

**TITLE IX**  
**CHOCTAW DOMESTIC RELATIONS CODE**

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## **CHAPTER 1. MARRIAGE**

### **§9-1-1 Recognition of Previous Marriage**

Indian marriages consummated before the effective date of this title, whether according to the laws of the State of Mississippi or Choctaw Tribal custom, are declared valid for all purposes under this Code. Marriages according to Tribal custom are recognized as being either by the traditional ceremonial observation or by mutually manifested course of conduct within the Indian community expressive of the intent of a couple to be regarded as husband and wife.

### **§9-1-2 Marriage by Laws of Foreign Jurisdiction**

Marriages consummated under the laws of a foreign jurisdiction shall be accorded the same legal status in this jurisdiction as in the jurisdiction where consummated.

### **§9-1-3 Subject Matter Jurisdiction**

The Choctaw Court shall have subject matter jurisdiction to determine the existence and duration of any marriage relationship in any action properly before the court wherein the validity or duration of such marriage is placed in issue.

### **§9-1-4 Marriage – General Definition**

Marriage, for all purposes, shall be defined as a personal relationship arising out of a civil contract to which the consent of parties capable of making it is necessary.

### **§9-1-5 Invalid Marriages; Incest**

Marriages between ancestors and descendants of every degree, between a stepfather and stepdaughter or between a stepmother and a stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins or second cousins, whether the relationship is of the half or whole blood and legitimate or illegitimate, shall be void.

### **§9-1-6 Invalid Marriages; Bigamy**

The marriage of any person already lawfully married to another living spouse shall not be valid unless the former marriage has been annulled or dissolved or unless the spouse has been absent and not known to be living for a period of seven years immediately prior to the subsequent marriage.

### **§9-1-7 Marriage Under this Title**

Marriages entered into within this Tribal territorial jurisdiction, after the effective date of this title, in order to be valid, shall be in conformity with one of the following:

- (1) tribal licensing procedures for marriages, as set forth hereafter in this title;
- (2) tribal custom ceremonial marriage; or

- (3) the laws of the State of Mississippi.

**§9-1-8 Marriage by Tribal Law**

After the effective date of this Title, marriages by Tribal law shall be consummated by:

- (1) the consent of the parties capable of giving same;
- (2) the issuance of a Tribal marriage license in accordance with §9-1-10 of this title; and
- (3) the solemnization of the marriage within the territorial jurisdiction of the Tribal court by the person authorized under §9-1-12 of this title.

**§9-1-9 Tribal Marriage License; Application For**

- (1) Application for the issuance of a marriage license shall be made in writing before the Secretary to the Tribal Chief, shall be sworn to by both applicants, and shall include the names, ages and addresses of the parties applying, as well as the names and addresses of the parents of the parties applying, or, if no parents, then the names and addresses of the guardian or next of kin. The application shall remain on file, open to the public, at the Office of the Tribal Chief not less than three days prior to the issuance of any license.
- (2) Applicants who are at least sixteen (16) years of age but less than eighteen (18) years old shall be provided, upon completion of the license application, with a written consent form containing an agreement to support the minor party and any children thereof until termination of the applicant's minority which must be signed before a notary public by the applicant's parents or other legal guardian and filed at the office of the Tribal Chief prior to the issuance of any certificate.
- (3) Except as otherwise provided in §9-1-10(3), no license shall issue to any applicant under the age of sixteen (16) years.

**§9-1-10 Tribal Marriage License; Issuance of**

It is unlawful for any Tribal marriage license to be issued unless:

- (1) Application shall have been made in accordance with §9-1-9 of this title and have remained on file at the office of the Tribal Chief for not less than three (3) days nor more than sixty (60) days;
- (2) A medical certificate dated within thirty (30) days prior to the application shall be presented to the secretary to the Tribal Chief showing that the applicants are free from venereal disease, as nearly, as can be determined by a blood test performed by a medical laboratory or licenses physician; and
- (3) Applicants are at least eighteen (18) years of age, or at least sixteen (16) years of age and have obtained and filed the requisite parent or guardian consent form; provided, however, that if satisfactory proof is furnished to the Tribal court judge that sufficient reason exists and that the parties desire to be married to each other, then the Tribal court judge may

waive the minimum age requirement, the requirement of parental consent, and/or the three-day waiting period and by written decree direct the secretary to the Tribal Chief to issue the marriage license in question. The grounds for any authorization so obtained shall be a part of the confidential files of the Clerk of the Court, subject to inspection only by written permission of the judge.

**§9-1-11 License Essential**

No marriage may be contracted or solemnized under §9-1-7(1) or (4) of this title unless a state or Tribal license shall first have been duly issued. No irregularity in the issuance of, or omission, in the license shall invalidate any marriage, nor shall this section be construed as invalidating any marriage that is otherwise good under §9-1-7(2) or (3) of this Title.

**§9-1-12 License and Solemnization Required**

- (1) No marriage contracted after the effective date of this title shall be valid under §9-1-7(1) of this title unless the contracting parties shall have obtained a marriage license as heretofore provided by this title and unless also the marriage, after such license shall have been duly issued therefore, shall have been solemnized within this territorial jurisdiction by the Tribal Chief, any member of the Tribal Council, any ordained minister, priest, rabbi or other spiritual leader of any religious body authorized under the rules of such religious body to solemnize rites of matrimony and being in good standing, or any Tribal court judge.
- (2) Nothing contained in this section shall be construed to affect the validity of any marriage under §9-1-7(2), (3), or (4) of this title.

**§9-1-13 Transmittal of Marriage Certificate to Clerk**

- (1) A certificate of marriage under §9-1-7(1) of this title signed by the Tribal Chief, member of the Tribal Council, religious leader, or Tribal court judge celebrating the same, shall be transmitted by such solemnizing officer within one month thereafter to the secretary to the Tribal Chief for recording.
- (2) Every Chief, Council member, religious leader, or judge failing to transmit such certificate to the issuing secretary within the time prescribed shall forfeit and pay to the secretary who issued the license and to each of the parties whose marriage was solemnized a forfeiture of twenty-five dollars (\$25.00); such payment to be enforceable by order of the Tribal Court.

**§9-1-14            Recording of Marriage**

A permanent record of all certificates of marriage issued under the provisions of this title shall be maintained in a permanent bound book open for public inspection by the secretary to the Tribal Chief, who shall also forward not less than quarterly to the Choctaw Agency notice of all marriages recorded therein during the previous quarter.

## CHAPTER 2. ANNULMENT

### §9-2-1 Grounds for Annulment

- (1) A marriage may be annulled by the Choctaw Court for any of the following reasons upon application of one of the parties:
  - (a) that the marriage lacked the consent of the party making application or of another person legally required to consent to such party's marriage, or that such consent was obtained by force or fraud;
  - (b) that the marriage was invalid under one of the grounds set forth in §9-1-5 or 9-1-6;
  - (c) that the party making application was of unsound mind at the time of the marriage; or
  - (d) that either party was, at the time of the marriage, incapable of consummating the marriage and the incapacity is continuing.
- (2) If, after the 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.

### §9-2-2 Effects of Annulment

The legitimacy of children born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under it.

## **CHAPTER 3. DIVORCE**

### **§9-3-1 Divorce and Annulment Procedure**

Proceedings in divorce and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final decree of divorce shall restore the parties to the status of unmarried persons.

### **§9-3-2 Residency Requirement**

In order to maintain an action for divorce or annulment in the Choctaw Court, at least one party to the marriage must be an enrolled member of the Tribe and have lived within the territorial jurisdiction of the Tribal court for at least six (6) weeks prior to bringing the action, except that an annulment may be granted where either party lives within the territorial jurisdiction of this court and the marriage was performed under the authority of the Tribal Code.

### **§9-3-3 Grounds for Divorce**

A divorce may be granted for any of the following causes:

- (1) impotency of the defendant, at the time of the marriage, where such impotency continues to the time of commencement of the action;
- (2) adultery, unless it should appear that it was condoned by the party complaining;
- (3) willful, continued and obstinate desertion of the plaintiff for more than one (1) year immediately preceding commencement of the action;
- (4) willful neglect of the defendant to provide for the plaintiff the common necessities of life for a period of six (6) months;
- (5) habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;
- (6) conviction and sentence to at least six (6) months in jail of the defendant of a Class A offense under the Tribal Code, or of a felony and sentence of at least one (1) year to any penitentiary and not pardoned before being sent there;
- (7) habitual cruel treatment to the plaintiff by the defendant to the extent of causing bodily injury or great mental distress;
- (8) when the parties have lived apart without cohabitation for a period of three (3) consecutive years, except under a decree of separate maintenance;
- (9) permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudged insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent; further, no divorce shall be granted on this ground unless a guardian ad litem as been appointed to represent the defendant in the divorce proceedings;

- (10) pregnancy of the wife by another person at the time of the marriage, if the husband did not know of such pregnancy; or
- (11) irreconcilable differences, but only upon joint bill of the husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process. No divorce shall be granted on the ground of irreconcilable differences unless the court shall find in its decree that the parties have made adequate and sufficient provision by written agreement for the custody and maintenance of any children of that marriage and for the settlement of any property rights between the parties. The agreement may be incorporated in the decree, and such decree may be modified as other decrees for divorce. Bills for divorce on the ground of irreconcilable differences must have been on file for sixty (60) days before being heard. A joint bill of husband and wife or a bill of complaint where the defendant has been personally served with process or where the defendant has entered an appearance by written waiver of process, for divorce, solely on the ground of irreconcilable differences, shall be taken as confessed and final decree entered thereon, pro confesso, as in other cases and at any time after the expiration of sixty (60) days. No divorce shall be granted on the ground of irreconcilable differences where there has been a contest or denial; provided, however, that a divorce may be granted on the grounds of irreconcilable differences where there has been a contest or denial, if the contest or denial has been withdrawn or canceled by the party filing same by leave and order of the court. Irreconcilable differences may be asserted as a sole ground for divorce or as an alternate ground of divorce with any other cause for divorce set out in this section.

#### **§9-3-4            Limitations**

A divorce must be denied in all cases when there is an unreasonable lapse of time before the commencement of the action, or two (2) years have passed since the grounds became or should have become known to the complaining party and subsequent actions thereto on the part of the complainant indicate condonation of the activity or situation.

#### **§9-3-5            Right of Husband to Divorce**

The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband.

#### **§9-3-6            Temporary Alimony and Suit Money; Restraint**

- (1) The court may order either party to pay the clerk for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend this action.
- (2) The court may restrain either party from doing certain acts harmful to the other or to the children, or the property of either, during the pendency of the divorce proceedings.

**§9-3-7 Pleadings; Findings; Decree**

The complaint shall be in writing and signed by the plaintiff or the plaintiff's counsel or attorney. No decree of divorce shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three (3) months.

**§9-3-8 Disposition of Property and Children**

When a decree of divorce is made, the court may make such orders in relation to the children, property and parties and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes or new orders may be made by the court with respect to the custody of the children or the distribution of property as shall be reasonable and proper.

**§9-3-9 Custody of Children in Case of Separation**

In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the court shall make such order for the future care and custody of the minor children as it may deem just and proper. In determining custody, the court shall consider the best interests of the child and the past conduct and demonstrated moral standards of each of the parties and the natural presumption that the mother is best suited to care for young children. The court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the court may, nevertheless, determine the children's custody otherwise.

**§9-3-10 Age of Majority for Purposes of Child Support Obligations**

- (1) The duty of support of a child, whether ordered by virtue of a divorce proceeding or child support proceeding, terminates upon the child reaching the age of twenty-one (21) years or the emancipation of the child, whichever occurs first. The court may determine that emancipation and no other support obligation exists when the child:
  - (a) Marries, as defined by the Choctaw Tribal Code, or cohabits, as if married;
  - (b) Voluntarily moves from the home of the custodial parent or guardian and establishes independent living arrangements; or
  - (c) Discontinues full-time enrollment in school after reaching eighteen (18) years of age.
- (2) Other factors that the court may consider when determining if a child is emancipated include, but are not limited to, whether the child discontinues full-time enrollment in school, attains permanent, full-time employment or enters military service.
- (3) This code section shall apply to all existing and future orders of child support.

## CHAPTER 4. SEPARATE MAINTENANCE AND PROPERTY RIGHTS

### §9-4-1 Separate Maintenance

- (1) The wife, living in this jurisdiction, who through no fault of her own or by agreement with her husband, is living separate and apart from her husband, or whose husband has deserted her or has failed to support her when otherwise able to do so, may maintain an action for a decree of separate maintenance.
- (2) During the pendency of the action the court may order the husband to pay temporary alimony and suit money as in an action for divorce.
- (3) If it appears that the wife is entitled to such, the court shall grant a decree of separate maintenance awarding custody of children, alimony, child support and expenses of suit as may be equitable under the circumstances.

### §9-4-2 Property Rights of Married Persons

- (1) Either a wife or husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.
- (2) Either a wife or a husband can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.
- (3) Either a wife or a husband nor the property of either in which their spouse has no interest, is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.
- (5) Nothing in this section shall alter existing inter-spousal or spousal rights and limitations respecting the sale, transfer or encumbrance of real property constituting a marital "homestead" interest under Mississippi Law.

### §9-4-3 Family Expenses

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them and may be enforced jointly or separately.

### §9-4-4 Custody of Children and Property

- (1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband nor the wife can remove the other spouse or the children from the place of family dwelling without the consent of the other spouse; provided however, that children may be removed from the family residency by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is

made to the court within ten (10) days for an order of the court, modifiable at any time, approving such removal of the children.

- (2) If a husband abandons his wife, the wife is entitled to custody of all children under the age of sixteen (16) unless a court of competent jurisdiction shall otherwise direct.

## **CHAPTER 5. RELATION TO ORDINANCE NO. 11**

### **§9-5-1 Other Domestic Relations/Family Law Matters**

All domestic relations and family law matters and proceedings not addressed in this Title or Title XI, shall be adjudicated in accordance with the provisions of Tribal Ordinance No. 11, provided that any reference to a state or county Department of Welfare or Welfare Department officials in state law provisions incorporated pursuant thereto shall be construed to refer to the Choctaw Department of Family Services, Mississippi Band of Choctaw Indians, or such successor agency or department as the Choctaw Tribal Council shall hereafter designate. Service of process or notice on said department shall be hand on the Mississippi Band of Choctaw Indians' Office of Attorney General, and the Tribal Chief.