, which may be interlocutory or final, and cause the Order to be kept in the records of the Confederated Salish and Kootenai Tribes, the Bureau of Indian Affairs and the appropriate agency of the State of Montana for statistical reporting.

3-1-107. Paternity and support. (1) The Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child, if the Tribal Court has personal jurisdiction of the alleged father.

(2) All proceedings in this section shall assure that concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the

opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses. If the alleged father does not appear after notice through service of process, the hearing may be held and decree rendered in his absence.

(3) Any hearings or trial held under this section shall be in closed Court without admittance of any person other than those necessary to the action. All papers, records of files, other than the part of the permanent record of the Court or of a file of any agency, are subject to inspection only upon consent of the Court and all interested parties, or in exceptional cases only upon an Order of the Court for good cause shown.

(4) A judgment of the Tribal Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determination of inheritance and in criteria for enrollment with the Confederated Salish and Kootenai Tribes.

3-1-108. Dependent and neglected children. (1) The Tribal Court of the Confederated Salish and Kootenai Tribes shall have jurisdiction to hear petitions alleging the neglect or dependency of any person under 18 years of age, subject to the jurisdiction of the Court, to order investigation by social services personnel of such allegations, to hold hearing in the matter, and to determine the proper disposition of the case.

(2) For the purposes of this Chapter, a "Neglected Child" is a child found to be in one or more of the following situations:

- (a) a child who is abandoned by his/her parent, guardian or custodian.
- (b) a child whose parent, guardian or custodian has subjected him/her to mistreatment or abuse.
- (c) a child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care or other necessities for his/her health, morals or well-being.
- (d) a child whose parents, guardian or custodian neglects or refuses to provide the special care made necessary by his/her mental condition.
- (e) a child who is found in a disreputable place or who associates with vagrant, vicious, or immoral persons.
- (f) a child who is engaged in an occupation or is in a situation or environment dangerous to life or limb or injurious to the health, morals or welfare of himself/herself or another.

(3) For the purposes of this Chapter, a "Dependent Child" is a child found to be in one or more of the following situations:

- (a) a child who is homeless or destitute or without proper support or care through no fault of his/her parent or guardian.
- (b) a child who lacks proper care by reason of the mental or physical condition of the parent, guardian or custodian.

(4) A petition alleging a child to be "dependent" or "neglected" shall be signed by the petitioners, witnessed by a Judge of the Tribal Court and shall specify:

- (a) the full name, age, place of residence and tribal membership, if any, of the child.
- (b) the full names, place of residence and tribal membership, if any, of the parents or other custodians.
- (c) the facts, specifically as possible, of the alleged neglectful custodians.

(d) request to the Court to summon the interested parties and set a date of a hearing to determine the need for Court supervision of the child.

(5) The hearing on a petition involving allegations of child dependency or neglect should be held as soon as possible after the filing of a petition, upon proper notice to the child, his/her parents or custodians, the petitioner, representatives of any agency involved in the matter, and any other person whose presence the Tribal Court deems necessary for a determination of the course of action which will be in the best interests of the child. The hearing shall be so conducted that all concerned parties, including minors, shall have the right to professional counsel or lay representation at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(6) Before depriving any parent of the custody of his or her child, the Tribal Court shall give due consideration to the preferred rights of parents to the custody of their children, and shall not transfer custody to another person, agency, or institution, unless the Court finds from all of the circumstances in the case that the welfare of the child or the public interest requires that the child be taken from his/her home.

(7) If a child is found to be dependent or neglected, the Tribal Court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with his/her parents or guardian subject to those conditions and limitations that the Court may prescribe;

(b) place the child in the temporary custody of a relative or other individual who, after study by a social service agency designated by the Court, is found by the Court to be qualified to receive and care for the child;

(c) place the child in the protective custody of the Court, which will in turn seek the assistance of a social services agency in placing the child in temporary foster care, with such placement to be approved by the Court;

(d) place the child in an agency that is able to assume responsibility for the education, care and maintenance of the child and which is licensed or otherwise authorized by law to receive and provide care of the child. *(Rev. 4-15-03)*

3-1-109. Termination of parental rights. (1) A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent or parents. No such hearing shall be held earlier than 10 days after service of petition is completed. The petition must contain a statement to the effect that the rights of the parent or parents are proposed to be permanently terminated in the proceeding. The parties, including minors, shall have the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence to be heard on their own behalf, and to examine witnesses.

(2) If the Tribal Court concludes after a hearing provided for in Section 3-2-313 that parental rights or the rights of a guardian of a child should be permanently terminated, the child may be placed in the adoptive custody of the Tribal Court, or in the adoptive custody of the appropriate Tribal or Bureau of Indian Affairs social services agency.

(3) If the rights of only one parent have been terminated, the right of the other parent to consent to adoption is not affected by an order placing the child for adoption as provided in the preceding section.

(4) The case records of the Court and any agency involved in any action under this section shall be confidential unless the Court orders their release. All hearings pursuant to this section shall be in closed Court without admittance of any person other than those necessary to the action. *(Rev. 4-15-03)*

3-1-110. Appointment of Guardians. (1) The Tribal Court shall have jurisdiction to appoint and remove legal guardians for minors and for persons who are incapable of managing their own affairs.

- (2) The Tribal Court may reappoint guardians over the person of a minor or for persons determined by the Court as being incapable of managing their own affairs.
- (3) The Court shall require a report from the appropriate Tribal social services personnel, or the Bureau of Indian Affairs social services division, or other persons designated by the Court to make a report on the parties involved.
- (4) Any guardian appointed under this section shall advise the Court by written report at least once a year or upon request of the Court to make a report on the parties involved.
- (5) Any guardians appointed under this section shall advise the Court by written report at least once a year or upon request of the Court the actions of the guardian on behalf of the ward or of his/her estate.
- (6) No guardian may dispose of any of the ward's property without the approval of the Court in advance.
- (7) Any guardianship over the person of a minor shall automatically terminate when the ward becomes 18, but does not affect the guardian's liability for prior acts, nor the obligation to account for the ward's funds and assets.
- (8) Any guardianship over the person or property of a minor or incapacitated person shall terminate upon application of the ward or a person interested in his or her welfare and the approval of the Court.
- (9) A special guardian may be appointed for the special purpose of signing deeds, contracts or other documents on behalf of a minor or a person who is incapable of managing his/her own affairs. The document to be valid must be approved by the Tribal Court and also approved by the Secretary of the Interior if it involves trust or restricted property or funds.
- (10) By accepting appointments as a guardian, a guardian submits personally to the jurisdiction of the Court in any proceeding relating to the interested person. Notice of any proceeding shall be delivered to the guardian or mailed to him/her by ordinary mail at his/her address as listed in the Court records and to his/her address as then known to the petitioner.

3-1-111. Probate, descent and distribution. (1) When any member of the Tribes dies, leaving property other than an allotment, or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent may petition the Tribal Court of the Confederated Salish and Kootenai Tribes to have the Court determine the heirs of the decedent and to divide among the heirs such property of the decedent. The Court may, on its own motion, initiate probate proceedings after a reasonable time if the heirs and/or other interested parties have neglected to file a petition with due diligence for commencement of probate. No determination of heirs shall be made unless all possible heirs known to the Court, the Tribes, the Bureau of Indian Affairs and the claimant shall have been notified of the suit and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Flathead Reservation must be notified by registered mail and a copy of the notice must be preserved in the record of the case.

(2) When any member of the Tribes dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall, at the request of any person named in the will, determine the validity of the will after giving notice to appear in Court to all persons who might be heirs of the decedent. A will shall be deemed by the Court to be valid if the decedent had a sane mind and understood what he/she was doing when he/she made the will and was not subject to any undue influence, and if the will was made in accordance with the laws of the State of Montana. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or their heirs.

(3) In under either of the two preceding Sections of this Chapter, the Tribal Court may, in its discretion, appoint from among the survivors of a decedent, an administrator of the estate, who will take possession and control of the property of the decedent until the administration of the estate has been completed and he/she has been discharged by Order of the Court.

(4) Prior to distribution of assets, the Court may direct that publication or other method of notice to creditors be given. Creditors may file a written statement of a claim with time and manner directed by the Court in its order of notification. *(Rev. 4-15-03)*

3-1-112. Change of name. The Tribal Court of the Confederated Salish and Kootenai Tribes shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of the minor. Any Order issued by the Court for change of name shall be kept as a permanent record, and copies shall be filed with the Tribal Office, Bureau of Indian Affairs and the appropriate agency of the State of Montana for statistical reporting.