

CITIZEN POTAWATOMI NATION
2017 CODES

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CONSTITUTION OF THE CITIZEN POTAWATOMI NATION

PREAMBLE

We, the Citizen Potawatomi Nation, sometimes designated as the Potawatomi Tribe of Oklahoma, in furtherance of our inherent powers of self-government, in order to take advantage of the opportunities for economic independence and social advancement offered by the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1976), do hereby adopt this Constitution pursuant to the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967) which shall supersede the constitution approved by the Secretary of the Interior on October 17, 1938, and ratified on December 12, 1938, and amended on September 27, 1956, December 27, 1960, April 24, 1961, September 21, 1970, April 20, 1983, April 5, 1989, April 8, 1996, and August 16, 2007, with ratification.

ARTICLE 1 – NAME

The official name of this Tribe shall be the Citizen Potawatomi Nation.

ARTICLE 2 – OBJECTIVES

Section 1. The objective of the Citizen Potawatomi Nation in organizing under this Constitution shall be:

- (A) To promote the general welfare of the Citizen Potawatomi Nation and its members by exercising to the fullest extent the inherent powers of self-government vested in the Tribe since time immemorial and any additional powers of self-government vested in the Tribe by Federal or state law.
- (B) To secure for the Tribe and its members the powers, benefits, rights, and privileges provided for in Article 1, Section 8 of the Constitution of the United States, the Act of June 18, 1934 (48 Stat. 984) and the Oklahoma Indian Welfare Act of June 26, 1936, (49 Stat. 1967).
- (C) To secure the powers, benefits, rights, and privileges as provided by any laws of the United States now or hereafter enacted for the benefit of Indians or other citizens of the United States.
- (D) To secure, for the Citizen Potawatomi Nation, a Charter of Incorporation from
- (E) the Secretary of the Interior that allows the tribe to enjoy, those powers specifically mentioned in the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967).

ARTICLE 3 – MEMBERSHIP OF TRIBE

Section 1. The membership of the Citizen Potawatomi Nation shall consist of the following persons:

- (A) All persons of Indian blood who were bona fide members of the Citizen Potawatomi Nation and who were enrolled or were entitled to be enrolled on the official census roll of the Band on January 1, 1937.
- (B) Each child of Citizen Potawatomi Nation Indian blood born since the date of said roll whose parents is, or was, a member of the Tribe.
- (C) Each child of the Citizen Potawatomi Nation Indian blood of a marriage between a member of the Tribe and any other person.
- (D) As used in this Article, the term “a member of the Tribe” means a member of the Tribe at the time of the child’s birth, or, in the case of a post-humous child, if membership rights are claimed through the deceased parent, the parent was a member of the Tribe at the time of death.
- (E) The burden of proof as to eligibility for membership in the Citizen Potawatomi Nation will be on the claimant for membership in each case.
- (F) The Business Committee shall have power to prescribe rules and regulations covering future membership including adoptions and the loss of membership, subject to confirmation by a majority of the votes cast for a General Council referendum containing such rules and regulations in a regular or special election.
- (G) No member of the Citizen Potawatomi Nation may hold membership in any other Indian tribe.

ARTICLE 4 – TRIBAL JURISDICTION

Section 1. The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall, consistent with applicable Federal law, extend to all persons and to all real and personal property, including lands and natural resources, and to all waters and air space within the Indian country, as defined in 18 U.S.C. section 1151 or its successor, over which the Citizen Potawatomi Nation has authority.

Section 2. The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall also, consistent with applicable Federal law, extend outside the exterior boundaries of the Citizen Potawatomi Nation to all tribal members. These powers shall also extend to any persons

or property which are, or as may hereafter be, included with the jurisdiction of the Citizen Potawatomi Nation under any laws of the Citizen Potawatomi Nation, any State, or the United States.

Section 3. The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall be exercised by three separate branches of Tribal Government: Legislative, Executive Officers and Judicial. All legislative powers are embodied in the Tribal Legislature (also called the Business Committee), including appropriation of all tribal moneys. All executive powers are embodied in the Executive, including the management of the business of the Tribe, supervision of tribal employees, enforcement of tribal law, and expenditure of all tribal moneys. All judicial powers are embodied in the Judiciary. Appropriate legislation shall be adopted to provide for a tribal law enforcement agency and other appropriate administrative agencies of the Tribe.

ARTICLE 5 – Citizen Potawatomi Nation Indian Council

Section 1. There shall be a Citizen Potawatomi Nation Indian Council (Council). The membership of the Citizen Potawatomi Nation Indian Council shall be all Citizen Potawatomi Nation Indians, 18 years of age or older who have not been adjudged incompetent by a court of competent jurisdiction.

Section 2. The Business Committee shall provide for the Citizen Potawatomi Nation Indian Council rules of procedure, subject to this Constitution, by appropriate legislation, and the Citizen Potawatomi Nation Indian Council shall exercise such authority and powers as are delegated to it by this Constitution.

Section 3. There is reserved to the Citizen Potawatomi Nation Indian Council the authority to approve all actions of the Business Committee, or to delegate specific authority to the Business Committee to take particular actions, prior to any such action of the Business Committee becoming effective, which results in:

- (A) the appropriation and budgeting of moneys of the Council held in trust by the Tribe as the proceeds of any claim against the United States, including interest earned thereon for expenditure for the benefit of the tribe;
- (B) the sale of any land or interest in lands, and in connection with the purchase of lands or interest in lands, to authorize and cause to be executed a mortgage or encumbrance covering or

extending to property not being purchased.

- (C) approval of any settlement of treaty claim of the Citizen Potawatomi Nation against the United States.

ARTICLE 6 – EXECUTIVE OFFICERS

Section 1. The Executive Officers of the Tribe shall be the Chairman, Vice-Chairman, and a Secretary/Treasurer who shall serve for four year terms of office and until their successor shall be qualified and installed in office.

Section 2. It shall be the duty of the Chairman to preside at all meetings of the Council and the Business Committee and perform all duties appertaining to the office, and the Chairman shall see that the laws of the Tribe are faithfully enforced. The Chairman shall have general supervision of the affairs of the Council and of the Business Committee. The Chairman may veto acts of the Business Committee, which can be overridden by a 10 vote majority of the Business Committee, exclusive of the Chairman, within thirty (30) days.

Section 3. The Vice-Chairman shall perform the duties of the Chairman in his absence or during his incapacity to act as defined by law, and shall undertake such other duties as may be assigned to him by the Chairman or by law.

Section 4. The Secretary/Treasurer shall correctly record the proceedings of all meetings. He shall have custody of the records and all papers of the Council, which records and papers shall be open to inspection during business hours, in his presence, by any member of the Council desiring to read them. He shall keep a correct list of all members of the Council and a correct list of all enrolled members of the Tribe, shall authenticate all accounts or orders of the Council and in the absence of the Chairman and Vice-Chairman, shall call the meetings to order until a Chairman pro tem is selected. He shall render a written report at the annual meeting, and at the expiration of his term of office, the records and all papers in his possession shall be turned over to his successor. He shall issue notices of all meetings and conduct all general correspondence, as directed by the Council or the Business Committee.

The Secretary/Treasurer shall verify all moneys of the Council for an accurate account of receipts and disbursements. The Secretary/Treasurer shall verify all Council moneys entrusted to his care in one or more tribal accounts as may be provided by legislation of the Business Committee, and shall endorse all

disbursements therefrom. The Secretary/Treasurer shall require an annual audit by a competent independent Certified Public Accountant of all moneys of the Council - moneys formerly held in trust by the Bureau of Indian Affairs and subsequent appreciation - which shall be submitted to the General Council annually.

ARTICLE 7 – BUSINESS COMMITTEE

Section 1. There shall be a Business Committee, hereinafter called Tribal Legislature, which shall consist of the Executive Officers as provided in Article 6, five (5) Legislators elected from Oklahoma, and eight (8) Legislators elected from Legislative Districts equally apportioned, within 30%, by population in the remaining States of the United States. Legislators shall serve four (4) year terms of office and until their successors shall be qualified and installed in office.

Section 2. Subject to any limitations in this Constitution, and except for those powers expressly reserved to the Citizen Potawatomi Nation Indian Council by this Constitution, or delegated to another tribal entity by this Constitution, the Legislature is empowered to enact legislation, transact business, and otherwise speak or act on behalf of the Citizen Potawatomi Nation in all matters on which the Tribe is empowered to act now or in the future including the authority to hire legal counsel to represent the Tribe, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior so long as such approval is required by Federal law.

ARTICLE 8 – RECALL

Section 1. The Legislature shall enact a law entitled: The Recall and Removal Act. This legislation shall establish the procedures to be followed in consideration of recall actions. Said Recall and Removal Act shall contain the definitions of misconduct in office which shall subject a tribal officer to a Recall Election. Thereafter, this Act may be amended or repealed only by the Citizen Potawatomi Nation Indian Council at an election conducted pursuant to Articles 9 and 12 of this Constitution. Such Act shall provide that not more than two recall proceedings may be pending in the Tribal Court at any time. A recall proceeding shall not include more than one official, unless the Court consolidates two or more actions for a good cause shown. The Recall and Removal Act shall include the following:

- (A) The Court, pursuant to the rules or civil procedure, shall hear complaints brought by a person alleging misconduct in office by members of the Legislature or Judicial Officers of the Tribe. The

Court shall require, prior to hearing any such action, that the complaining party post a bond in such amount as the Court shall deem proper to guarantee the costs, damages, and attorney fees of the person complained of in the event that the recall action was filed without probable cause to believe misconduct in office had occurred or that the recall action was otherwise filed in bad faith.

- (B) In any such recall action, the Court shall have power, to hear the evidence of the complaining party or parties and to determine whether the act or acts of misconduct in office have been shown by clear and convincing evidence so that a recall election should be held. If the Court determines that a Recall Election should be held, a two-thirds (2/3) majority of those voting in an election held pursuant to Article 12, Section 9, shall be necessary to recall the officer from his office. Any appeal taken of the judgment of the Trial Court ordering a recall election shall be expedited by the Supreme Court.

Section 2. No person may be recalled pursuant to this Article unless at least 5% of the members of the Citizen Potawatomi Nation Council cast ballots in the Recall Election.

ARTICLE 9 – REMOVAL AND FORFEITURE

Section 1. The Legislature, and the Supreme Court in the case of any judicial officers, shall remove any of its members, or a member of the Executive branch, from office for misconduct in office, as defined in the Recall and Removal Act, or upon conviction of such member by any Court of competent jurisdiction of a felony or other offense involving dishonesty or moral turpitude, or if such member becomes ineligible to hold his office under this constitution, by a unanimous vote of the remaining members of that body.

Section 2. Such removal action shall be taken only upon proof by clear and convincing evidence at a formal hearing during which a verbatim transcript and record of the proceeding is made, and at which the party complained of shall have the right to not less than thirty (30) days notice, the right to counsel at his own expense, the opportunity to cross examine witnesses against him, introduce any evidence in his favor, and to otherwise be accorded due process of law.

Section 3. A person removed in such a proceeding shall have the right to appeal the removal directly to

the Supreme Court upon the record established at the hearing. During such appeal, which shall be expedited by the Court, the officer shall be deemed suspended but not removed from office until a final decision of the Court. For purposes of this Article, removal of an Executive Officer from the Legislature shall also be deemed a removal from his Executive Office whether or not specifically stated in the removal action.

ARTICLE 10 – INITIATIVE AND REFERENDUM

Section 1. The members of the Citizen Potawatomi Nation shall have the authority to enact legislation, consistent with this Constitution's delegation of specific powers, by petition to the Legislature bearing the language of the proposed tribal law, the signatures, roll numbers, and current address of at least ten percent (10%) of the Citizen Potawatomi Nation Indian Council, provided, that in the general election upon such proposed legislation which shall be called by the Legislature within ninety (90) days of the receipt of a valid petition, a majority of the voters who cast ballots in such election vote in favor of the proposed legislation. Notice of such referendum election shall be given to the registered voters at least fifteen (15) days prior to such election. The Legislature shall be bound by a vote enacting such proposed legislation into law from the date of the election at which such legislation was enacted until it expires by its own terms or until changed by voters at a subsequent election.

Section 2. The members of the Citizen Potawatomi Nation shall have the authority to reject any legislation action taken by the Legislature by referendum petition to the Legislature bearing the language of the tribal law sought to be rejected, the signatures, roll numbers, and current address of at least ten percent (10%) of the Citizen Potawatomi Nation Indian Council, provided, that in the general election upon such legislation, which shall be called by the Legislature within ninety (90) days of the receipt of a valid petition, a majority of the voters who casts ballots in such election vote against the legislation as enacted by the Legislature. Notice of such initiative election shall be given to the registered voters at least fifteen (15) days prior to such election. If the legislation is rejected by such vote, that enactment is null and void as of the date of referendum.

ARTICLE 11 – COURT

Section 1. The judicial power of the Citizen Potawatomi Nation is hereby vested in one Supreme Court consisting of seven (7) Justices and such inferior courts as may be established by Tribal law.

Section 2. The Courts of the Citizen Potawatomi Nation shall be courts of general jurisdiction and shall further have jurisdiction in all cases arising under the constitution, laws, and treaties of the Citizen Potawatomi Nation. The Supreme Court shall have original jurisdiction in such cases as may be provided by law, and shall have appellate jurisdiction in all cases.

Section 3. The Tribal Courts, in any action brought before them, shall have the power of judicial review, in appropriate cases, in order to declare that legislative enactments of the Legislature or the Council, are unconstitutional under this Constitution or prohibited by Federal statutes and void. In such cases, the Court shall have the authority to declare such act void and to issue injunctive relief. In cases initiated by the Tribal Chairman prior to enforcement of a legislative act, the court shall rule presuming a case in controversy.

Section 4. The Supreme Court Justices and Tribal Court Judges shall be selected by the Legislature and confirmed by the Citizen Potawatomi Nation Indian Council at a general election called for that purpose, and shall serve six (6) year terms and until their successor be duly confirmed and installed. At the expiration of such term, each Justice or Judge may, at his option, be considered for reconfirmation to a new term by the Council.

Section 5. Vacancies in Tribal Judicial Offices may be filled by appointment of the Legislature for the remainder of the unexpired term. Such appointment shall be valid for not more than one hundred twenty (120) days unless the Citizen Potawatomi Nation Indian Council confirms the appointee to complete the remainder of the unexpired term. If no Citizen Potawatomi Nation Indian Council election is called to act upon such appointment within the one hundred twenty (120) day period, the appointment of that person shall not be renewed.

ARTICLE 12 – ELECTIONS

Section 1. The Chairman, Vice Chairman and Secretary/Treasurer shall be elected to a four (4) year term of office and until their successors be qualified and installed in office by a majority vote at an election to be conducted by secret ballot, with absentee voting, on the date of the annual Citizen Potawatomi Nation Indian Council meeting. All elections shall be conducted pursuant to an Election Ordinance adopted by the appropriate legislation of the Citizen Potawatomi Nation Legislature. At the time of their election they shall be not less than thirty-five (35) years of age, and residents

of the State of Oklahoma not less than six (6) months prior to taking office, and not have been convicted of a felony or other serious crime involving incarceration for moral turpitude in any court of competent jurisdiction, or have been incarcerated for a crime for more than six (6) months within ten (10) years previous to the date of the election, unless pardoned.

Section 2. No person shall be allowed to run for, or hold, more than one (1) elected tribal position at any one time.

Section 3. The Legislature serving at the time of this Amendment shall adopt legislation within ten (10) days of adoption of this Amendment describing eight (8) Legislative Districts of equal proportion, within 30%, of members of the Citizen Potawatomi Nation Indian Council living outside of Oklahoma. They shall be numbered one (1) through eight (8) for those Legislative Districts outside of the State of Oklahoma and nine (9) through thirteen (13) for those Legislators within the State of Oklahoma.

Section 4. In order to provide for staggered terms of office, in a special election held within 120 days of the adoption of this Amendment in which eleven (11) Legislators will be elected, one (1) Legislator's first term shall coincide respectively with the term of office of the former Councilman #1 and both of whom shall, at the time of their election and thereafter, be residents of the State of Oklahoma. Two (2) Legislators' first term shall coincide respectively with the terms of office of the former Councilman #2 and all three of whom shall, at the time of their election and thereafter, be residents of the State of Oklahoma. Four (4) Legislators' first term of office shall coincide with the term of office of the Tribal Chairman and all four (4) Legislators shall, at the time of their election and thereafter, not be residents of the State of Oklahoma. Four (4) Legislators' first term of office shall coincide with the terms of office of the Vice Chairman and the Secretary/Treasurer, and all four (4) Legislators shall, at the time of their election and thereafter, not be residents of the State of Oklahoma. Business Committee members in office at the time of this Amendment will serve out their terms of office and may stand for reelection at the next regular election.

Section 5. Legislators whose first term of office expires at the same time as the Tribal Chairman shall reside, one each, in Legislative Districts 1,2,3 and 4. Legislators whose first term of office shall expire at the same time as the term of office as the Tribal Vice Chairman and Secretary/Treasurer shall reside, one each, in Legislative

Districts 5,6,7 and 8. Legislators who live in Oklahoma shall be Legislators 9, 10, 11, 12 and 13.

Section 6. Apportionment of the Legislative Districts and any boundary changes necessary to reflect reapportionment shall occur every ten (10) years, after the initial apportionment and boundary descriptions set by appropriate legislation of the Legislature serving at the time of the adoption of this Amendment.

Section 7. The newly elected officers shall be installed immediately upon their election or at such time as may be provided in the Election Ordinance approved by the Council, or as soon thereafter as any period provided by law for a challenge to the election has expired or as soon thereafter as any dispute regarding the election be finally resolved as provided by law.

Section 8. The incumbent officers as of the date of adoption of this Constitution shall continue to serve until the normal expiration of their terms as provided for in Section 3 of this Article, and the election held upon expiration of those terms shall be the first regular election held pursuant to this Constitution.

Section 9. Special elections for the Recall of Tribal Officials shall be conducted on order of the court by an independent Election Board to be established pursuant to a Recall Election Ordinance prescribed by the Legislature and concurred on by the Council, provided that at least 5% of the members of the Citizen Potawatomi Nation Indian Council, must vote in order for the Recall Election to be valid. Other special elections shall be conducted by the Election Board as required in Article 9 or Article 12, or upon request by resolution of the Legislature.

ARTICLE 13 – MEETINGS OF THE COUNCIL

Section 1. Annual meetings of the Citizen Potawatomi Nation Indian Council shall be held on the last Saturday of June of each year for receiving reports and any other business which may come regularly before the Council. The purpose of the Citizen Potawatomi Nation Indian Council meetings shall be to give information and to discuss any matter pertaining to the Citizen Potawatomi Nation. Any actions taken with respect to the authority reserved to the Council by this Constitution shall be made only by a subsequent election held in accordance with, and within the time specified in the Election Ordinance, which election shall be open to all members of the Council.

Section 2. Such meeting shall be held at the Tribal Office Building designated for that purpose at the

Citizen Potawatomi Nation Capital Complex south of Shawnee, Oklahoma, unless some other point under the jurisdiction of the Citizen Potawatomi Nation is specifically designated in the call.

Section 3. Special meetings of the council may be called at the discretion of the Chairman, and shall be called by him upon the written request of the majority of the Legislature or the written request of five percent (5%) of the members of the Council.

Section 4. The principal object of the special meeting must be stated in the call for same and may include the words “and for the discussion of other business that may be presented.” Unless these words are added, no other business can be discussed except for the object stated in the call. Any actions taken with respect to the authority reserved to the Council by this Constitution shall be made only by a subsequent election held in accordance with, and within the time specified in, the election ordinance, which election shall be open to all members of the Council.

Section 5. Notice of meetings of the Citizen Potawatomi Nation Indian Council shall be given through all appropriate means by the Secretary/Treasurer of the Nation at least ten (10) days prior to the date of such meeting.

Section 6. The agenda for each meeting of the Citizen Potawatomi Nation Indian Council shall be compiled by the Tribal Chairman. Following completion of discussion on all agenda items other tribal business may be discussed, subject to the requirements of Section 4 of this Article.

Section 7. As required, following the meetings of the Citizen Potawatomi Nation Indian Council, the election board shall conduct an election pursuant to the election ordinance to decide the issues approved by the Council.

ARTICLE 14 – MEETINGS OF THE LEGISLATURE

Section 1. The regular meetings of the Legislature shall be held the last Thursday in February, May, August, and November unless otherwise provided by resolution.

Section 2. Special meetings of the Legislature may be called by the Chairman at his discretion, and shall be called by him upon the written request of nine (9) members of the Legislature.

ARTICLE 15 – VACANCIES

Section 1. The Chairman, subject to the approval of the majority of the remaining members of the Legislature,

whether or not the number of remaining members would constitute a quorum shall have the authority to appoint persons to fill any vacancies in any elective office on an interim basis until the next regular election at which time a person shall be elected to serve the remainder of the unexpired term or for a new term in its regular order as the case may be.

Section 2. In case of vacancy in the office of Chairman, the Vice-Chairman shall succeed at once to the office of the Chairman until the next regular election at which the office of Chairman shall be filled for the remainder of the unexpired term or for a new term in its regular order as the case may be.

Section 3. During the period in which the Vice-Chairman serves as Chairman under these circumstances, the Vice-Chairman’s office shall not be considered vacant and he/she shall return to serve the unexpired portion of his/her own term of office (if any) upon election and installation of a Chairman. Should the Vice-Chairman be elected, to the chairmanship, his vacancy shall be filled according to Article 12, Section 1.

ARTICLE 16 – RIGHTS OF PERSONS

Section 1. The Citizen Potawatomi Nation shall not:

- (A) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble or to petition for a redress of grievances.
- (B) Violate the rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
- (C) Subject any person for the same offense to be twice put in jeopardy.
- (D) Compel any person in any criminal case to be a witness against himself.
- (E) Take any private property for a public use without just compensation.
- (F) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.

- (G) Require excessive bail, impose excessive fines, or inflict cruel and unusual punishment.
- (H) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- (I) Pass any bill of attainder or ex post facto law.
- (J) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

ARTICLE 17 – QUORUM

Section 1. Nine (9) members of the Legislature shall constitute a quorum at any meeting.

Section 2. Five percent (5%) of the members of the Citizen Potawatomi Nation Indian Council shall constitute a quorum to transact business at a meeting. Should a quorum not be achieved at a duly-called meeting of the Council, the Legislature may initiate a referendum election on any agenda items which require action by the Council under the authority reserved to it by this constitution. Such referendum election shall be conducted pursuant to the provisions of the election ordinance.

ARTICLE 18 – TRIBAL ENACTMENTS

Section 1. All final decisions of the Council on constitutionally delegated matters shall be embodied in resolutions approved by a referendum election to be held within ninety (90) days. Every resolution of the Council shall begin with the words, “Now, therefore be it resolved by the Council of the Citizen Potawatomi Nation”.

Section 2. All final decisions of the Legislature on matters of temporary interest or matters relating to particular circumstances, officials, or individuals shall be embodied in resolutions. Every resolution of the Legislature shall begin with the words, “Now, therefore be it resolved by the Legislature of the Citizen Potawatomi Nation”.

Section 3. All final decisions of the Council of the Citizen Potawatomi Nation upon ongoing matters necessary to the orderly administration of its delegated powers and authority shall be embodied in ordinances, which may be called statutes, approved by a referendum election held within ninety (90) days. Every ordinance shall begin with the words, “Be it enacted by the Council of the Citizen Potawatomi Nation”.

Section 4. All final decisions of the Legislature of the Citizen Potawatomi Nation upon ongoing matters necessary to the orderly administration of tribal affairs, or having general or continuing application shall be embodied in ordinances, which may be called statutes. Every ordinance shall begin with the words, “Be it enacted by the Legislature of the Citizen Potawatomi Nation”.

ARTICLE 19 – AMENDMENTS

Amendments of this Constitution may be proposed by a unanimous vote of the Legislature or by a petition signed by thirty percent (30%) of the members of the Tribal Council, shall be submitted to a referendum vote of the members of the Tribe, and shall be effective if ratified by a 2/3 majority vote of those registering and voting in an election called for that purpose under the supervision of the Election Committee.

ARTICLE 20 – SAVINGS CLAUSE

Any previous ordinances or resolutions enacted by the Tribe shall continue in full force and effect to the extent they are not in conflict with this Constitution unless revoked or amended in the future.

ARTICLE 21 – RATIFICATION

This Constitution, when ratified by a majority vote of the qualified voters of the Citizen Potawatomi Nation voting at an election called for that purpose, in which at least thirty percent (30%) of those entitled to vote shall cast their ballots, shall be effective from the date of ratification.

CITIZEN POTAWATOMI NATION
RELINQUISHMENTS AND DISENROLLMENTS
TITLE 2

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CHAPTER ONE

RELINQUISHMENTS AND DISENROLLMENTS

Section 2-1-101 Relinquishments

- (A) Any adult member of the Citizen Potawatomi Nation may voluntarily relinquish their membership. Such a relinquishment must be in writing, and the signature must either be notarized or witnessed by two persons. A person who has relinquished their membership in the Citizen Potawatomi Nation as an adult, over the age of Eighteen (18), may not reapply for membership.
- (B) The membership of any member of the Citizen Potawatomi Nation who is not at least Eighteen (18) years of age may not be relinquished by anyone. The only exception is when the parent or guardian desires to enroll the minor child into another federally recognized Indian Tribe. However, this may only be accomplished on a conditional relinquishment form. A person whose membership in the Citizen Potawatomi Nation was relinquished by a parent or guardian while the person was a minor may reapply for membership after reaching the age of Eighteen (18).
- (C) Any member wishing to relinquish will be encouraged to do so on a conditional relinquishment form. In such case, the relinquishment will become effective upon the acceptance of that individual into membership of another Tribe. The member's name will not be removed from the Citizen Potawatomi Nation until documentation of the acceptance into the other Tribe's membership is received.
- (D) Should a member insist upon relinquishing in writing, without using the conditional relinquishment form, the Tribe will comply with the member's wishes and will remove the member's name from the Citizen Potawatomi Nation Tribal Roll on the effective date specified in the submitted written relinquishment.

Section 2-1-102 Disenrollments

The Director of Tribal Rolls shall bring to the attention of the Legislative Committee on Enrollment the names of such Tribal members as an examination of the records of the enrollment office indicate, might be subject to disenrollment. Should the Legislative Committee on Enrollment determine that disenrollment action is necessary; the procedures described in this section

shall be followed. Any person whose disenrollment has been completed shall not be eligible to reapply for membership.

- (A) *Grounds for disenrollment.* A Tribal member shall be subject to disenrollment if records reveal one or more of the following conditions exist:
- (1) The member was erroneously enrolled (that is, they did not meet the eligibility criteria in existence at the time of their enrollment).
 - (2) The member has accepted benefits of land or money (or if a minor, a parent or guardian has accepted benefits of land or money on the minor's behalf) as an enrolled member of another Indian Tribe after the effective date of the Revised Constitution of the Citizen Potawatomi Nation.
 - (3) The member is currently enrolled with another Indian Tribe and has either refused to relinquish membership in the other Tribe or has failed to respond to a notice of the requirement to relinquish membership in the other Tribe.
- (B) *Procedures for disenrollment.* Members identified as being subject to disenrollment pursuant to subsection (1) of this section shall be notified by certified mail, return receipt requested, of the intent to disenroll. Included in the notice shall be the date set for a hearing before the Legislative Committee on Enrollment to consider the matter. Following the hearing, whether or not the affected member makes any appearance or response, the Legislative Committee on Enrollment shall determine if the member shall be disenrolled. The disenrolled member shall be notified of the action taken by certified mail, return receipt requested. Such notice shall include the right to appeal the Legislative Committee on Enrollment decision to the Legislature within Thirty (30) days of the date of the receipt of the notice. Should such an appeal be timely filed, the Legislature shall make a decision on the disenrollment. The decision of the Legislature shall be final. If no appeal is timely filed, the decision of the Legislative Committee on Enrollment shall be final.

CITIZEN POTAWATOMI NATION
**TRIBAL SOVEREIGNTY AND EXTRNERAL
TITLE 3**

INDEX

CHAPTER

SECTION

1 Tribal Sovereignty

101

CHAPTER ONE
TRIBAL SOVEREIGNTY

Section 3-1-101. Sovereign Immunity

Noting in this Code shall be construed to constitute a waiver of the Tribe's sovereign immunity.

CITIZEN POTAWATOMI NATION
ELECTION CODE
TITLE 4

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CHAPTER ONE ELECTION CODE

Section 4-1-101 Citation

This enactment may be cited as the Election Ordinance of the Citizen Potawatomi Nation.

Section 4-1-102 Purpose

The purpose of this ordinance is to establish the rules and procedures for conducting elections authorized in the Revised Constitution of the Citizen Potawatomi Nation as adopted August 16, 2007.

Section 4-1-103 Definitions

The following definitions shall control the meanings of the following terms:

- (A) "Tribal Court" shall mean the Citizen Potawatomi Nation Tribal Courts.
- (B) "Legislative Ordinance" and "Legislative Resolution" shall mean the official document, and its adoption by the Legislature, by which the Legislature acts on behalf of the Nation under the authority granted to it by the Revised Constitution.
- (C) "Nation" and all derivatives thereof shall mean the Citizen Potawatomi Nation.
- (D) "Tribe" and all derivatives thereof shall mean the Citizen Potawatomi Nation.
- (E) "Legislative District" shall mean the geographical area from which a Legislator or Executive Officer may be elected.
- (F) "Revised Constitution" shall mean the Revised Constitution of the Citizen Potawatomi Nation as adopted by the Nation on August 16, 2007.
- (G) "Elective Office" shall mean an elected office of the Citizen Potawatomi Nation.

Section 4-1-104 Time Periods

Unless otherwise provided herein, all of the time periods established herein for filing, challenges, contests, or appeals are jurisdictional and cannot be waived.

Section 4-1-105 Creation

An Election Committee is hereby created and established having the duties and powers hereinafter set forth. The Election Committee shall conduct all elections and referendum votes in accordance with the Tribal Constitution and with this ordinance.

Section 4-1-106 Composition

The Election Committee shall consist of five persons: Chairman, Vice-Chairman, Secretary, Assistant Secretary, and a Marshal.

Section 4-1-107 Appointment

Subject to confirmation by the Legislature, the Chairman of the Citizen Potawatomi Nation shall appoint the members of the Election Committee and designate the Chairman of the Committee:

- (A) On or before the first Wednesday in October.
- (B) By resolution in substantially as set forth in Appendix Form 1. (Resolution Format)
- (C) If a vacancy occurs on the Election Committee, the Chairman shall fill the vacancy within thirty (30) days.

Section 4-1-108 Oath

Prior to entering into the duties of office, each Election Committee member shall take the following oath of office to be administered by a member of the Executive Committee or a Tribal Court Judge:

"I, _____, do hereby solemnly swear, or affirm, that I will support, protect and defend the Constitution and Laws of the Citizen Potawatomi Nation, and will cause the elections of the Citizen Potawatomi Nation to be conducted fairly, impartially, and in accordance with the laws of the Citizen Potawatomi Nation, so help me God."

Section 4-1-109 Officer Selection

The Chairman of the Citizen Potawatomi Nation shall select a Committee Chairman from among the Election Committee members. A Vice-Chairman, Secretary, Assistant Secretary, and a Marshal shall be selected by the Election Committee, who shall certify in writing to the Legislature the names of the persons so selected.

Section 4-1-110 Sub-Appointments

The Election Committee may appoint such observers, clerks, counters, marshals, and alternates, as necessary to conduct the election and shall certify such appointments in writing to the Chairman of the Citizen Potawatomi Nation.

Section 4-1-111 Filing Certifications

Copies of all certified appointments and sub-appointments shall be filed with the Secretary of the Citizen Potawatomi Nation and be open for public inspection at the Nation's headquarters in Shawnee, Oklahoma.

Section 4-1-112 Eligibility

No person may be appointed to the Election Committee unless eligible and qualified.

(A) A person is eligible if:

- (1) A member of the Tribe.
- (2) 21 years of age or older

(B) A person is not qualified for appointment if:

Under any court-ordered guardianship due to mental incapacity,

- (1) The natural or adopted brother, sister, parent, child, or spouse to a current candidate,
- (2) A current candidate for election to any tribal office to be decided by that election,
- (3) Ever convicted of a felony,
- (4) Ever found civilly or criminally liable of issuing a false publication in connection with a tribal election or criminal guilt of a non-felonious crime involving the election laws of the Tribe, or
- (5) Ever found civilly or criminally liable for breaching a fiduciary or contractual duty to the Tribe.

Section 4-1-113 Term

Each Election Committee member shall serve from appointment until the election results for all offices have been certified.

Section 4-1-114 Compensation

Members of the Election Committee are to receive only such compensation, traveling expenses, or stipend, as may be authorized by the Legislature.

Section 4-1-115 Records

The Election Committee shall maintain complete and accurate minutes of meetings and retain all documents pertaining to an election. These records shall be filed with the Secretary of the Citizen Potawatomi Nation within forty-eight (48) hours after the conclusion of each meeting and shall be open for public inspection during normal office hours at the Nation's headquarters in Shawnee, Oklahoma.

Section 4-1-116 Duties

Each Election Committee member has the duty to become thoroughly familiar with this ordinance and the Tribal Constitution and by-laws to see that these laws are rigorously followed, and to immediately document

and report any violations to the marshal or other law enforcement personnel. In addition:

- (A) Chairman: The Chairman shall be the presiding member and responsible for the overall activities of the Election Committee, including safekeeping of the ballots and ballot box(s).
- (B) Vice-Chairman: The Vice-Chairman shall assist the Chairman, preside in his absence and assist in the conduct of the election.
- (C) Secretary: The Secretary shall record and maintain accurate minutes of meetings and records pertaining to an election. The Secretary shall verify the authenticity of these records and be responsible for providing all Election Committee certifications except where otherwise provided herein after each Election Committee meeting. All records shall be filed with the Secretary-Treasurer of the Tribe within two (2) working days after each meeting.
- (D) Assistant Secretary: The Assistant Secretary shall assist the Secretary and serve in the Secretary's absence, and assist in the conduct of the elections.
- (E) Marshal: The Marshal shall maintain order at the polls, and enforce the election laws. The Marshal shall have these powers from the time the polls open until declaration of all election results is final.
- (F) Clerks: Appointed Clerks shall assist in the conduct of the elections, and shall check off the voters on the list of qualified voters. Each Clerk shall keep a separate record of the members voting which shall be cross-checked frequently by the Chairman or his designate, to insure accuracy.

Section 4-1-117 Procedure

The Election Committee acts only by majority vote of a quorum at a properly called and noticed meeting.

- (A) Quorum. A quorum of the Election Committee shall consist of any three (3) members.
- (B) Meetings. Meetings may be called at any time by the Chairman, or by request of a majority of the Election Committee. In the event the Chairman fails to call a meeting as requested, the other members of the Election Committee who request a meeting may convene upon prior registered mail notification to all members

of the Election Committee and the Secretary - Treasurer.

- (C) Where. All meetings shall be at the tribal office unless notice of the place and time of the meeting is conspicuously posted in the tribal office at least forty-eight (48) hours prior to the meeting.

Section 4-1-118 Rules

Upon the conclusion of each election, the Election Committee shall have the authority to recommend such rules, not inconsistent with this Ordinance, as may be necessary and proper for the conduct of tribal elections. Such rules shall be approved by the Legislature. Copies should also be posted in prominent places in the tribal offices and such other places as the Election Committee may deem advisable. A copy of the rules should be promptly delivered to the tribal newsletter for publication.

Section 4-1-119 Election Days

All tribal elections and referendum votes, unless otherwise specifically provided by law, shall be on a Saturday. Regular elections of members of the Legislature and Executive Officers shall be held on the last Saturday in June of each election year. All other required Citizen Potawatomi elections or constitutionally mandated elections shall be held upon call of the Legislature or the Election Committee as provided by the Tribal Constitution and by-laws.

Section 4-1-120 Forms

The forms contained in the Appendix of Forms are sufficient under this ordinance and are intended to indicate the simplicity and brevity of statement which this ordinance contemplates. Except as provided herein, all forms needed for Citizen Potawatomi elections and referendum votes shall be prescribed and provided by the Election Committee. The Citizen Potawatomi Nation shall be responsible for the cost of producing all forms.

Section 4-1-121 Instructions to Voters

Instructions to voters describing the manner of casting one's vote shall be posted at the polling place and issued upon request to all eligible voters with a ballot.

Section 4-1-122 Public Information

The Election Committee shall widely disseminate to the tribe information about the dates and times of election, locations of polling places and other election-related data. The Election Committee is authorized to publish in the tribal newsletter and in other newsprint media names of candidates, election dates, polling places,

election results, and other information as necessary to discharge its duties.

Section 4-1-123 Polling Place

The polling place of all Citizen Potawatomi elections shall be the Nation's headquarters in Shawnee, Oklahoma and the mailing address for the submission of all absentee ballots shall be as designated by the Election Committee.

Section 4-1-124 Ballot Box

Locked empty ballot boxes shall be provided and shown at the polling place prior to voting. Each ballot box shall be constructed of substantial material and shall be equipped with a lock so that the keys of one lock will not unlock others. Each box shall be equipped with a slot or opening in the top through which a ballot may be inserted, but so the box must be unlocked before the ballots can be removed.

Section 4-1-125 Access to Ballots

The Election Committee Chairman and Election Committee Secretary shall retain ballot box keys in their custody until all election results are finally certified. Only those authorized by this ordinance shall have access to the ballot boxes at specific times designated by the Election Committee.

Section 4-1-126 Voting Booths

At least two voting booths shall be provided at the polling place. The booths shall be constructed with a counter shelf so that:

- (A) No more than one person is in the booth, and
- (B) Voters can mark their ballots in secrecy.

Section 4-1-127 Poll Watchers

Each candidate may designate, in writing, one person who is not a candidate, to watch the activities at the polls.

- (A) A Poll Watcher is eligible if:
 - (1) A member of the Tribe.
 - (2) 21 years of age or older.
- (B) A Poll Watcher is not qualified for appointment if:
 - (1) Under any court-ordered guardianship due to mental incapacity.
 - (2) Ever convicted of a felony.
 - (3) Ever convicted of non-felonious crime involving the election laws of the Tribe, or

- (4) Ever found civilly or criminally liable for breaching a fiduciary or contractual duty to the Tribe.

Such designation must be presented to Election Committee Officials in writing one week prior to the election. Poll Watchers may not interfere in any way with the conduct of the election, but may observe only. Any poll watcher interfering with the election or attempting to electioneer in any way may be ejected from the poll area by a marshal or law enforcement officer.

Section 4-1-128 Electioneering and Loitering

No person shall be allowed to electioneer inside or within one hundred (100) feet of the polling place where and when the election is in progress. Neither will any loitering be permitted in the polling places during voting hours. Election officials at the polling place have the duty to obtain such assistance as may be required to maintain order about the building during the progress of the election.

Section 4-1-129 Voter Conduct

No intoxicated person will be permitted in the polling place. No person will be permitted to conduct himself in such a manner which may interfere with the election progress. No person shall engage in any activity which serves as a detriment to the election progress or which inhibits the rights of another to vote.

Section 4-1-130 Anonymous Election Material

It shall be unlawful for any person, firm, corporation, partnership, organization, or association to write, print, post, or distribute or cause to be written, printed, posted or distributed a statement, circular, poster or advertisement which is designed to influence the voters on the nomination or election of a candidate or to influence the voters on any constitutional or statutory amendment or on any other issue in a Potawatomi tribal election, or to influence the vote of any member of the Legislature or Tribal Council, unless there appears in a conspicuous place upon such circular, poster, or advertisement, either the name and address of the person, if an individual, or the name and address of the president, chairman, or secretary, or of two (2) officers of the organization, if an organization. Persons violating this act shall be guilty of a crime punishable by the maximum incarceration and fine allowed by law.

Section 4-1-131 Application

The provisions of Section 130 shall not apply to any matter published in any newspaper, magazine, or jour-

nal recognized and circulating as such, which matter is published upon its own responsibility and for which it shall not charge or receive any compensation whatsoever, nor shall the provisions of this Chapter apply to any publication issued by any legally-constituted election officials in the performance of their duties. For purposes of this provision only, a newspaper, magazine or journal is a publication which is published at intervals of either one (1) month or less, on a continuous basis, and has been so published on said continuous basis for the six (6) months prior to the date when ballots can first be requested by tribal members for elections of Legislature members at the General Council. The newspaper, magazine or journal must also bear the address of the.

As amended by Ordinance #09-02 enacted by the Citizen Potawatomi Legislature on December 15, 2008.

Section 4-1-132 Public Disclosure of Campaign Contributions

Each candidate for elective offices in the Citizen Potawatomi Nation shall file a public disclosure statement that identifies all persons, corporations, groups, etc., contributing in excess of Fifty Dollars (\$50.00) to that individual's campaign. This disclosure must be made to the Secretary-Treasurer of the Tribe no later than four (4) weeks after the day of the election. If no contribution has been received, a statement must be filed stating so. Failure to file public disclosure under this Chapter is punishable by a fine of Five Hundred Dollars (\$500.00) and possible disqualification from the election if the individual falsifies or refuses to file the required reports.

Section 4-1-133. No Posting of Tribal Campaign Election Literature or Signs on Tribal Property

It shall be unlawful for any person, firm, corporation, partnership, organization or association to post election literature, material or signs on Tribal property. Posting of literature, signs or other partisan political advertisement is strictly prohibited. The distribution of tribal campaign literature will be allowed on Election Day at the tribal polling place, subject to specifications in Section 4-1-128.

Nothing in this Chapter shall be interpreted as a general prohibition against the placement of advertisements in the tribal newspaper.

As amended by Ordinance #09-02 enacted by the Citizen Potawatomi Legislature on December 15, 2008.

Section 4-1-134 Candidates Employed by the Tribe

Candidates who are employed with the Citizen Potawatomi Nation must comply with the Citizen Potawatomi Nation Employee Handbook in regard to campaigning or candidacy for office.

Section 4-1-135 Eligibility

Every tribal member 18 years of age or older is eligible to vote in accordance with the Revised Constitution.

Section 4-1-136 Voters Lists

The Secretary of the Citizen Potawatomi Nation shall have the duty to compile from the tribal membership rolls, a voter list of all persons who will be eligible voters on the date scheduled for the election and shall certify the voter list and:

- (A) Present a certified copy to the Election Committee no later than the first business day in January prior to the election, except for unforeseen circumstances.
- (B) Maintain at least one certified copy of the names of the eligible voters of each Legislative District at the Nation's headquarters in Shawnee, Oklahoma for public inspection during regular business hours no later than the second Monday in December.
- (C) Maintain at least one (1) certified copy of the names of the eligible voters of each Legislative District at each polling place on Election Day to verify the eligibility of those presenting themselves to vote.

Section 4-1-137 Who May Challenge

Any person may challenge the eligibility of anyone whose name appears on the voter list, or may apply to have his name added to the voter list.

Section 4-1-138 How To Challenge

A voter list challenge is initiated by filing a written petition with the Election Committee. No special form of petition shall be required although the petition shall:

- (A) Clearly indicate the substance of the challenge,
- (B) Specify the name, or names challenged
- (C) Set forth the relief requested,
 - (1) To add a name, or
 - (2) To delete a name, and
- (D) Include supporting evidence.

Section 4-1-139 Time for Challenge

A challenge must be initiated no later than ten (10) days after the Tribal Secretary deposits the certified voter list in the tribal office.

Section 4-1-140 Decision

The Election Committee should render a decision on a challenge within ten (10) days of filing. Failure to timely act will be considered a denial of challenge.

Section 4-1-141 Appeal

Any party aggrieved by the action or inaction of the Election Committee may thereafter appeal to Tribal Court.

Section 4-1-142 Appeal Time

An appeal must be filed within five (5) working days of the publication of the decision by the Election Committee.

Section 4-1-143 Appeal Parties

The individual members of the Election Committee and Legislature shall not be named as defendants in an appeal. The tribal attorney or the Tribal Chairman's appointee shall represent the Election Committee, Legislature and/or Executive Officers, under the direction of the Tribal Chairman, and the Court shall expedite such case so as to reach a final decision prior to Election Day. No election shall be postponed because of pending voter list challenge.

Section 4-1-144 Eligibility to File

In order to file for any office, a candidate must be eligible and qualified:

- (A) A person is eligible to be a candidate for a Legislative Office if:
 - (1) Eighteen (18) years of age or older,
 - (2) A member of the Tribe, and
 - (3) Physically residing within the respective
 - (4) Legislative District continuously for the period of not less than six (6) months prior to the election.
- (B) A person is eligible to be a candidate for an Executive Office if:
 - (1) Thirty-five (35) years of age or older,
 - (2) A member of the Tribe, and
 - (3) Physically residing within the State of Oklahoma continuously for the period of not less than six (6) months prior to the election.

(C) A person is not qualified for an elected office if:

- (1) Ever convicted of a felony, or other offense involving dishonesty while holding an elected tribal office,
- (2) Ever found civilly or criminally liable for a breach of fiduciary duty to the Nation or misconduct in elected office, or
- (3) Ever impeached or recalled from an elected tribal office.
- (4) Holds membership in any other Indian Tribe or Nation and/or accepted land or monetary benefits from another Tribe after August 16, 2007.

Each successful candidate for an Executive Office in the Citizen Potawatomi Nation must submit a completed personal information form containing their personal financial information to the Comptroller of the Currency as required under the Standard Change of Control application form for National Banks no later than seven (7) days after the election results are certified. This statement will be incorporated into the candidates filing form.

As amended by Ordinance #09-02 enacted by the Citizen Potawatomi Legislature on December 15, 2008.

Section 4-1-145 Ballot Eligibility

To be eligible to seek election and be placed on the ballot, a person must timely file for that office.

Section 4-1-146 Filed Candidate

To be a filed candidate, one must:

- (A) Be eligible to file,
- (B) Timely file a declaration of candidacy on the appropriate form with the Secretary-Treasurer of the Citizen Potawatomi Nation or his designee or the Election Committee or their designee.
- (C) Timely pay a filing fee of one hundred-fifty dollars (\$150.00) upon filing by guaranteed check (such as cashier's or official bank check.)

Section 4-1-147 Filing Period

A candidate must file by United States Mail, received no later than the end of the filing period, or 5:00 p.m. of the second Wednesday of January, or as designated by the Legislature.

Section 4-1-148 Form of Declaration

On the approved form, the declaration of candidacy must be by affidavit and contain the following statement:

"I hereby consent to the publication of background information of record available from the National Crime Information Center, the Citizen Potawatomi Nation Tribal Court, plus tribal employment history relating to my personal behavior that has been addressed by formal disciplinary action for misconduct or dishonesty. I will have the right to simultaneously publish a sworn statement of explanation accompanying this information containing no names of present or previous tribal employees, No information that can be used for identity theft will be published."

plus sufficient information for the Election Committee to determine that the candidate is eligible to file, is seeking a particular office, and has complied with this ordinance. The declaration should be as shown in Appendix Form 2. Any reasonable copy of the form may be used.

As amended by Ordinance #09-03 enacted by the Citizen Potawatomi Legislature on February 12, 2009.

Section 4-1-149 Names of Candidates

Candidates must file as legally named on the tribal rolls. Each candidate may specify one (1) nickname to be placed on the ballot alongside the candidate's true name. No nicknames may be used if identical or substantially similar to the name or nickname of another candidate. Should a dispute over the use of a name arise, the Election Committee's decision shall be final and such decision shall not be subject to appeal. To specify a nickname, a candidate must affirm in the declaration of candidacy that:

- (A) The candidate is known by the nickname, and
- (B) The nickname is not being used for any other purpose than to accurately identify the candidate.

Section 4-1-150 Acceptance

The Election Committee shall accept any filing on the approved form by a person which, on its face, appears valid. That is, shows the candidate filing is eligible, qualified, and has timely filed, and tendered the filing fee. Acceptance shall entitle the candidate to have his name appear on the ballot unless the candidate withdraws as hereinafter set forth or unless a contest to his candidacy is sustained in the manner hereinafter described.

Section 4-1-151 Certification of Slate

As soon as practical after the filing period closes, the Election Committee shall file a written certification of the slate of candidates for the election with the Tribal Secretary. The certification shall also indicate all filings not accepted and the reasons for non-acceptance.

Section 4-1-152 Use of Tribal Newspaper

After filing closes, the tribal newspaper will provide an equal amount of free space in the next edition for all candidates appearing on the certified slate. The purpose of allowing the free space is to allow the candidates to identify themselves to the voters. All other space in the tribal newspaper shall be available to candidates on a set-fee.

The Election Committee shall publish Appendix Form 4 for each candidate in the HowNiKan, up to a full page, allowing sworn Candidate Comments of a maximum of five full lines for each separate listed incident.

The contents of free and paid advertisements shall be reviewed to insure that they do not contain libelous, slanderous, false, or misleading statements. Deadlines for receiving advertisement copy shall be set by the editor and published in the newspaper.

As amended by Ordinance #09-03 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 4-1-153 Filing for More Than One Office Prohibited

No person shall be a candidate for more than one (1) office during any one (1) election, nor may a tribal office holder seek another office except when the office holder's term expires contemporaneously with the election. Each candidate must specify which office is being sought.

Section 4-1-154 Withdrawals

Any candidate for office may withdraw a Declaration of Candidacy by filing a written Notice of Withdrawal with the Election Committee at any time prior to the election. The withdrawal notice shall contain the candidate's name, the office sought, and shall be notarized or sworn to before a person authorized to administer oaths. A timely withdrawal is final. Notice shall be by certified mail.

Section 4-1-155 Procedure on Withdrawal

If a candidate withdraws, the Election Committee shall post notices to that effect at all polling places and with-

in the voting booths, and may line-through or otherwise obliterate the candidate's name from the ballot. Any votes cast for a withdrawn candidate shall be rejected.

Section 4-1-156 Kinds

The certified slate may be challenged either because a candidacy was allegedly wrongfully certified or because a person's attempted filing was allegedly wrongfully rejected. Any challenge of a candidate or to the certified slate must be made within five (5) working days after the slate has been certified and posted to be a valid challenge.

Section 4-1-157 Who May Challenge

Any candidate may challenge the eligibility of any other candidate for the same office. If only one (1) candidate has filed for an office, any person on the voter list may challenge the eligibility of that candidate. Only the person whose filing is not accepted may challenge the non-acceptance.

Section 4-1-158 How To Challenge

A challenge must be initiated by filing a written petition with the Election Committee. Each petition shall state with particularity the reasons for the challenge.

Section 4-1-159 Hearing

Upon receiving a candidacy challenge, the Election Committee shall immediately deliver copies to the challenged candidate and all other candidates for that office. A hearing on the challenge must be held within five (5) days of receipt of challenge. The Election Committee must render a decision on the challenge within seventy-two (72) hours of commencing a hearing. No formal pleadings are required. The Election Committee may subpoena witnesses and take testimony under oath. The challenger has the burden of proof.

Section 4-1-160 Appeal

Any proper party to a candidacy challenge aggrieved by the Election Committee decision may appeal to the Tribal Court.

Section 4-1-161 Appeal Time

An appeal must be filed with the Tribal Court on or before the expiration of two (2) business days following announcement of the Election Committee decision.

Section 4-1-162 Relief

The appellant shall have the burden of proof. The Tribal Court shall either:

(A) Affirm the Election Committee decision.

- (B) Reverse the Election Committee decision and depending upon which is appropriate, add or strike a candidate's name from the slate certification.

Section 4-1-163 Time for Declaration

The Tribal Court has ten (10) days to act on the appeal proceeding Election Day. Failure of the Tribal Court to render a decision within twenty (20) days is an affirmation of the Election Committee's decision.

Section 4-1-164 Candidate's Names

The name of any candidate for office shall be printed on the official ballot as set forth in the declaration of candidacy without any prefix, suffix, or title. A nickname may be included if properly requested. Positions on the ballot will be determined by incumbency first with the remaining candidates for a particular office being placed on the ballot in alphabetical order. As soon as the candidates filing period closes and period challenges expire without a timely challenge, the Election Committee will prepare a ballot. If candidacy challenge is filed, the ballot will be prepared as soon as the challenge is resolved.

Section 4-1-165 Unopposed Candidates

Any candidate who is unopposed for an office shall:

- (A) Appear on the ballot with the designation "unopposed" printed next to his name, and
- (B) On Election Day be deemed elected to that office.

Section 4-1-166 Ballot Care

- (A) Specific instructions to the voter may be printed at the top of the ballot. Ballots shall not be numbered or show any other lettering or identifiable markings, unless such markings be on a perforated "tear-off" slip to be removed prior to placing the ballot in the ballot box.
- (B) Only one (1) ballot shall be cast by each eligible voter.
- (C) A ballot shall be cast only after the voter has signed the poll register unless voting by absentee ballot.
- (D) Election Committee officials shall account for all "ballots."
- (E) A ballot shall be issued to each eligible voter by mail or through distribution at the tribal offices by the Election Committee.

Section 4-1-167 Eligibility

Any voter can vote by absentee ballot.

Section 4-1-168 Application

Requests for absentee ballots may be written, printed or typed and must include the correct mailing address, roll number, date of birth, and legal signature of the person making the request. These requests must be mailed to the Post Office Box designated by the Election Committee.

Section 4-1-169 When To Apply

Requests to vote an absentee ballot must be post-marked not less than twenty (20) days prior to the election.

Section 4-1-170 Receiving Ballot and Absentee Voter List

After the final certification of the slate of candidates has been made, the Election Committee will have until March 1st or as soon as practicable thereafter to print the ballots. Ballots will then be mailed to the voters no earlier than May 1st or later than June 20th upon receipt of an appropriate and timely request.

The Election Committee shall maintain an accurate written record ("Absentee Ballot List") of all ballots so issued (including the name, address, roll number, and legal signature of the voter to whom each absentee ballot was issued, and the date of the issue).

Section 4-1-171 Voting

Those voting by absentee ballot shall mark their ballots, seal them in an inner envelope, and see that the absentee ballot is timely delivered. Only the outer envelope shall have the voter's name, return address, roll number and legal signature written upon it. A written reminder of the requirement of the specified information to be placed on the outer envelope shall be conspicuously printed on the outer envelope and on the ballot. Ballots will not be counted unless legal signature and role number is provided.

Section 4-1-172 Delivering Completed Ballot

Those wishing to vote by absentee ballot must see that their outer envelope with enclosed inner envelope and absentee ballot are delivered to the designated post office box not later than 10:00 a.m. of the last Saturday in June unless otherwise provided for by the Legislature.

Section 4-1-173 Handling

All absentee ballots received by the Election Committee shall remain in the Post Office or sealed locked bal-

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lot boxes provided for that purpose until 8:00 a.m. of Election Day, at which time the Chairman of the Election Committee, or an election official designated by the Chairman of the Election Committee, and at least one other election official shall:

- (A) Receive the ballots from the post office,
- (B) Personally transport the ballots to the polling place,
- (C) Deliver the ballots immediately, still sealed, to the remaining members of the Election Committee,
- (D) Deposit the ballots unopened in a special locked ballot box, and,
- (E) Tabulate the ballots by election officials in the presence of candidate poll watchers.

In the event of a large mail-in vote, the Election Committee has the option to verify (not count) the returned absentee ballots prior to Election Day. Prior to an official meeting of the Election Committee, the procedure will involve: 1) obtaining the envelopes from the post office; 2) bringing the envelopes to the court room; 3) certifying the identification of the voter on the outer envelope in the presence of a poll watcher (if appointed) and a tribal police officer; and 4) placing the envelopes in a sealed locked ballot box or returning them to the Post Office.

Section 4-1-174 Procedure Mandatory

No absentee ballot will be received at any time or by other means than provided herein.

Section 4-1-175 Voting Period

The polls shall be opened at each polling place from 7:00 a.m. until 2:00 p.m. Saturday the day of General Council meeting. Any voter in line at the polling place at 2:00 p.m. but unable to cast a ballot before 2:00 p.m. shall be allowed to cast a vote.

Section 4-1-176 Voting

All voting is by secret ballot. Upon being identified as an eligible voter by the presentation of a Citizen Potawatomi Enrollment Card containing the member's photograph, or the presentation of an older Citizen Potawatomi Enrollment Card without the member's photograph and a second form of photographic identification, and verification of the prospective voter being on the official voter's list and not having previously received a ballot, each prospective voter shall:

- (A) Sign his name on a voter register, kept for that

purpose, to acknowledge receipt of the ballot,

- (B) Be handed an unused ballot by an election official,
- (C) Vote in privacy, in a voting booth, by marking the box opposite the name of the candidate supported by the voter.
- (D) Fold the ballot so the choice cannot be seen by others, and
- (E) Personally deposit the ballot in the ballot box.
- (F) If electronic machines are used to tabulate the vote, the voter shall insert the ballot into the machine or the ballot shall be secured in a locked box until such time as it may be inserted.

Members of the Election Committee may, at their discretion, require a second form of identification beyond the Citizen Potawatomi Enrollment Card.

Section 4-1-177 Voter Assistance

The election officials may allow a voter to obtain the assistance of any person in casting a vote if the voter is physically unable to cast a ballot and assistance, without previous suggestion, is requested. The Election Committee shall decide whether assistance may be rendered which decision shall be final and unappealable.

Section 4-1-178 Marking the Ballot

A ballot shall show only the marking of the voter's choice and shall not show more choices than the election calls for. A person may choose not to vote for any candidate for a particular office. However, if a voter marks a ballot so that the vote is apparently for more than one candidate for a single office or for a candidate not properly listed, or bearing any other such material errors, the ballot will not be counted, but will be marked by an official, and retained as hereinafter provided. Voters voting in person, and not by absentee ballot, who mark a ballot improperly may ask for another ballot.

Section 4-1-179 Mutilated Ballots

If a voter mutilates a ballot or renders the ballot unusable another may be obtained, and the mutilated ballot shall be folded and marked "mutilated" in ink. Each member of the Election Committee on duty at the polling place shall sign below this marking and the mutilated ballot shall be placed in a large envelope marked "mutilated ballots." The envelope containing all mutilated ballots shall be placed in the ballot box at the end of the voting.

Section 4-1-180 Unused Ballots

Ballots unused at the end of the voting shall be tied together, marked “unused” in ink, signed by at least two (2) election officials, and placed in the ballot box at the end of the voting.

Section 4-1-181 The Tally

All election material shall be transported to the counting room. Thereafter, the Election Committee shall:

- (A) Unlock the ballot box(s),
- (B) Remove the regular ballots, and
- (C) Tabulate the vote.
- (D) If electronic machines are used, tabulation of the vote is done as soon as the voter completes his ballot and inserts it into the machine or as soon as reasonable possible thereafter.

Section 4-1-182 Verifying the Absentee Ballots

The Election Committee shall verify the absentee ballots. Each outer envelope shall be opened, but the inner envelope shall remain unopened at that point. The Chairman shall then determine:

- (A) Whether the person whose name is signed to the outer envelope and affidavit is a qualified voter,
- (B) Whether the voter is on the absentee ballot list.

Section 4-1-183 Counting Ballots

The Election Committee shall count the absentee ballots manually or by electronic voting machines. If electronic machines are used the count shall be tabulated on the day of the election.

Section 4-1-184 Observing Tally

At least two (2) election officials shall view each ballot, and each counter shall keep a separate tally of the votes cast. Each candidate may select a watcher, not a candidate, who shall not interfere with the tally process, but can observe and keep a separate record of the tally of the ballots. If electronic machines are used to tabulate the vote, the tally shall be done electronically.

Section 4-1-185 Rejection Of Ballots

If, during the tallying of the votes, the members of the Election Committee are unable to determine from a ballot the choices of a voter, the ballot shall be rejected. A rejected ballot shall be marked “rejected” in ink. Each member of the Election Committee shall sign his name below this marking. Rejected ballots shall be kept together, and placed in the ballot box at the end of the tally.

Section 4-1-186 Certified Abstract

At the close of the tally, the Election Committee members shall:

- (A) Open the ballot boxes and display the empty box to all persons present to insure that no ballots are contained therein,
- (B) Determine the total vote cast including the absentee ballots for each candidate for each office,
- (C) Write down these totals, together with the number of rejected ballots, spoiled ballots, unused ballots and total ballots printed,
- (D) Sign the written totals as a certified abstract of the election results,
- (E) Read the certified abstract aloud to the public,
- (F) Deliver copies of the certified abstract to:
 - (1) The Legislators
 - (2) The Tribal Court Clerk, and
 - (3) The Election Committee files in the tribal Secretary’s Office.

Section 4-1-187 Recounts

If the votes cast for two (2) or more candidates (with the highest vote) is tied, or if the highest vote is larger than the next highest vote by less than 10% of the total vote cast for that office, the Election Committee shall recount the vote for that office on all the un mutilated unrejected ballots, rejecting any which it is unable to determine the choice of the voter. The recounts shall continue until two (2) consecutive counts agree, and a new abstract shall then be prepared and read aloud to the public.

Section 4-1-188 Request For Recount

Since the Election Ordinance provides for automatic recount of ballots, any request for recount of ballots must list the reasons therefore in writing and be submitted to the Election Committee Chairman or his designated representative within two (2) working days after the election.

Such request must be accompanied by a non-refundable cashier or official check of Two Hundred Fifty Dollars (\$250.00) and made payable to the Citizen Potawatomi Nation. Said check shall be forwarded to the tribal Secretary-Treasurer to be credited against the cost of the recount. The Election Committee shall meet and decide within five (5) days of receipt of the notice whether or not such reasons listed in the request are sufficient to

cause a recount of ballots. If no recount is made, the Two Hundred Fifty Dollars (\$250.00) is refunded.

Section 4-1-189 Run-Off Elections

A candidate must receive a majority of the votes in order to be elected. If the abstract shows that the highest number of votes cast for any one (1) candidate is less than a majority of the votes cast, a run-off election shall be held within sixty (60) days between the two candidates receiving the highest number of votes cast in the general election. In the event of a tie vote between the candidates with the second highest number votes cast, three (3) names shall be on the run-off election ballot. The Election Committee shall supervise the run-off election using the same rules and procedures followed in the general election. As soon as some candidate has received a majority of votes in the run-off election, no further run-off elections will be held.

Section 4-1-190 Retention of Ballots

Upon completion of the election and announcement of the certified abstract, the Election Committee shall lock all ballots and records in the ballot box and deposit the ballot box in the vault of the designated bank, post office, or other secure area as approved by the Election Committee, to be held for safekeeping until final certification of the election results and installation of all officers. Only the Chairman of the Election Committee and Secretary of the Election Committee shall have access to these records. After installation of all officers, the Election Committee shall return all ballots and election records to the Tribal Secretary to be placed in permanent confidential tribal records for a period of five (5) years. The documents will not be available for public viewing in order to preserve the confidentiality of the persons voting in the election. From and after the date of final installation of all elected officials and after the five-year period is completed, the Tribal Secretary may remove the election ballots and records, except the final certification of successful candidates and destroy them. The final certification of election results entered by the Election Committee shall not be removed but shall be retained as a permanent public record.

Section 4-1-191 Election Certification

The Election Committee shall certify the election results for all uncontested offices immediately after the two (2) working day period for filing an election contest expires. If an election office is timely contested, then no certificate of election for contested office shall be issued until, if appropriate, after the election contest is finally decided.

Section 4-1-192 Finality

The Election Committee's certification of uncontested election results or the Election Committee's certification of the election results following an election contest provided for herein shall be final unappealable.

Section 4-1-193 Installment

In order to provide for an orderly transition of power, all newly-elected officers shown on the certificate of election shall be installed immediately following the election by taking the Oath of Office before any member of the Citizen Potawatomi Judiciary or the Chairman of the Citizen Potawatomi Nation or Vice-Chairman when authorized in writing by the Chairman. The Oath of Office is as follows:

I, _____, do solemnly swear that I will support, protect and defend the Constitution and laws of the Citizen Potawatomi Nation, that I will faithfully and impartially carry out the duties of my office and represent the interest of the Potawatomi people. These things I will do to the best of my ability so help me God.

Section 4-1-194 Effect of Installment

Once an officer is installed, removal is only by impeachment, recall or some other procedure authorized by the tribal constitution or recount certification.

Section 4-1-195 Incumbents

Consistent with Article 12 of the Tribal Constitution, the term of an incumbent office holder shall not expire until installation of his successor.

Section 4-1-196 Who Can Contest

Only a candidate for the disputed office may contest the election results for that office.

Section 4-1-197 Grounds

Only two (2) grounds may be asserted for contesting an election. The grounds are that the Election Committee erroneously counted or failed to count ballots, which failures were of such a magnitude that:

- (A) Either the contestant is entitled to be elected to the office, or
- (B) It is impossible to determine with mathematical certainty which candidate is entitled to be elected to the office.

Section 4-1-198 When to Contest

Any candidate desiring to contest a tribal election for an office must do so within two (2) business days af-

ter announcement of the certified abstract of election results.

Section 4-1-199 How To Contest

A contest can only be initiated by:

- (A) Timely filing with the Election Committee a verified statement setting forth the particular grounds for the contest, and
- (B) Depositing Two Hundred Fifty Dollars (\$250.00) in a guaranteed cashier's check or an official check with the Election Committee to cover costs of the hearing (if the contest is successful, the deposit shall be refunded).

Section 4-1-200 Election Committee Hearing

The Election Committee shall set a hearing of the contest no later than fourteen (14) days after the contest is filed. Written notice of such hearing shall be mailed or delivered to each candidate for the office contested. Any party to the election protest and the Election Committee shall have the right to view the election ballots and records in the presence of the Election Committee Chairman in the tribal offices. Any party to the protest or a tribal member shall be entitled to copies of the ballots from the Court Clerk upon payment to said clerk of normal and customary charges. Said certified copies shall be received as evidence by the Election Committee in like manner as an original. Alternatively, the Election Committee, upon request of a party or on its own motion, may convene a hearing for any protested election at the Tribal Courthouse, Shawnee Indian Agency, for the purpose of reviewing the election materials. After hearing the proofs and allegations of the contestants, the Election Committee shall make factual findings and one of the following conclusions:

- (A) That the contested election should be confirmed, or
- (B) The contestant should be declared the winner of the election, or
- (C) The contested election should be set aside and a new election held.

Section 4-1-201 Appeal

Any proper party to an election contest aggrieved by the findings and decisions of the Election Committee may appeal to the Tribal Court by the proper filing of a Quo Warranto action within the time periods established by this Ordinance.

Section 4-1-202 Time

An appeal must be filed within five (5) days of receipt

of notification of the decision of the Election Committee.

Section 4-1-203 Parties

The Election Committee and the person whose election is challenged are indispensable parties to the appeal. Any other candidate for that office may intervene. The individual Election Committee members are not necessary or proper parties to such action. The tribal attorney or the designee of the Chairman of the Citizen Potawatomi Nation shall represent the Election Committee, Legislature and/or Executive Officers, under the direction of the Tribal Chairman, and the Court shall expedite such case so as to reach a final decision as soon as is practicable under the circumstances.

Section 4-1-204 Relief

The Tribal Court, whose decision is final, may only:

- (A) Confirm with Election Committee decision,
- (B) Order a new election for the contested office, or
- (C) Reverse the Election Committee decision and order the Election Committee to certify the election of the contestant to the office.

Section 4-1-205 Standard

Neither the Election Committee nor the Tribal Court shall invalidate any certified abstract of election results and order a new election for an office unless clear and convincing evidence shows that the person receiving the most votes for the contested office as shown on the certified abstract cannot be mathematically determined to be the clear winner.

Section 4-1-206 General Council Resolutions

All actions taken with respect to the authority reserved to the Council by the Revised Constitution shall be made by General Council Resolutions and shall not be final until they are voted on in a referendum election conducted pursuant to Article 13 of the Revised Constitution. The reserved powers of the Council is the authority to approve all actions of the Legislature that result in (a) the appropriation and budgeting of all moneys of the Council held in trust by the Tribe as the proceeds of any claim against the United States, (b) the sale, purchase, mortgaging, or encumbrance of trust lands or interest therein, and (c) the approval of any settlement of treaty claim of the Citizen Potawatomi Nation against the United States.

Section 4-1-207 Absentee Votes

All absentee votes shall be handled by the Committee

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in the same manner as that prescribed for casting tribal election ballots. All absentee ballots must be distributed at least twenty (20) days prior to any General Council Meeting and received by the Election Committee by 10:00 a.m. on the day of any General Council Meeting. These ballots will be received for counting and counted on the day of the General Council Meeting and the results certified to the Legislature. The issues to be voted on must receive a majority vote for adoption. Results of the vote will be published in the tribal newspaper.

Section 4-1-208 Resolution Preparation

Preparation of Resolutions for referendum vote shall be by the Legislature or Executive Committee or by provisions provided for under Article X of the Tribal Constitution.

Section 4-1-209 Election Board

When a special election is properly called, the Legislature, by resolution, shall establish an independent election board to conduct the special election.

Section 4-1-210 Composition

The independent election board shall have the same composition as that of the Election Committee provided herein.

Section 4-1-211 Powers of the Election Board

The independent election board shall have the same powers and duties as set forth herein for the Election Committee and shall have such further powers as are necessary to carry out the duties imposed by the Tribal Constitution and by-laws. Further, the independent election board will have the power to establish different time periods for filing, challenges, contests and appeals, but shall not have power to change the other substantive and procedural rules provided for herein including, by way of example only, the eligibility to vote and the eligibility and qualifications of a candidate.

Section 4-1-212 Misdemeanor

In addition to any other penalties (civil or criminal) provided by law, any person willfully violating the duties and obligations imposed by this ordinance is guilty of a misdemeanor and, upon conviction, may be punished up to the maximum allowed for misdemeanors.

Section 4-1-213 Venue and Jurisdiction

The venue and jurisdiction for all violations of this Ordinance is placed exclusively in the Citizen Potawatomi Nation Tribal Courts.

Section 4-1-214 What Is Quo Warranto

Quo warranto is the name of the writ by which title to an office is resolved. It is not a substitute for or an alternate to the election challenges or appeals provided herein before.

Section 4-1-215 Who May Seek

Only a person claiming a better right to the office may bring a quo warranto action.

Section 4-1-216 Who Is The Proper Party Defendant

The only proper party defendant is the person who holds title to the office.

CITIZEN POTAWATOMI NATION
LEGISLATIVE BRANCH
TITLE 5

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CHAPTER ONE

LEGISLATIVE CODE OF ETHICS

Section 5-1-101 Conduct

All members of the Legislature shall conduct themselves at all times so as to reflect credit upon the Legislature, shall obey all rules of the Legislature and shall conform the member's conduct to this Code of Ethics.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-102 Disclosure Statement

(A) The Office of the Chairman shall accept disclosure statements filed by members of the Legislature pursuant to this Code of Ethics and shall maintain a file of all disclosure statements that are filed pursuant to this Code. Every member of the Legislature, who is required to file a financial disclosure statement, within the period prescribed by law, shall file with the Office of the Chairman, a disclosure statement as provided by this Code of Ethics. Each member required to file a financial disclosure statement, within the period and in the manner prescribed by this Code of Ethics, shall receive from the Office of the Chairman the form on which the statement shall be prepared.

(B) In accordance with this Code of Ethics, every member of the Legislature shall disclose the source of any gift or gifts from legislative agent, defined as any individual or entity doing business or attempting to do business with the Citizen Potawatomi Nation, where the value of the gift or gifts aggregate per calendar year exceeds fifty dollars.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-103 Voting Abstention

(A) A member who has reason to believe that he or she has a substantial personal interest in legislation may request permission of the chair to abstain from voting on the legislation and may site the member's reason for the request. The request shall be granted by the chair or Legislature.

(B) No member of the Legislature shall knowingly vote on any legislation in which the member has a financial interest or a financial interest in the legislative agent or employer that is actively

advocating on that legislation. Financial interest means an interest distinct from that of the general public, including, but not limited to, an interest held by an individual, the individual's spouse or dependent children which is:

- (1) An ownership interest in a business;
- (2) A creditor interest in an insolvent business;
- (3) An employment or prospective employment for which negotiations have begun;
- (4) An ownership interest in real or personal property;
- (5) A loan or other debtor interest;
- (6) A directorship or officership in a business;
- (7) A business associate;
- (8) A person who is hired under contract to perform certain services, and such position involves a substantial and material exercise of administrative discretion in the formulation of public policy.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-104 Compensation

(A) Except as provided in this Code of Ethics, no person elected to the Legislature shall receive or agree to receive, directly or indirectly, compensation for any service rendered or to be rendered by the person personally in any case, proceeding, application or other matter that is before the Legislature.

(B) No member of the Legislature shall knowingly accept from a legislative agent a gift of any amount in the form of cash or the equivalent of cash, or a gift or gifts of any other thing of value where the value of the gift or gifts aggregate per calendar year exceeds two hundred dollars.

(C) Accepting campaign contribution, food or lodging, properly received and reported, shall not be a violation of this Code of Ethics.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-105 Confidential Information

No present or former member of the Legislature shall disclose or use for the member's personal profit, without appropriate authorization, any information acquired by the member in the course of the member's official

duties that has been clearly designated to the member as confidential when such confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business. No present or former member of the Legislature shall disclose or use, without appropriate authorization, any information acquired by the member in the course of the member's official duties that is confidential.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-106 Improper Influence

- (A) No member of the Legislature shall use or attempt to use or authorize the use of the authority or influence of the member's office to secure anything of value or the promise or offer of anything of value that is of such a character as to manifest a substantial and improper influence upon the member with respect to the member's duties.
- (B) No member of the Legislature of any legislative agency shall solicit or accept anything of value that is of such a character as to manifest a substantial and improper influence upon the member with respect to the member's duties.
- (C) No member of the Legislature shall solicit or receive funds from any legislative agent.
- (D) In the absence of bribery or another offense or a purpose to defraud, the receipt of campaign contributions on behalf of a member of, or candidate for, the Legislature does not violate this Code of Ethics if properly reported.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-107 Separation of Funds

- (A) No member of, or candidate for, the Legislature shall convert, receive or accept for personal of business use anything of value from the member's or candidate's campaign fund except legitimate and verifiable prior campaign expenses incurred by the member or candidate;
- (B) For purposes of this section, an expense is incurred whenever a member or candidate has either made payment or is obligated to make payment, as by the use of a credit card or other credit procedure, or by the use of goods or services received on account.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-1-108 Improper Inducement

If any person attempts to induce a member or employee of or candidate for the Legislature or employee of any legislative agency to violate any provision of this Code of Ethics, the member, employee or candidate shall report the matter to the Chairman of the Citizen Potawatomi Nation and Tribal Attorney.

As amended by Ordinance #08-04 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

CHAPTER TWO RULES FOR THE CITIZEN POTAWATOMI NATION TRIBAL LEGISLATURE

Section 5-2-101 Notice

The Chairman or Presiding Officer shall publish notice of meetings on the CPN website as soon as possible prior to a meeting.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-102 Opening

- (A) The Tribal Legislature shall begin all sessions with a prayer in the Potawatomi Language
- (B) The Tribal Legislature shall have a Roll Call by the Secretary-Treasurer. Response is by the word "Shoda" (here), and the count shall be the determination of a quorum.
- (C) There shall be a Declaration of a Quorum by the Chairman or Presiding Officer.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-103 Conduct of Meetings of the Legislature

- (A) The Chairman or Presiding Officer shall preside in the manner described by the Constitution and consistent with traditional Citizen Potawatomi meeting rules, generally conforming to universal Parliamentary processes.
- (B) The Chairman or Presiding Officer shall afford each Tribal Legislator equal opportunity to participate in the legislative process in an orderly manner. Determination of the order of speakers shall be in the sequence of hand signal requests and verbal recognition by the Chairman or Presiding Officer.

- (C) The Chairman or Presiding Officer may declare a speaker out of order with the admonition “Ayashtuk” (take turns) or “Gahgo” (stop).
- (D) The agenda of the meetings shall be prepared by the Secretary at the direction of the Chairman and distributed prior to the meetings.
- (E) Points of Order and Calls for the Order of the Day may be afforded precedence of consideration in the conduct of meetings by the Chairman or Presiding Officer. A declaration of an invalid Point of Order or other issue of Order by the Chairman or Presiding Officer may be overridden by unanimous vote of the remaining Members of Legislature.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-104 Legislative Committees

- (A) Appointments of at least five (5) Members to each Legislative Committees shall be made by the Chairman. Vacant Committee positions shall be filled by the Chairman immediately.
- (B) Committee appointments shall contain, as much as possible, equal numbers of Members of the Committee appointments shall contain, as much as possible, equal numbers of Members of the Legislature from Oklahoma and Members of the Legislature from Districts out of Oklahoma, exclusive of the Executive Officers.
- (C) Legislative Committees shall be:
 - (1) Rules and Government – matters relating to District affairs, Redistricting and Apportionment, Elections. Enrollment and Removal, Legislative procedural rules and Citizen communication.
 - (2) Judiciary and Public Safety – matters relating to Police, Tribal Courts, Code Enforcement, Emergency response, Vehicle tags, Indian Child Welfare, Family Preservation, Public Safety, Corporate regulation and Uniform Commercial Code.
 - (3) Health and Human Services – matters relating to Housing, Elders, Veterans, Health facilities, Licensing and inspections, the Office of Environmental Health, Environmental Protection, Health Aids and Women’s, Infants’ and Children’s Nutrition.

- (4) Natural Resources – matters relating to Agriculture, Energy, Utilities, Telecommunications, Facilities, Roads, Construction and Realty management.
- (5) Education – matters relating to Child Development, Scholarship, Higher Education, Job Pride, Vocational Training and Job Placement, On-the-Job Training, Endowments and Educational contributions.
- (6) Tribal Culture – matters relating to the Heritage Center, Museums, Heritage Festival, The Gathering of the Nations, Language Preservation, Ceremony, Art, Games and Sport, and NAGPRA.
- (7) Economic Development and Commerce – matters related to Banking, Tribal enterprise, Technology development, Insurance and Community Development Corporation.
- (8) Appropriations and budget – all matters relating to the assignment and use of Tribal income and debt.

- (D) Matters that impact more than one (1) Committee may be assigned to multiple Committees by the Chairman.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-105 Forms of Legislative Activity

- (A) Committees shall consider all legislation in the form of Bills, each assigned sequential numbering as scheduled for Committee assignment by the Chairman. Bill numbering shall also contain numerical reference to the affected Tribal Code. Resolution may be assigned directly to the full Legislature without assignment to a Committee at the discretion of the Chairman.
- (B) All Bills shall be submitted in draft or concept form to the Legislative Services Department prior to assignment to a Committee for purposes of verification of constitutionality, consistency, savings clauses, Code footnoting and avoidance of duplication. The Legislative Services Department shall be directed by the Tribal Attorney.
- (C) Matters of temporary interest shall be in the form of Resolutions. Matters of continuing or permanent interest shall be in the form of Laws or Ordinances embodied in the Tribal Code.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-106 Legislative Participation

(A) Legislators shall be afforded access to and participation in the meetings of the Tribal Legislature by electronic means if they cannot attend in person.

(B) Committee meetings may be conducted by internet teleconferencing by the majority decision of the members of the Committee.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

Section 5-2-107 Public Viewing

(A) Meetings of the Tribal Legislature shall be broadcast over the internet for the benefit of Citizen Potawatomi Nation citizens.

(B) Matters relating to personnel or other issues of a sensitive nature with potential harm to the Nation may be conducted in a confidential manner without public broadcast as determined by the Chairman or Presiding Officer.

As amended by Ordinance #08-05 enacted by the Citizen Potawatomi Legislature on April 26, 2008.

**CHAPTER THREE
LEGISLATIVE IMMUNITY**

Section 5-3-101 Immunity

Members of the Tribal Legislature shall be privileged from arrest during legislative sessions and in going to and returning from the same, except for treason, felony or breach of peace; and for any comments, speech or debate in the legislature, which shall not be questioned in any other place.

As amended by Ordinance #09-01 enacted by the Citizen Potawatomi Legislature on September 4, 2008.

CITIZEN POTAWATOMI NATION
EXECUTIVE BRANCH
TITLE 6

RESERVED

CITIZEN POTAWATOMI NATION
JUDICIARY AND APPELLATE PROCEDURE
TITLE 7

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PREFACE

Section 7-0-001. Authorization

There is hereby established, ordained and activated pursuant to the Constitution of the Tribe A Judicial Branch of the Government with a lower Court known as the District Court and an upper Court known as the Supreme Court

Section 7-0-002. Definitions

The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

- (A) "Clerk" shall mean the Clerk of the Court.
- (B) "Code: shall mean the Statutory laws of the Tribe.
- (C) "Constitution" shall mean the Constitution of the Tribe.
- (D) "District Court" shall mean the lower or general trial Court operating within the jurisdiction of the Tribe.
- (E) "Jurisdiction" shall mean the jurisdiction as established by the Tribal Court.
- (F) "Supreme Court" shall mean the Court to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

Section 7-0-003. Territorial Jurisdiction

The Territorial Jurisdiction of the Courts shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

Section 7-0-004. Civil Jurisdiction

The Courts shall have general civil jurisdiction over all civil actions arising under the constitution, laws, or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction.

Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere consistent with tribal law, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

Section 7-0-005. Criminal Jurisdiction

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

Section 7-0-006. Probate Jurisdiction

To the extent permitted by federal law the Courts shall have probate jurisdiction over all the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

Section 7-0-007. Juvenile Jurisdiction

The Juvenile Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

Section 7-0-008. Law to be Applied

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States

or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability.

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability.

The order of precedence in which the Courts shall apply the law is as follows:

- 1) the Tribal Constitution,
- 2) Tribal Statute,
- 3) Tribal traditional custom and usage (Common Law),
- 4) Federal law,
- 5) State laws applicable to tribal sovereign land under the Major Crimes Act,
- 6) delegations of regulatory authority by Federal Statute.

The Tribal Courts may request the counsel of Tribal Elders and Counselors as well as consider any precedents established under State Courts and State Law. The laws of the United States as interpreted by the United States Supreme Court are binding and enforceable in Tribal Court. Federal law that has been interpreted by the lower federal courts that is in conflict with tribal statute and the rulings of other lower federal courts may be considered by the Tribal Court in a manner most beneficial to the Citizen Potawatomi Nation (Most Favorable Precedent).

The Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et seq.*, provides that no Indian Tribe exercising powers of self-government shall fail to provide certain guarantees contained in the United States Constitution, including, but not limited to, the right of free exercise of religion, the right of freedom of speech, assembly, and petition, the right to equal protection of the laws,

and the right against deprivation of liberty or property without due process of law. These guarantees are also enshrined in Article 16 of the Citizen Potawatomi Nation Constitution. The Citizen Potawatomi Nation Code shall be construed by the Courts to provide the guarantees identified in the Indian Civil Rights Act, as defined by the United States Supreme Court.

Enacted by Ordinance #17-06 by the Citizen Potawatomi Legislature on December 8, 2016.

Section 7-0-009. Amendments

The Tribal Legislative Body shall have the authority to alter, amend, or repeal any of this Act.

CHAPTER ONE EQUITABLE POWERS DOCTRINE

Section 7-1-101. Citation

This chapter may be cited as Defining the Existing Equitable Powers Doctrine of the Citizen Potawatomi Nation Tribal Court.

Section 7-1-102. Purpose

The Citizen Potawatomi Nation recognizes that the Tribal Court has had equitable powers to enforce its orders from inception, and to cite persons for both direct and indirect contempt of court. Indirect contempt of court consists of a willful disobedience of any process or order lawfully issued or made by court; and/or resistance willfully offered by any person to the execution of a lawful order or process of a court.

Section 7-1-103. Equitable Powers Doctrine

The Court is vested and has been vested with the power and authority, in a civil matter properly before the Court, to cite an individual for indirect contempt when they fail to execute, follow or obey an Order of the Court concerning payment, action or any inaction as required by Court Order regardless of the physical location of such acts. The respondent to a citation for contempt shall be entitled to a show cause hearing within ten (10) days of the issuance of a citation, at which time they will be advised of their rights and a plea taken. Upon a guilty plea the Court may proceed with sentencing as appropriate in the discretion of the Court, limited to Five Thousand Dollars (\$5,000.00) and/or a year in prison.

CHAPTER TWO DISTRICT COURT

Section 7-2-101. Judges of the District Court

The District Court shall consist of the Chief Judge, and such District Judges, and Special Judges as may be appointed.

Section 7-2-102. Minimum Qualifications of Judge of the District Court

A Judge shall:

- (A) Be either:
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five years, or
 - (6) An Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; and
- (B) Have demonstrated moral integrity and fairness in his business, public and private life, and
- (C) Have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two years next preceding his appointment. The two year period shall begin to run from the date the person was unconditionally released from supervision.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be older than twenty-five (25).
- (F) Not be the holder of any other elective Tribal Office, provided, that the holder of elective Tribal Office, may be confirmed upon their resignation.
- (G) if less than fifty (50), have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two years

of previous experience as a Judicial Officer for some recognized Court.

Section 7-2-103. Manner of Selection of Justices and Judges

Justices and Judges of the Tribe shall be nominated by the Chief Executive Officer and confirmed by the Tribal Legislative Body upon a vacancy occurring in a judicial office in the following manner:

- (A) Within thirty days after a vacancy the Chief Executive Officer shall cause a notice of the vacancy to be published once in the Tribal newspaper and once each week for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. Copies of the notice shall be posted at the Tribal Office, and such other places as the Chief Executive Officer shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Secretary who shall keep a permanent record of responses.
- (B) No sooner than twenty (20), nor more than thirty (30) days after the last required notice, the Secretary shall deliver the names and files of all persons nominated or applying to Chief Executive Officer, who shall select no more than three qualified candidates for each vacancy and place the candidate(s) on the agenda of the next regular or special meeting of the Tribal Legislative Committee.
- (C) The Tribal Legislative Body shall review the nominees, and may interview nominees. The Tribal Legislative Body shall give preference to candidates who:
 - (1) have more formal education and experience in the legal field.
 - (2) by written examination conducted by the Supreme Court or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Tribe.
 - (3) have demonstrated decision making ability.
 - (4) agree to participate in a program of study provided by the Tribal Court Administration which reviews concepts of Tribal Sovereignty and United States, State and Tribal Court precedents.
- (D) If the nominee is confirmed by the Tribal Legislative Body, the nominee shall be sworn by the

Chief Justice, or the next available Justice.

- (E) If the nominee(s) is not confirmed, the Chief Executive Officer may either republish the notice, or reconsider the candidates. Nomination - Legislative confirmation process shall continue until some nominee be confirmed.
- (F) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Secretary not less than 150 days prior to the expiration of his term to be considered for confirmation to a new term at the next meeting of the Tribal Legislature at which a quorum is present. If the Legislature, a quorum being present, does not confirm the outgoing officer, it shall declare and direct the Chief Executive Officer to begin the selection process. The outgoing Judicial Officer's term shall expire upon confirmation of the new Justice or Judge.

Each person appointed to Tribal Judicial Office by the Tribal Legislature must furnish a standard form of consent before the Appointment is confirmed by the Council of the Citizen Potawatomi Nation by majority vote in a General or Special Election held for that purpose. To wit:

JUDICIAL APPOINTMENT CONSENT FORM

"I, (Appointee's Name) do hereby accept appointment by the Tribal Legislature of the Citizen Potawatomi Nation to the office of (Supreme Court Justice or District Court Judge) for a term of (number of) years and consent to confirmation of this appointment by the Citizen Potawatomi Nation Indian Council in a Tribal Election."

Signed: _____

Name: _____

Date: _____

This form must be filed with the Tribal Secretary by either facsimile or letter no later than one hundred and fifty (150) days prior to a regular election or sixth (60) days prior to a special election.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on January 13, 2010.

Section 7-2-104. Term of Office

All Judges of the District Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

Section 7-2-105. Oath of Office

Before assuming office each Judge, and Special Judge, shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court as soon after confirmation as may be practical.

Section 7-2-106. Duties and Powers of Judges

All Judges of the District Court, and Special Judges shall have the duty and power to conduct all court proceedings, and issue all orders and papers. In doing so the Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court regulating conduct in the District Court. Such rules must be filed in the office of the Tribal Secretary and the District Court Clerk before becoming effective.
- (B) Hold Court regularly at designated time and place.
- (C) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (D) Hear and decide all cases.
- (E) Enter all appropriate orders and judgments.
- (F) Issue all appropriate warrants and subpoenas.
- (G) Keep all Court and other records as may be required.
- (H) Perform the duties of the Clerk in their absence.
- (I) Subject to the confirmation of the Supreme Court, to appoint such Magistrates as may be necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters a may be determined by Rule of the Supreme Court. Magistrates shall meet the minimum qualifica-

tions for Judges of the District Court except that Section 102 (a) and (g) shall not apply.

- (J) Unless a coroner is appointed in any Judge designated by the Chief Judge shall have the authority to perform the duties of a coroner.

Section 7-2-107. Special Appointments

Whenever, due to any cause an additional Judicial Officer is needed, the Supreme Court may designate by Court Order Justices to sit or may make special appointments to act as a Special Judge to hear specific named cases. No special procedure need be followed and Special Judges need not meet the qualifications of Section 102 (a) or (g) of this Act. Whenever a Justice of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund.

Section 7-2-108. Compensation of Judges

- (A) The compensation of all Judges of the District Court shall be set by appropriate legislation of the Tribal Legislative Body. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally.
- (B) Subsection (A) above shall not apply to Special Judges. The compensation of all shall be set by the Court Administrator.

Section 7-2-109. Removal of Judges

The Judges of the District Court shall be removed only for cause by the Tribal Legislative Body upon the recommendation of the Supreme Court. Neither the Supreme Court, nor the Tribal Legislative Body may remove a Judge of the District Court independently, but the Supreme Court must first recommend the removal, and the Tribal Legislative Body must then concur. The term "cause" shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Canons of Judicial Ethics promulgated by the American Bar Association.

Section 7-2-110. Disqualifications, Conflict of Interest

- (A) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother;

brother; sister; grandfather; grandmother; or any other legal dependant. A Judge should attempt to prevent even the appearance of partiality or impropriety.

- (B) A party of interest or the Judge may raise the question of conflict of interest. Upon a decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned.
- (C) Any Judge disqualified because he is related to one of the parties enumerated in subsection (a) may hear a case if all parties are informed of the relationship in open Court and of their right to have a different Judge, and consent to further action by that Judge upon the record, or in a writing filed in the record.

Section 7-2-111. Decisions

- (A) Decisions of the District Court at trial may be recorded on a form approved by the Supreme Court or written findings of fact and conclusions of law. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.
- (B) The decision form or the written findings of fact and conclusions of law may be placed in the case file.

Section 7-2-112. Records

The District Court shall be a Court of Record. To preserve such records:

- (A) In all Court proceedings, the Clerk shall record the proceedings by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings. At the close of each hearing, or as specified, the Reporter shall make a recording upon the request of any party or the Court as a permanent part of the case record.
- (B) To preserve the integrity of the electronic record, the Clerk shall store the recording in a safe place and release it only to relevant Court or pursuant to an Order.
- (C) The Clerk shall keep in a file bearing the case

name and number every written document filed in the case.

- (D) All Court records shall be public records except as otherwise provided by law.
- (E) After five (5) years, court records except judgments, appearance, and other dockets may be reproduced on computer disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.
- (F) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and public.

Section 7-2-113. Files

- (A) Except as otherwise provided by law, as in juvenile cases, Court files are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.
- (B) Any persons desiring to inspect the records of a case or obtain copies may inspect such files only during the ordinary working hours of the Clerk, and in their presence. Under no circumstances shall anyone, except a Judge or Clerk taking a file to a Judge or courtroom, take a file from the Clerk's office.
- (C) A copy of any document may be obtained from the Clerk for a reasonable copy fee, to be set by the Court Administrator. The Clerk is hereby authorized to certify that such copies are accurate reproductions of those documents on file. The Supreme Court by rule may provide for such certification.

Section 7-2-114. Motion Day

Unless impractical, the District Court shall establish regular times and places, at which motions requiring notice and hearing may be heard. The Judge at any time or place may make orders for the advancement, conduct, and hearing of actions. The Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Section 7-2-115 through 7-2-119 Reserved

Section 7-2-120. Practice Before the Trial Court

- (A) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.
- (B) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Courts.

**CHAPTER THREE
SUPREME COURT**

Section 7-3-101. General Provisions

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District Court, appeals of other orders of the District Court subject to interlocutory appeal by law, and original actions as may be provided by tribal law, and shall render its decision in writing to the parties of interest, file a copy thereof in the Supreme Court Clerk's office and, at the time of filing, submit a copy to the official reporter of the decisions of the Court. The decision of the Supreme Court shall be final and binding.

Section 7-3-102. Composition of the Supreme Court

The Supreme Court shall consist of one (1) Chief Justice, and six (6) Associate Justices.

Section 7-3-103. Minimum Qualifications of Justices

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

- (A) Be either
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Actually domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of seven years, or
 - (6) An Indian graduate of an American Bar As-

sociation approved Law School, or a Paralegal program approved by the Supreme Court; and

- (B) Have demonstrated moral integrity and fairness in his business, public and private life. Agree to participate in a program of study provided by the Tribal Court Administrator which review concepts of Tribal Sovereignty and United States, State and Tribal Court precedents, and
- (C) Have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years next preceding his appointment. The five year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be not less than thirty (30) years of age.
- (F) Not be a member of the Tribal Legislative Body, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective Tribal Office, may be confirmed as a Justice subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.
- (G) If less than fifty (50) years of age, have completed at least sixty (60) semester credit hours at an accredited college or university, or at least four years of previous experience as a Judicial Officer for some recognized Court.

Section 7-3-104. Selection of Justices

Justices shall be selected in accordance with the provisions above.

Section 7-3-105. Term of Office

All Justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or death or resignation. The first appointment of Justices hereunder shall be for terms which may vary in order to provide for staggered terms of office.

(A) The Tribal Judicial Offices of the District Court shall be designated and numbered as follows:

- (1) The Office currently held by Chief District Judge shall be named Chief Judge #1.
- (2) Associate District Judge #1.
- (3) Associate District Judge #2.

(B) The Tribal Judicial Offices of the Supreme Court shall be designated and numbered as follows:

- (1) The Office of Chief Justice of the Supreme Court shall be named Supreme Court Justice #1.
- (2) Associate Justice #2.
- (3) Associate Justice #3.
- (4) Associate Justice #4.
- (5) Associate Justice #5.
- (6) Associate Justice #6.
- (7) Associate Justice #7.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on January 13, 2010.

Section 7-3-106. Oath of Office

Before assuming office each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before them with integrity and fairness, without regard to the persons to be administered by the Chief Justice, the Chief Executive Officer or the available Justice of the Court.

Section 7-3-107. Duties and Powers of Justices

All Justices of the Supreme Court, unless disqualified for conflict of interest of other cause, shall participate in the deliberation of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers. In doing so the Supreme Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Courts to provide for the orderly and efficient administration of justice. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court, and:
- (B) Hear appeals from the District Court.

- (C) Enter all appropriate orders and judgments.
- (D) Keep all appropriate records.
- (E) Perform any and all duties as may be required for the operation of the Supreme Court and the District Court.
- (F) Supervise the actions of the District Court and all Clerks, Bailiffs, and other officers of the Courts.
- (G) Perform any of the duties and powers of a District Judge in appropriate cases.

Section 7-3-108. Reserved

Section 7-3-109. Compensation of Justices

The compensation of all Justices of the Supreme Court shall be set by legislation of the Tribal Legislative Body. No Justice shall have his compensation reduced during his term of office, except the compensation of all judicial officers may be reduced proportionally.

Section 7-3-110. Removal of Justices

Justices of the Supreme Court may not be removed from office except upon final conviction of a felony, or an offense punishable by banishment, or an offense involving moral turpitude, in which case the Supreme Court shall enter its order disbaring and expelling such Justice from the Court and declaring that Judicial Office vacant.

Section 7-3-111. Disqualifications, Conflict of Interest

- (A) No Justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.
- (B) A party in interest or the Justice may raise the question of conflict of interest. Upon decision by the Justice concerned or the Supreme Court that disqualification is appropriate, a Judge, or Special Justice may be appointed to sit on the Supreme Court to hear the matter.
- (C) Any Justice related to one of the parties enumerated in Subsection (a) may hear a case if all parties are informed of the relationship on the record and of their right to have the interested

Justice disqualified and consent in writing or upon the record to the conflict of interest. Normally, the Justice knowing of the conflict should file an order recusing from the action and stating the relationship. If the parties consent to that Justice hearing the action, they should file their consent for the Justice to continue in the cause. If all parties file such consents, the Justice may then enter his order withdrawing the recusal on grounds of the consents filed. A consent to the withdrawal of a Justices recusal may not be withdrawn.

Section 7-3-112. Decisions

- (A) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties, the District Court in appeal cases, filed in the Supreme Court Clerk's office and recorded on a form approved by the Supreme Court. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties, the issues presented of appeal or the substance of the complaint in an action within the Court's original jurisdiction, the relevant facts upon which the decision was made or found by the Court to be true in an original action, the Court's decision, and the legal principals and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.
- (B) Each Justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.
- (C) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

Section 7-3-113. Rules of the Court

- (A) The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme Courts not inconsistent with Tribal Ordinance or the Tribal Constitution. Such rules shall govern the conduct, demeanor, and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function efficiently.

(B) The Rules shall be filed in the Court Clerk's office.

(C) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

Section 7-3-114. Special Appointments

Whenever, due to vacancies for any cause three (3) Justices cannot be convened, the Court, including any disqualified Justices, may designate Judges of the District Court, not having tried the case, or some member of the Bar to sit as a special Justice for purposes of the appeal or original action, or request the Chairman with Tribal Legislative Body concurrence to make special appointments to hear specific named cases, or cases filed prior to the date three (3) Justices can be convened. No special procedure need be followed and special Justices need not meet the qualifications above.

Section 7-3-115. Supreme Court's Action on Appeals

In any appeal, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken, and may enter such order as is just or remand for the entry of a specified judgment, a new trial, or for further action in accordance with opinion or instructions.

Section 7-3-116. Terms of the Court

The regular term of the Court shall commence on the first Monday in October of each year, and upon that date the Supreme Court shall convene or meet by electronic means for the purpose of disposing of the actions and other business. The term shall continue until such time as the Court determines the term is declared completed. Special terms may be convened upon the call of the Chief Justice for dispensing with pressing matters which may not be justly delayed until the regular term.

Section 7-3-117. Court Fund

There is hereby authorized to be maintained by the Clerk under the supervision of the Court, a "Fund" into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required to be paid to the Courts which are not distributed. These funds shall be used exclusively for the purchase of supplies, materials, and personal property for the use of the Courts, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries.

**CHAPTER FOUR
COURT CLERK**

Section 7-4-101. Establishment

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and Deputy Court Clerks. The Court Clerk shall be selected by Court Administrator, and Deputy Court Clerks shall be appointed by the Court Clerk and Court Administrator.

Section 7-4-102. Clerk to Serve Supreme and District Courts

The Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the District Court".

Section 7-4-103. Clerk as Department Director

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Court Clerk shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody upkeep and maintenance of the record, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk.

Section 7-4-104. Powers and Duties

The Court Clerk shall have the following powers and duties:

- (A) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of the office.
- (B) To supervise and direct the hiring, firing, and work of all deputy court clerks and other employees.
- (C) To collect all fines, fees, and costs paid to the Courts, to receipt, and to deliver them to the Tribal Treasurer for deposit.
- (D) To accept, when ordered, monies for the payment of civil judgments and to pay to the party entitled to them. The Clerk is authorized to maintain a bank checking account.
- (E) To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Court.
- (F) To provide an accurate and complete record all proceedings of the Courts.

- (G) To provide stenographic and clerical services to the Court.
- (H) To keep and maintain the Court's law library.
- (I) To undertake all duties assigned or delegated to the Clerk's office.
- (J) Upon a written request for a Transcript, the Court may obtain the cost from two transcription services. The requesting party will by the transcription service the required amount directly and prior to preparation.

Section 7-4-105. Seal

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

Section 7-4-106. Certification of True Copies

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

Section 7-4-107. Courts Always Open

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper.

Section 7-4-108. Trials and Hearings - Orders in Chambers

All trials, except as specifically provided and in children's cases, shall be conducted in open Court. All other acts or proceedings may be done or conducted by a Judge in chambers, without the clerk or other court officials and in any place either within or without the tribal jurisdiction; but no hearing, other than ex parte, shall be conducted outside the tribal jurisdiction without the consent of all parties affected. Except when determined to be necessary or expedient in children's cases arising under the Indian Child Welfare Act, or when the Tribe has entered into an agreement with another government for the sharing of judicial officers and courtroom space.

Section 7-4-109. Clerk's Office and Orders by the Clerk

The Clerk's office shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications and other proceedings which do not require court permission or order are grantable by the Clerk, but any action may be suspended or altered or rescinded by the Court.

Section 7-4-110. Notice of Orders or Judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party and shall make a note in the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

Section 7-4-111. Books and Records Kept by the Clerk and Entries Therein

- (A) The Clerk shall keep a "book" known as the "Civil Docket" in paper or electronic form and shall enter each civil action. Pursuant to rules and regulations prescribed by the Court Administrator.
- (B) In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action dockets of the Supreme Court.
- (C) The Clerk shall also keep such other books and records as may be required from time to time.

Section 7-4-112. Stenographic Report or Transcript as Evidence

- (A) Whenever the testimony of a witness was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript

certified by the person who reported the testimony.

- (B) Whenever the testimony of a witness was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording maintained in the custody of the Court Clerk or by some other person certified as correct by the Court Clerk, or authorized to administer oaths, who has prepared under their direction a transcript.

Section 7-4-113. Judgment Docket

The judgment docket shall be kept in the form pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-114. Execution Docket

In the execution docket the Clerk shall enter all executions as they are issued. Pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-115. Clerk may Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive and receipt the amount of the judgment and costs, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution and the Clerk shall be liable in the same manner and amount as the Chief of the Tribal Police.

Section 7-4-116 through 7-4-122 Reserved

Section 7-4-123. Clerk to Provide Statistical and Other Information

The Clerk is directed to furnish as requested statistical and other information as the Executive, Legislature and Supreme Court may require, including, but without being limited to, the number and classification of cases:

- (A) Filed with the Court.
- (B) Disposed of by the Court, and the manner of such disposition.
- (C) The number of cases pending before the Court.

Section 7-4-124 through 7-4-125. Reserved

CHAPTER FIVE

CHIEF OF THE TRIBAL POLICE - PROCESS

Section 7-5-101. Reserved

Section 7-5-102. Appointment of Substitute for Tribal Police Chief

The Court upon an oral or written order, may appoint a

person to serve a particular process or order, who shall have the same power to execute it as the Chief of Police. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit.

Section 7-5-103. Tribal Police Chief to Indorse Time of Receipt on Process

The Chief of the Tribal Police shall indorse upon every document, the day and hour it was received by him.

Section 7-5-104. Tribal Police Chief to Execute and Return Process

The Chief of the Tribal Police shall execute every summons, order or other process, and return the same as required by law. If he fails unless prevented by inevitable accident he shall be fined by the Court in a sum not exceeding Five Hundred Dollars (\$500.00) upon motion and ten (10) days notice, and shall be liable to any person aggrieved by such failure. Provided that whenever any party shall make and file with the Clerk an affidavit, stating that they believe the Chief of the Tribal Police will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties. The Clerk shall direct the original, or other process, in such suit to the Chief Executive Officer of the Tribe or his designate who shall execute the same in like manner as the Chief of the Tribal Police might or ought to have done.

Section 7-5-105. When Bailiff or Tribal Police Chief May Adjourn Court

If the Judge fails to attend at the time and place appointed for holding Court, the Chief of the Tribal Police, or person appointed by the Court as bailiff, shall have power to adjourn the Court, until the regular or assigned Judge attend or a Special Judge, or Judge pro tempore, be selected.

Section 7-5-106. Reserved

CHAPTER SIX BONDS AND SURETIES

Section 7-6-101. Justification of Surety

A ministerial officer whose duty it is to take security shall require the person, if not a qualified surety or bonding company, to make an affidavit of qualifications, which affidavit may be made before such officer, and shall be indorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person shall be

shown and attached. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

Section 7-6-102. Qualifications of Surety

The surety in every undertaking unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed.

Section 7-6-103. Real Estate Mortgage as Bond

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty per cent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty per cent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty per cent valuation.

Section 7-6-104. Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in community where such real estate is located to the value of such real estate.

Section 7-6-105. False Valuation - Penalty

Any person willfully making a false affidavit shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured to the extent of the injuring proximately caused.

Section 7-6-106. Action by Tribal Department - No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, whatsoever. In case of an adverse decision, such costs as by law are taxable against a party shall be paid out of the available fund of the party under whose direction

the proceedings were instituted.

Section 7-6-107. Appearance Bond - Enforcement

(A) If a bench warrant or command to enforce a Court order is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, makes a bond for his appearance, the bond made shall be disbursed by the Court Clerk by order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.

(B) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

**CHAPTER SEVEN
MISCELLANEOUS**

Section 7-7-101. Deputy May Perform Official Duties

Any duty enjoined by the Tribal Code upon a ministerial officer, and any act permitted to be done by him, may be performed by this lawful deputy unless otherwise specifically stated.

Section 7-7-102. Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

Section 7-7-103. Publications in "Patent Insides"

(A) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and any Tribal Newspaper shall be

recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

- (B) All publications and notice required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by Subsection (a) of this Section if at least one side of such paper is printed within the legal area.

Section 7-7-104. Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law; entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled.

Section 7-7-105. May be Several Actions on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 7-7-106. Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleading or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 7-7-107. Payments Into Court for Minors and Incompetents

Where any amount not exceeding Five Hundred Dollars (\$500.00) is deposited and paid into Court, for any minor or incompetent person having no legal guardian, and no person within ninety (90) days becomes the legal guardian, if the money is needed for support or in the best interest of the minor or incompetent, the Court may order payment made to a person as trustee. The order may be made in the original cause upon application of any interested person; and the Court may direct the Clerk to make payment in installments or one lump

sum. If a guardian has been appointed with bond, the Court shall order the money paid to the guardian subject to restrictions and accounting.

Section 7-7-108. Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered for or on behalf of a person less than eighteen (18) years or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses, shall by Court order, be deposited in a banking or savings and loan institution. Until the person becomes eighteen (18) or competent, withdrawals of moneys from accounts shall be solely pursuant to Court order. When an application is made pro se, the Judge shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed. In that case, the Court may direct, money may be paid to the guardian, subject to restrictions and accounting.

Section 7-7-109. Sharing of Judicial Officers

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdiction for the shared use of magistrates, trial judges, and appellate court justices.

Section 7-7-110. Sharing of Other Judicial Personnel

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdictions for the shared used of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial related or support personnel.

Section 7-7-111. Sharing of Material Resources

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

Section 7-7-112. Sharing of Financial Resources

Provisions may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any fines, fees, court costs, or penalties. Agreements may also provide for monetary contributions to the funding of the Court.

Section 7-7-113. Indians Employed in the Indian Service

All persons employed in the Indian Service shall be subject to the jurisdiction of the Court to the extent permitted by law. Any employee appointed by the Secretary of the Interior shall not be subject to any sentence or judgment for actions while on official duty except to the extent permitted by federal law, unless such sentence or judgment shall have been approved by the Secretary of the Interior.

Section 7-7-114. Copies of Laws

(A) The Supreme Court law library will be provided with available copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.

(B) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Tribal Attorney General to furnish an opinion on the point in question.

Section 7-7-715. Cooperation by Federal Employees

(A) No field employee of the Indian Service shall obstruct, influence or interfere with the functions of the Courts or attempt to influence, interfere or obstruct, functions in any manner.

(B) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the court upon its request in the preparation and presentation of the facts, and in the proper treatment of offenders and juveniles.

Section 7-7-716. Effect of Prior Decisions of the Court

The prior decisions of the Courts shall be binding upon the parties. The rules of law stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court.

Section 7-7-717. Judicial Review of Legislative and Executive Actions

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body,

or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional authorized and not prohibited by the Indian Civil Rights Act. If the Court finds action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize the unlawful action or to apply the law or statute. If the Court finds the contemplated action is authorized by the Constitution, Tribal Statutes, or the common law and the manner the authorized action is exercised is not prohibited, the Court shall dismiss the case. The Court shall not review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee unless some specific provision authorizes judicial review of the merits of the discretionary decision or action.

Section 7-7-718. Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

**CHAPTER EIGHT
APPELLATE PROCEDURE
PREFACE**

Section 7-8-001. Scope and Applicability of Rules

(A) Scope. This Act governs the procedure in appeals to the Supreme court from the Tribal District court and in application for writs or other relief which the Supreme Court or a Justice thereof is competent to give. When this Act provides for the making of a motion or application in the Tribal District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.

(B) "Tribal Court" Defined. Unless otherwise specifically stated or required by the context, the term "Tribal Court" as used in this Act shall be deemed to refer to both the Tribal District Court and any Division, or Judge thereof.

(C) This Act shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this Act shall be subject to the Tribal Constitution.

Section 7-8-002. Suspension and Revision of Rules

(A) In the interest of expediting decision(s), the furtherance of the administration of justice and the

efficient functioning of the Court, the Supreme Court is authorized to amend provisions of this Act by Court Rule duly adopted by a unanimous vote of the entire Court and filed in the Supreme Court clerk's Office and the Tribal Secretary's Office. Any Rule of the court which would have the effect of amending the Act shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary's Office for a period of sixty days, within which time the Tribal Legislative Body may veto said Rule. If not vetoed, such Rules shall be placed in the Court's law library and shall take effect of the sixty-first day after filing or on such later date as may be provided by the Court.

- (B) Amendment is specifically limited to necessary changes in existing provisions but not the addition of provisions which expand the authority of the Court.

Section 7-8-003. Discretionary Authority

Where no procedure is provided in this Act, other statutes of the Tribe, or the Supreme Court rules, the Supreme Court may proceed to exercise its functions in any manner.

Section 7-8-004. Authority

The Supreme Court shall hear cases by a panel of three justices, provided that appropriate provision be made for en banc hearings at the request of a party.

SECTION ONE

APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Section 7-8-101. Appeal As Of Right - How Taken

- (A) **Filing The Notice Of Appeal.** An appeal permitted as of right from the Tribal District Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk within the time allowed by Section 102, or by the statute applicable. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal.

- (B) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal, and their interests make joinder practicable, they may file a joint notice of appeal, or may join in appeal after fil-

ing separately, and they may proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties.

- (C) **Content of the Notice of Appeal.** The notice of appeal shall specify the parties to the appeal; shall designate the order, commitment, or judgment appealed, the docket of the Tribal District Court from which the appeal is taken, and a short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice.

- (D) **Service of the Notice of Appeal.** The Clerk shall serve notice of the filing of an appeal by mailing a copy of the notice, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall certify and deliver to the Clerk of the Supreme Court for filing, a certified copy of the notice of appeal. The Clerk shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom copies are mailed, with the date of mailing.

- (E) **Payment of Fees.** Upon the filing of appeal, the appellant shall pay to the Clerk the filing fee which shall be in such amount as may be determined by the Court Administrator, except that a filing fee shall not be required from the Tribe, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, tribal officers, or tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

Section 7-8-102. Appeal As Of Right - When Taken

(A) Appeals In Civil Cases.

- (1) In a civil case appeal permitted by law the notice of appeal shall be filed within the following time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided:
 - (a) From an order or judgment in an action for forcible entry or forcible or unlawful detainer. Ten (10) Days;
 - (b) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.
 - (c) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Sixty (60) days.
- (2) Except as provided in subsection (a)(4) of this Section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.
- (3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.
- (4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any party.
 - (a) For judgment notwithstanding the verdict, or
 - (b) To amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or
 - (c) To alter or amend the judgment or for a new trial,
 - (d) then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other

such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

- (5) The Tribal District Court, upon the showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 15 days after the expiration of the time prescribed by this Section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 10 days from the date of entry of the order granting the motion.
- (6) A judgment or order is entered when it is entered in compliance with the Civil Procedure Act.

(B) Appeals In Criminal Cases. In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court within 10 days after the entry of the final judgment and sentence or other order. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal

District Court within 10 days after the entry of the judgment or order appealed from unless a different time is specifically set by statute. A judgment or order is entered within the meaning of this subdivision when it is entered in the criminal docket pursuant to the Criminal Procedure Act. Upon a showing of excusable neglect Tribal District Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

Section 7-8-103. Interlocutory Appeals in Civil Actions.

(A) Interlocutory Appeals as of Right. A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments or orders of the Tribal District Court:

- (1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.
- (2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
- (3) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.
- (4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
- (5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such a directing sales or other disposal of property.
- (6) An order that directs the payment of money

pendente lite, except where granted at an ex parte where a full hearing will be held upon application therefore, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the payment of money pendente lite.

- (7) An order that certifies or refuses to certify an action to be maintained as a class action.
- (8) An order with regard to probate matters:
 - (a) Granting, or refusing, or revoking letter testamentary or of administration, or of guardianship, or conservatorship, or
 - (b) Admitting, or refusing to admit, a will to probate, or
 - (c) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (d) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (e) Against or in favor of directing the partition, sale or conveyance of any interest in real property, or
 - (f) Settling an account of an executor, or administrator or guardian, or
 - (g) Refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or
 - (h) Refusing or allowing the release of any tax liability, or
 - (i) From any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.
- (9) Any interlocutory order or decree made immediately appealable by Tribal statute.

(B) Time for Filing Interlocutory Appeals as of Right and Special Rules.

- (1) The party aggrieved may appeal the order without awaiting the final determination of the action, by filing the notice of appeal with the District Court Clerk within fifteen (15) days after the order is issued.

- (2) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or preliminary injunction shall stay the enforcement of said order and said order shall remain in full force and effect until final order of discharge after appeal shall take effect.
- (3) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in the sum as the Court deems proper, to secure the party procuring the injunction damages he may sustain, including reasonable attorneys fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.
- (4) Where a receiver has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in a sum required of the receiver or a Judge, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(C) Interlocutory Appeals by Permission. When a Judge, in making an order or decree in a civil action not appealable believes the order involves a controlling question of law which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing. The Supreme Court may in its discretion, permit an appeal to be taken from such order, if application is made within ten days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall so order.

(D) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed by Section 103(c) may be sought by filing a petition for permission to appeal with the Clerk within 10 days after the entry of such order in the District Court with proof of service on all other parties to the action in the District Court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

- (1) The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined the District Court; a statement of the question itself; and a statement of why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include a copy of the order appealed and findings of fact, conclusions of law and opinion. Within 7 days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.
- (2) All papers may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.
- (3) Within 10 days after the entry of an order granting permission to appeal, the appellant shall:
 - (a) pay to the Clerk of the District Court the fees established for the filing of appeals by permission.
 - (b) file a bond for costs if required by the Supreme Court.

Upon receipt of payment the Clerk of the Supreme Court shall enter the appeal. The record shall be transmitted and filed as in cases of direct appeal by right. A notice of appeal need not be filed.

Section 7-8-104. Interlocutory Appeals In Criminal Actions.

(A) Appeal by the Defendant. An interlocutory

appeal to the Supreme Court may not be taken by the defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

- (B) Appeal by the Tribe.** An appeal by the Tribe may be taken from a decision or order of the Tribal Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

Section 7-8-105. Appeals by the Tribe in Criminal Actions.

- (A) An appeal to the Supreme Court may be taken by the Tribe from the final judgment in a criminal action in the following cases:
- (1) Upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial.
 - (2) Upon an order of the Court arresting the judgment.
 - (3) Upon a question of law reserved by the Tribe, provided, that the criminal complaint shall be reinstated and the case shall proceed if the Tribe's appeal is upheld under subsection (A)(1) of this Section, the judgment and sentence arrested shall be entered and enforced if the Tribe's appeal is upheld under subsection (A)(2) of this Section, and a defendant may not be tried against for the same offense if the Tribe's appeal is upheld under subsection (A)(3) of this Section.
- (B) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant may be released in accordance with Section 108 of this Act.

Section 7-8-106. Bond For Costs On Appeal In Civil Cases.

The District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Section 107(B) of this Act applies to a surety upon a bond given pursuant to this Section.

Section 7-8-107. Stay Or Injunction Pending Appeal.

- (A) Procedure.** Application for a stay of the judgment or order of Tribal District Court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction pending must ordinarily be made first in the District Court. A motion may be made to the Supreme Court panel, or to a Justice thereof, but the motion shall show that application to the District Court is not practicable, or the District Court has denied an application, or has denied the relief with the reasons given. The motion shall also show the reasons for the relief and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies. The record as relevant shall be filed. Reasonable notice of the motion shall be given. The motion shall be filed with the Clerk. In exceptional cases due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the Court panel. In cases where relief has not been previously requested in the District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the District Court for its initial determination.

- (B) Bond, Proceedings Against Sureties.** Relief available in the Supreme Court under this Section may be conditioned upon the filing of a bond or other appropriate security in the District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk with his proper and current address, and a supply of stamped, self addressed envelopes, if they wish copies of any papers served upon the Clerk as agent to be mailed. Liability may be enforced on motion in the District Court without the necessity of an independent action. The motion and notice of the motion as the District Court shall prescribe may be served on the Clerk who shall mail copies to the sureties if

their addresses are known.

- (C) **Criminal Cases.** Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Act.

Section 7-8-108. Release in Criminal Cases.

- (A) **Appeal Of Order Denying Release Pending Appeal.** An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. The appeal in such matters shall be heard without briefs after reasonable notice to the appellee upon such papers, affidavits, and the record as the parties shall present. A Supreme Court, panel of three justices may order the release of the appellant pending the appeal.

- (B) **Procedure.** Application for release after a judgment of conviction shall be made first in the Tribal District Court. If the Tribal District Court refuses release pending appeal, or imposes conditions of release, the Court shall issue an order. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice. The motion shall be determined promptly upon such papers, affidavits, and the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court panel may order the release of the appellant pending disposition of the motion.

- (C) **Criteria For Release.** The decision as to release pending appeal shall be made in accordance with the criteria for bail established by tribal law in the Criminal Procedure Act. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

- (D) The Defendant shall be required to post a cash bond in the amount of fines, fees, costs and restitution ordered by the District Court after a finding of guilt by the court or a jury.

Section 7-8-109. The Record on Appeal.

- (A) **Composition Of The Record On Appeal.** The original papers and exhibits filed in the District Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the

docket entries prepared by the Clerk shall constitute the record on appeal.

(B) Transcript, Duty of Appellant To Order, Notice Of Partial Transcript.

- (1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the District Court. If no parts of the proceedings are ordered, within the same period the appellant shall file a certificate to that effect.
- (2) If the appellant intends to urge on appeal that a finding or conclusions unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.
- (3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (B)(1) of this Section, file a statement of the issues he intends to present on appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings are necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days order the parts or move in the District Court for an order requiring the appellant to do so.
- (4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court Administrator for each original page, and an additional fee for each copy of an original page. The Clerk may designate a Reporter to produce a transcript with the cost assigned to the party. If a copy of a tape

recording of the proceedings is ordered, the Clerk shall charge a fee to be set by the Court Administrator for each tape ordered. All such fees paid on behalf of a Clerk or reporter who is employed by the Tribe and paid a salary from tribal monies shall be deposited in the Court fund. All fees paid on to an independent reporter appointed or authorized by the District Court to record proceedings, not paid from tribal fund shall be paid over to such reporter.

(C) Procedure When No Transcript Available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the District Court for settlement and approval and as settled and approved shall be included by the Clerk in the record on appeal.

(D) Agreed Statement As The Record On Appeal. In lieu of the record on appeal as defined in subsection (A) above, the parties may prepare and sign a statement showing how the issues presented arose and were decided and setting forth facts proved or sought to be proved essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with additions the Court may consider necessary, shall be approved by the District Court, and be certified to the Supreme Court as the record and transmitted to the Supreme Court Clerk's records.

(E) Correction Or Modification Of The Record. If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or its

own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the Supreme Court.

Section 7-8-110. Transmission of Record.

(A) Chief Clerk To Serve As Clerk of the Supreme Court. The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant.

(B) Transmission And Filing Of Record. In all cases, including juvenile and criminal actions, the Clerk within 15 working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by the Court Administrator.

(C) Completion of Record. Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge receipt and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, to the Clerk of the Supreme Court. If the transcript cannot be completed within 30 days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the shall be entered and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the clerk or reporter shall file it with the Clerk of the Tribal District Court and shall notify the Clerk of the Supreme Court that he has done so.

(D) Transmission of Transcript. Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Section 109 (C) or (D) of this Act, the Clerk of the District Court shall notify the parties that the transcript, tapes, or statement is completed and ready for transmittal to the Supreme Court and shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed.

Section 7-8-111. Docketing The Appeal; Filing The Record.

(A) Docketing The Appeal. Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to Section 110(B), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Tribal District Court, with the appellant identified as such, but if the action in the Tribal District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(B) Upon receipt of the completed record on appeal as provided in Section 110(D), the Clerk of the Supreme Court shall file it and shall immediately give notice to all parties and the date on which it was filed.

**SECTION TWO
HABEAS CORPUS**

Section 7-8-201. Habeas Corpus Proceedings.

An application for a writ of habeas corpus shall originally be made to the Tribal District Court. If application is made to the Supreme Court, or a Justice thereof individually, the application will ordinarily be transferred to the Supreme Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal District Court denying the writ.

Section 7-8-202. Transfer Of Custody Pending Review

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Section and the Court rules. Upon application of a custodian showing a need therefore, the Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

Section 7-8-203. Detention Or Release Pending Review Of Decision Failing to Release

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court panel. This provision is subject to Section 108(D).

Section 7-8-204. Detention Or Release Pending Review Of Decision Ordering Release

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order. This provision is subject to Section 108(D).

Section 7-8-205. Modification of Initial Order Respecting Custody

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made. This provision is subject to Section 108(D).

**SECTION THREE
PROCEEDINGS IN FORMA PAUPERIS**

Section 7-8-301. Leave From Tribal District Court to Proceed to Supreme Court

A party to an action in the District Court who desires to appeal in forma pauperis shall file in the Tribal District Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his inability to pay fees and costs or to give security, their belief that they are entitled to redress, and a statement of the issues which they intend to present. If the motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either Court or the giving of security. If the motion is denied, the District Court shall state the reasons for the denial.

Section 7-8-302. Special Rule For Parties Previously Granted. Permission To Proceed In Forma Pauperis.

A party who has been permitted to proceed in the District Court in forma pauperis, or who has been permitted to proceed there as financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed, in which event the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed, in which event the Tribal District Court shall state the reasons for such certification or finding.

Section 7-8-303. Remedy For Denial Of Motion By Tribal District Court.

If a motion for leave to proceed on appeal in forma pauperis is denied by the District Court, or if the District

Court shall certify that the appeal is not taken in good faith or shall find that the party is not entitled to proceed in forma pauperis, the Clerk shall serve notice of such action. A motion for leave may then be filed in the Supreme Court within 30 days after service of notice of the action of the District Court. The motion shall be accompanied by a copy of the affidavit filed in the District Court, or by the affidavit prescribed by Section 311 of this Subchapter if no affidavit has been filed in the District Court, and by a copy of the statement of reasons given by the District Court for its actions.

**SECTION FOUR
GENERAL PROVISIONS**

Section 7-8-401. Filing and Service.

Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if first class mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

Section 7-8-402. Service of All Papers Required.

Copies of all papers filed by any party and not required by this Act to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

Section 7-8-403. Manner Of Service.

Service may be personal or by mail in any manner allowed by the Civil Procedure Act for service of motion or briefs. Personal service includes delivery of the copy to a Clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

Section 7-8-404. Proof Of Service.

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certi-

fied by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly.

Section 7-8-405. Computation of Time.

In computing any period of time, by an order of the Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to or less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Section, “legal holiday” includes New Year’s Day, Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or the Legislative Body of the Tribe.

Section 7-8-406. Enlargement Of Time.

The Court for good cause shown may upon motion enlarge the time prescribed by this Act or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

Section 7-8-407. Additional Time after Service By Mail.

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, 3 days shall be added to the prescribed period.

SECTION FIVE MOTIONS AND BRIEFS

Section 7-8-501. Content, Response, and Reply to Motions.

Unless another form is elsewhere prescribed by this Act, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Act governing such a motion,

shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within 7 days after service of the motion, but motions authorized by Sections 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

Section 7-8-502. Determination of Motions for Procedural Orders.

Notwithstanding the provisions of Section 311 of this Act as to motions generally, motions for procedural orders, including any motion under Section 306, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may by application to the Court request consideration, vacation or modification of such action.

Section 7-8-503. Power of a Single Judge to Entertain Motions.

Consistent with the authority expressly conferred by this Act or by other Tribal law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Act may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by Court panel. The action of a single Justice may be reviewed by a Court panel.

Section 7-8-504. Form of Papers; Number of Copies.

All papers relating to motions may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

Section 7-8-505. Brief of Appellant.

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (A) A cover page as described in Section 329.
- (B) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (C) A statement of the issues presented for review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 319).

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

Section 7-8-506. Brief of Appellee.

The brief of the appellee shall conform to the requirements of Section 315, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

Section 7-8-507. Reply Brief.

The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court.

Section 7-8-508. References in Briefs to Parties.

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee”. It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” the car,” or the names of the parties.

Section 7-8-509. References in Briefs to the Record and Statutes.

(A) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix where they appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript

where the evidence was identified, offered, and received or rejected.

(B) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts, they shall be reproduced in the brief or in an addendum, or they may be supplied to the Court in pamphlet form.

Section 7-8-510. Length of Briefs.

Except by permission of the Court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, and similar material.

Section 7-8-511. Briefs in Cases Involving Cross Appeals.

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purposes of this Chapter and Sections 326, 327, and 328, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

Section 7-8-512. Briefs and Cases Involving Multiple Appellants or Appellees.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Section 7-8-513. Citation of Supplemental Authorities.

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk of the Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Section 7-8-514. Brief of an Amicus Curiae.

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of

Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Tribe, the United States or an officer or agency thereof, or by another Tribe or a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the Tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

Section 7-8-515. Appendix to the Briefs.

Whenever the record on appeal, or the transcript is particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his brief when such is necessary for a clear presentation of the issues raised on appeal.

Section 7-8-516. Time for Filing and Service of Briefs.

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 5 days before argument.

Section 7-8-517. Number of Copies to Be Filed and Served.

Ten copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall direct a lesser or greater number, and two cop-

ies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

Section 7-8-518. Consequence of Failure to File Briefs.

If an appellant fails to file his brief within the time provided by this Act, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

Section 7-8-519. Form of Briefs, the Appendix and Other Papers.

(A) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. All printed matter must appear in at least 12 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Section may be inserted in the appendix; such pages may be informally renumbered if necessary.

(B) If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of a intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front cover of the briefs and of appendices shall contain.

- (1) The name of the Court and the number of the case;
- (2) The title of the case;

- (3) The nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
- (4) The title of the document (e.g. Brief for Appellant, Appendix); and
- (5) The names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

Section 7-8-520. Form of Other Papers.

- (A) Petitions for rehearing shall be produced in a manner prescribed by a Section 329.
- (B) Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.
- (C) A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

**SECTION SIX
ARGUMENT**

Section 7-8-601. Prehearing Conference.

The Court may direct the attorneys for the parties to appear before the Court or a Justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding. The Court or Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Section 7-8-602. Oral Argument in General.

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opin-

ion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines.

- (A) The appeal is frivolous; or
- (B) The dispositive issue or set of issues has been recently authoritatively decided; or
- (C) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Section 7-8-603. Notice of Argument; Postponement.

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefore, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

Section 7-8-604. Order and Content of Argument.

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

Section 7-8-605. Cross and Separate Appeals.

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

Section 7-8-606. Non-Appearance of Parties.

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

Section 7-8-607. Submission on the Briefs.

By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

Section 7-8-608. Use of Physical Exhibits at Argument; Removal.

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

Section 7-8-609. When Hearing or Rehearing En Banc Will Be Ordered.

A majority vote of the nine Justices may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

- (A) When consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or
- (B) When requested by the Chief Judge of the District Court
- (C) When the proceedings involves a question of exceptional importance, to the Tribe or Tribal Government.

Section 7-8-610. Suggestion of a Party for Hearing or Rehearing En Banc.

A party may suggest the appropriateness of a hearing or rehearing en banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the Justices of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard en banc unless a Justice in regular active service or the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

- (A) When the majority of the nine Justices vote that a matter will be heard en banc the cost of the en banc hearing until be appropriated to the parties equally at the rate of the current daily Justices pay. Such amount to be paid to the Court Clerk before the conduct of such hearing, unless waived by the Court.
- (B) A party may request an appeal hearing en banc by depositing the amount to cover the additional Justices, beyond the three Justice panel. The amount deposited shall cover the daily pay rate

of the additional Justices. A request under this provision, where one party assumes the additional costs will ordinarily be granted unless the Justice vote to reject such a request. The moving party under this provision assumes the additional costs of further hearings if they are required by the circumstances of the case.

Section 7-8-611. Time for Suggestion of a Party for Hearing or Rehearing En Banc; Suggestion does not Stay Mandate.

If a party desires to suggest that a motion or proceeding be heard initially en banc, the suggestion must be made by the date the appellee's brief is filed. A suggestion for rehearing a motion en banc must be made within ten days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

**SECTION SEVEN
JUDGMENT**

Section 7-8-701. Entry of Judgment.

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Section 7-8-702. Interest on Judgments.

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the District Court the mandate shall contain instruction with respect to allowance of interest.

Section 7-8-703. Damages for Delay.

If the Supreme Court shall determine that an appeal is

frivolous, it may award just damages and single or double costs to the appellee.

Section 7-8-704. To Whom Costs Allowed.

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

Section 7-8-705. Costs For Or Against the Tribe.

In cases involving the Tribe or an agency or officer thereof, if an award of costs against or for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of Section 364, otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity, provided that cost shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

Section 7-8-706. Costs of Briefs, Appendices, and Copies of Records.

Unless otherwise provided by tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work.

Section 7-8-707. Bill Of Costs; Objections; Costs Inserted In Mandate Or Added Later.

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within 14 days after the entry of judgment. Objection to the bill of costs must be filed within 10 days of service unless the time is extended. The Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk.

Section 7-8-708. Costs On Appeal Taxable in the Tribal District Court.

Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary

for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the District Court as costs of the appeal in favor of the party entitled to costs under this Act.

Section 7-8-709. Petition For Rehearing.

(A) Time For Filing, Content, Answer, Action By Court. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other order as are deemed appropriate under the circumstances of the particular case.

(B) Form of Petition; Length. The petition shall be in a form prescribed by Section 329, and copies shall be served and filed as prescribed by Section 327 for the service and filing briefs. Except by permission of the Court, a petition for rehearing shall not exceed 15 pages.

Section 7-8-710. Issuance of Mandate.

The mandate of the Court shall be issued 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Section 7-8-711. Voluntary Dismissal.

(A) Dismissal in The Tribal District Court. If an appeal has not been docketed, the appeal may

be dismissed by the District Court upon the filing in that Court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(B) Dismissal in The Supreme Court. If the parties shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

Section 7-8-712. Substitution of Parties.

(A) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party. The motion of a party shall be served upon the representative in accordance with the provisions of Sections 302, 303, and 304. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Act. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

(B) Substitution for Other Causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (A).

(C) Public Officers; Death or Separation from Office.

- (1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
- (2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

Section 7-8-713 Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Tribe Is Not A Party.

It shall be the duty of a party who draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee in their official capacity is not a party, upon the filing of the record, or as soon as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of the question. The Clerk shall certify such fact to the Tribal Attorney and/or Tribal Prosecutor who may intervene.

CITIZEN POTAWATOMI NATION
ADMISSIONS, PRACTICE AND DISCIPLINE OF ATTORNEYS
TITLE 8

<u>Chapter</u>	<u>Rule</u>
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CHAPTER ONE

ATTORNEYS AND LAY ADVOCATES RULES

Rule 8-1-101 Admission to the Bar

(A) Roll of Attorney and Lay Advocates. The Bar of this Court shall consist of those attorneys and lay advocates heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule, and have signed the roll of attorneys of this Court.

(B) Procedure for Admission. There is hereby constituted a Committee on Admissions and Grievances, consisting of three member of the Bar of this Court, to be appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on Admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant, if an attorney, may be admitted. Lay Advocates shall be admitted upon examination as described below. An applicant for admission, who has qualified for admission, may, upon request, be admitted upon order of the Court after having filed his oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its term and be admitted by taking the oath of attorney in open Court upon motion of any member of the Bar of this Court.

It is desired that the procedure for admission by the Committee include a Tribal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules. It is anticipated that this program would be held in the ceremonial courtroom, and would, if possible, include presentations by Court officials and judicial officers. The Court will endeavor to set aside a portion of one day at the beginning of each term of a Tribal practice program which should be attended by those

expecting to be admitted during that term unless such attendance would create a hardship for the prospective admittee.

Individual Justices may, from time to time, in emergent situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the oath shown in Exhibit I to these rules.

(C) Eligibility. Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Tribal Justice, Judge, or magistrate, or a member in good standing of the Bar of the highest court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

Any member of a federally recognized Indian Tribe shall be eligible for admission as a lay advocate upon successfully taking a comprehensive examination on the laws and rules applicable in the Tribal Court, which examination shall be promulgated by the Admissions Committee with the approval of the Court, and administered by the Admissions Committee at least once each year or at such other intervals as may be ordered by the Court. Upon receiving a passing score on the examination and showing their moral fitness to practice law, such persons should receive a favorable report from the Admissions Committee and be admitted to the practice of law in this Court and all inferior Tribal Courts. Thereafter, such lay advocates shall be held to the same standards, be entitled to the same rights, privileges, obligations, and duties, and be accorded all the honors to the same extent as any attorney admitted to practice before the Courts of the Tribe within this reservation.

(D) Reciprocity. Any attorney who shall have been admitted to practice in any Federal Court within this State may be admitted to practice in this Court upon the motion of a member of the Bar, in open Court, and the filing of a written application without the necessity of appearing before the Admissions Committee.

(E) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

(F) Admission of Non-Resident Attorney for Limited Practice. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or of the highest Court of any Indian Tribe or State of the United States, who is a non-resident of the State may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (B) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the court.

(G) Temporary Admission. Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a Judge of the District Court or Justice of this Court be granted temporary admission to practice in a pending case.

(H) Withdrawal from Case. In any action, wherein appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(I) Discipline. Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

(J) Summary Discipline. For misconduct in the

presence of the Court, an order may issue forthwith administering such discipline as the Court deems appropriate, including a fine of not to exceed \$500.00 or confinement of not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal any punishment imposed hereunder to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting en banc. The Justice or Judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal the discipline imposed will, upon request of the attorney, and by his posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within said seven (7) days, the punishment so imposed shall be forthwith administered unless in the interim the Judge or Justice imposing same has rescinded or modified his original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal direct to the Supreme Court.

(K) Conviction; Discipline in Other Courts. Any member of the Bar of this Court convicted in either federal, state, or tribal court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated, excepting however that in the event the discipline imposed in the other jurisdiction has been stayed there the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. And provided further however that in the event a member of the Bar of this Court is disciplined in some other jurisdiction and this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

- (2) that there was such a infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) that the imposition of the same discipline by the Court would result in grave injustice; or
- (4) that the misconduct established is deemed by the Court to warrant substantially different discipline,

then and in either of such events said attorney shall not be automatically similarly disciplined in this Court.

An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits his license to practice therein to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall forthwith be disbarred from practicing in this Court.

(L) Disciplinary Procedures. Proceedings to discipline a member of the Bar of this Court, except as set forth in paragraphs (J) and (K) hereof, shall be upon an order to show cause issued by the Court, reciting the charges and fixing notice of the date of hearing (which shall not be less than thirty (30) days from the date of the notice), and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at his last known address. The Court may, in its discretion, refer any Bar disciplinary matter to its Committee on Admissions and Grievances for proper investigation and recommendation to the Court, either before or after issuance of an order to show cause. The recommendation of the Committee on Admissions and Grievances, if same suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement.

Rule 8-1-102 Appearance of Counsel and Withdrawal of Counsel

(A) Appearance. Any attorney appearing for a defendant in a civil or criminal case shall enter his appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a plaintiff should change counsel or add additional counsel, the new or additional counsel for such plaintiff shall enter his appearance on a form to be provided by the Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw conformably to Rule 101 (H) only by order of the Judge to whom the case is assigned.

(B) Certificate of Familiarity With Local Court Rules. Every person, upon entering an appearance in any case of proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

The same certification shall also be required of every other person thereafter participating in such cause or proceeding.

The Clerk shall keep a master file of all such certificates. Once a person has so certified his familiarity, he shall not be required to do so in a subsequent cases unless required by order of the Court. A Judge of this Court may authorize the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of Justice.

Rule 8-1-103 Courtroom Decorum

(A) The Canon of Professional Ethics were adopted by the American Bar Association and this Court

as a general Guide, because as stated in the preamble of the American Bar Association Canons, “No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life.” The preamble further admonishes that “the enumeration of particular duties should not be construed as a denial of the existence of other equally imperative, though not specifically mentioned.” In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and the usages, customs, and practice of the bar of this Court. These Canons, and the statutes and common law of the Tribe relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(B) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer’s conduct in the courtroom. In addition to all other requirements, therefore, lawyer’s appearing in this Court shall:

- (1) Be punctual in attendance at Court.
- (2) Refrain from addressing one another in Court by their first names.
- (3) Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court’s permission has been first obtained.
- (4) See that only one of them is on his feet at a time unless an objection is being made.
- (5) Refrain from approaching jurors who have completed a case unless authorized by the Court.
- (6) Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If however, it becomes necessary for an attorney to confer with the Court at the bench, the Court’s permission should be obtained, and opposing counsel should be openly invited to accompany him.

- (7) Refrain from employing dilatory tactics.
- (8) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
- (9) Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the Judge.
- (10) Hand to the Clerk, rather than the Court Reporter, any exhibits to be marked which have not previously been identified.
- (11) Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.
- (12) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.
- (13) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument which has been previously admitted in evidence.
- (14) Not conduct a trial when they know, prior thereto, that they will be necessary witness, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client’s case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.
- (15) Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.

- (16) Rise when addressing, or being addressed by the Court.
- (17) Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner as befits an officer of the Judicial Branch of the Government and should abstain from any apparel or ornament calculated to attract attention to themselves.
- (18) Comply, along with all other persons in the courtroom, with the following:
 - (a) No tobacco in any form will be permitted at any time.
 - (b) No propping of feet on tables or chairs will be permitted at any time.
 - (c) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.
 - (d) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.
 - (e) No talking or other unnecessary noises will be permitted while Court is in session.
 - (f) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.
 - (g) All male lawyers and male Court personnel must wear both coats and ties, women lawyers and women Court personnel must be suitably attired.
 - (h) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

Rule 8-1-104 Attorney Conference With Respect To Discovery Motions

With respect to all motions or objections relating to discovery, the Tribal District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that he

has conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

Rule 8-1-105 Free Press - Fair Trial

- (A) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.
- (B) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.
- (C) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:
 - (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

- (2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
 - (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
 - (4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
 - (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
 - (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.
- (D) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.
- (E) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.
- (F) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.
- (G) All Court supporting personnel, including among others, Tribal and Bureau of Indian Affairs Police and their deputies, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning in camera arguments and hearings held in chambers or otherwise outside the presence of the public.
- (H) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.
- Such a special order may be addressed to some or all of the following subjects:
- (1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors and court officials) which might divulge prejudicial matter not of public record in the case.
 - (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury

and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

- (3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.
- (4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the Tribal Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.
- (6) Insulation of witnesses during the trial.
- (7) Specific provisions regarding the seating of spectators and representatives of news media, including:
 - (a) An order that no member of the public or news media representative be at any time permitted within the bar railing;
 - (b) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.
- (I) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a Tribal judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or

similar proceedings, and (3) the use of electronic or photographic equipment including recording apparatus by tribal officers or employees on the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

- (J) As used in this Rule the term “environs” means any place in or near the tribal courtroom, or within the building in which the tribal courtroom is situated.

Rule 8-1-106 Plan of the Tribal Court for the Representation of Indigent Defendants

- (A) **For Whom Appointed.** As designated and provided by the Tribal Court for criminal defendants, and parents, and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation.
- (B) **Appointment Panel.** Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational basis, subject to the Court’s discretion to make exceptions due to the nature and complexity of the case, an attorney’s experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.
- (C) **Pay.** Appointees may be compensated at a rate determined by a Judge of this Court but not to exceed \$30.00 per hour for time expended in court and \$20.00 per hour for time expended out of court in addition to reasonable expenses as determined by a Judge of this Court as the Court budget and court fund will allow. The compensation for legal services shall not exceed \$1,000.00 for an attorney in a case in which a crime punishable by banishment is charged, or in termination of parental rights cases, including all representation before the Supreme Court

through appeal of the case, and shall not exceed \$400.00 for an attorney in a case in which a misdemeanor is charged including all representation before the Court through appeal of the case. Compensation in post-conviction cases, probation and parole revocation hearings and material witness matters shall not in any event exceed \$250.00 per attorney per case. In all events, the compensation paid shall be in that amount approved by a Judge of this Court.

(D) Claims. Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within 45 days after services are completed.

(E) Obligation of Court-Appointed Counsel to Disclose Client's Assets. If at anytime after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(F) Refusal to Represent Indigents. An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed so to do so by either a Judge or a Magistrate may have his name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without his consent, to represent more than one person each calendar year without receiving compensation therefore as provided in paragraph (v) of this rule. For good cause shown, the Court may excuse as attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such cases.

(G) Persons Obligated To Refund Court Fund For Attorney Fees Or Pay Attorneys.

Every indigent person, and the parents of every child, for whom, a court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their court appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such rep-

resentation at the conclusion of the case, which amount shall not exceed the amount which the Court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case by the parties attorney, the Tribal Attorney, or Tribal District Attorney, at any time after the amount of such attorneys fees and costs have been set by the Court, and process may be issued as in civil cases to enforce this liability. All amounts recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for his fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amount as he is entitled to pursuant to the order of the Court setting the attorney fees and costs.

CHAPTER TWO OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution of the Tribe. I will maintain the respect due to Courts of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's causes for lucre or malice. So help me God.

CITIZEN POTAWATOMI NATION
EXECUTIVE BRANCH
TITLE 6

RESERVED

CITIZEN POTAWATOMI NATION
JUDICIARY AND APPELLATE PROCEDURE
TITLE 7

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PREFACE

Section 7-0-001 Authorization

There is hereby established, ordained and activated pursuant to the Constitution of the Tribe A Judicial Branch of the Government with a lower Court known as the District Court and an upper Court known as the Supreme Court

Section 7-0-002 Definitions

The following words have the meanings given below when used in this Act, unless a different meaning is obvious from the context:

- (A) "Clerk" shall mean the Clerk of the Court.
- (B) "Code: shall mean the Statutory laws of the Tribe.
- (C) "Constitution" shall mean the Constitution of the Tribe.
- (D) "District Court" shall mean the lower or general trial Court operating within the jurisdiction of the Tribe.
- (E) "Jurisdiction" shall mean the jurisdiction as established by the Tribal Court.
- (F) "Supreme Court" shall mean the Court to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.

Section 7-0-003 Territorial Jurisdiction

The Territorial Jurisdiction of the Courts shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States Code over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a Court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

Section 7-0-004 Civil Jurisdiction

The Courts shall have general civil jurisdiction over all civil actions arising under the constitution, laws, or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction.

Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere consistent with tribal law, and all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

Section 7-0-005 Criminal Jurisdiction

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

Section 7-0-006 Probate Jurisdiction

To the extent permitted by federal law the Courts shall have probate jurisdiction over all the real and personal property located within the jurisdiction of the Court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

Section 7-0-007 Juvenile Jurisdiction

The Juvenile Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

Section 7-0-008 Law to be Applied

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States

Title 7

or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability.

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the courts of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability.

The order of precedence in which the Courts shall apply the law is as follows:

- 1) the Tribal Constitution,
- 2) Tribal Statute,
- 3) Tribal traditional custom and usage (Common Law),
- 4) Federal law,
- 5) State laws applicable to tribal sovereign land under the Major Crimes Act,
- 6) delegations of regulatory authority by Federal Statute.

The Tribal Courts may request the counsel of Tribal Elders and Counselors as well as consider any precedents established under State Courts and State Law. The laws of the United States as interpreted by the United States Supreme Court are binding and enforceable in Tribal Court. Federal law that has been interpreted by the lower federal courts that is in conflict with tribal statute and the rulings of other lower federal courts may be considered by the Tribal Court in a manner most beneficial to the Citizen Potawatomi Nation (Most Favorable Precedent).

The Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 *et seq.*, provides that no Indian Tribe exercising powers of self-government shall fail to provide certain guarantees contained in the United States Constitution, including, but not limited to, the right of free exercise of religion, the right of freedom of speech, assembly, and petition, the right to equal protection of the laws, and the right against deprivation of liberty or property

without due process of law. These guarantees are also enshrined in Article 16 of the Citizen Potawatomi Nation Constitution. The Citizen Potawatomi Nation Code shall be construed by the Courts to provide the guarantees identified in the Indian Civil Rights Act, as defined by the United States Supreme Court.

Enacted by Ordinance #17-06 by the Citizen Potawatomi Legislature on December 8, 2016.

Section 7-0-009 Amendments

The Tribal Legislative Body shall have the authority to alter, amend, or repeal any of this Act.

CHAPTER ONE EQUITABLE POWERS DOCTRINE

Section 7-1-101 Citation

This chapter may be cited as Defining the Existing Equitable Powers Doctrine of the Citizen Potawatomi Nation Tribal Court.

Section 7-1-102 Purpose

The Citizen Potawatomi Nation recognizes that the Tribal Court has had equitable powers to enforce its orders from inception, and to cite persons for both direct and indirect contempt of court. Indirect contempt of court consists of a willful disobedience of any process or order lawfully issued or made by court; and/or resistance willfully offered by any person to the execution of a lawful order or process of a court.

Section 7-1-103 Equitable Powers Doctrine

The Court is vested and has been vested with the power and authority, in a civil matter properly before the Court, to cite an individual for indirect contempt when they fail to execute, follow or obey an Order of the Court concerning payment, action or any inaction as required by Court Order regardless of the physical location of such acts. The respondent to a citation for contempt shall be entitled to a show cause hearing within ten (10) days of the issuance of a citation, at which time they will be advised of their rights and a plea taken. Upon a guilty plea the Court may proceed with sentencing as appropriate in the discretion of the Court, limited to Five Thousand Dollars (\$5,000.00) and/or a year in prison.

CHAPTER TWO DISTRICT COURT

Section 7-2-101 Judges of the District Court

The District Court shall consist of the Chief Judge, and such District Judges, and Special Judges as may be appointed.

Section 7-2-102 Minimum Qualifications of Judge of the District Court

A Judge shall:

- (A) Be either:
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five years, or
 - (6) An Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Supreme Court; and
- (B) Have demonstrated moral integrity and fairness in his business, public and private life, and
- (C) Have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two years next preceding his appointment. The two year period shall begin to run from the date the person was unconditionally released from supervision.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be older than twenty-five (25).
- (F) Not be the holder of any other elective Tribal Office, provided, that the holder of elective Tribal Office, may be confirmed upon their resignation.
- (G) if less than fifty (50), have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two years

of previous experience as a Judicial Officer for some recognized Court.

Section 7-2-103 Manner of Selection of Justices and Judges

Justices and Judges of the Tribe shall be nominated by the Chief Executive Officer and confirmed by the Tribal Legislative Body upon a vacancy occurring in a judicial office in the following manner:

- (A) Within thirty days after a vacancy the Chief Executive Officer shall cause a notice of the vacancy to be published once in the Tribal newspaper and once each week for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. Copies of the notice shall be posted at the Tribal Office, and such other places as the Chief Executive Officer shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Secretary who shall keep a permanent record of responses.
- (B) No sooner than twenty (20), nor more than thirty (30) days after the last required notice, the Secretary shall deliver the names and files of all persons nominated or applying to Chief Executive Officer, who shall select no more than three qualified candidates for each vacancy and place the candidate(s) on the agenda of the next regular or special meeting of the Tribal Legislative Committee.
- (C) The Tribal Legislative Body shall review the nominees, and may interview nominees. The Tribal Legislative Body shall give preference to candidates who:
 - (1) have more formal education and experience in the legal field.
 - (2) by written examination conducted by the Supreme Court or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Tribe.
 - (3) have demonstrated decision making ability.
 - (4) agree to participate in a program of study provided by the Tribal Court Administration which reviews concepts of Tribal Sovereignty and United States, State and Tribal Court precedents.
- (D) If the nominee is confirmed by the Tribal Legislative Body, the nominee shall be sworn by the

Chief Justice, or the next available Justice.

- (E) If the nominee(s) is not confirmed, the Chief Executive Officer may either republish the notice, or reconsider the candidates. Nomination - Legislative confirmation process shall continue until some nominee be confirmed.
- (F) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Secretary not less than 150 days prior to the expiration of his term to be considered for confirmation to a new term at the next meeting of the Tribal Legislature at which a quorum is present. If the Legislature, a quorum being present, does not confirm the outgoing officer, it shall declare and direct the Chief Executive Officer to begin the selection process. The outgoing Judicial Officer's term shall expire upon confirmation of the new Justice or Judge.

Each person appointed to Tribal Judicial Office by the Tribal Legislature must furnish a standard form of consent before the Appointment is confirmed by the Council of the Citizen Potawatomi Nation by majority vote in a General or Special Election held for that purpose. To wit:

JUDICIAL APPOINTMENT CONSENT FORM

"I, (Appointee's Name) do hereby accept appointment by the Tribal Legislature of the Citizen Potawatomi Nation to the office of (Supreme Court Justice or District Court Judge) for a term of (number of) years and consent to confirmation of this appointment by the Citizen Potawatomi Nation Indian Council in a Tribal Election."

Signed: _____

Name: _____

Date: _____

This form must be filed with the Tribal Secretary by either facsimile or letter no later than one hundred and fifty (150) days prior to a regular election or sixth (60) days prior to a special election.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on January 13, 2010.

Section 7-2-104 Term of Office

All Judges of the District Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

Section 7-2-105 Oath of Office

Before assuming office each Judge, and Special Judge, shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the persons before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court as soon after confirmation as may be practical.

Section 7-2-106 Duties and Powers of Judges

All Judges of the District Court, and Special Judges shall have the duty and power to conduct all court proceedings, and issue all orders and papers. In doing so the Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court regulating conduct in the District Court. Such rules must be filed in the office of the Tribal Secretary and the District Court Clerk before becoming effective.
- (B) Hold Court regularly at designated time and place.
- (C) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.
- (D) Hear and decide all cases.
- (E) Enter all appropriate orders and judgments.
- (F) Issue all appropriate warrants and subpoenas.
- (G) Keep all Court and other records as may be required.
- (H) Perform the duties of the Clerk in their absence.
- (I) Subject to the confirmation of the Supreme Court, to appoint such Magistrates as may be necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters a may be determined by Rule of the Supreme Court. Magistrates shall meet the minimum qualifica-

tions for Judges of the District Court except that Section 102 (a) and (g) shall not apply.

- (J) Unless a coroner is appointed in any Judge designated by the Chief Judge shall have the authority to perform the duties of a coroner.

Section 7-2-107 Special Appointments

Whenever, due to any cause an additional Judicial Officer is needed, the Supreme Court may designate by Court Order Justices to sit or may make special appointments to act as a Special Judge to hear specific named cases. No special procedure need be followed and Special Judges need not meet the qualifications of Section 102 (a) or (g) of this Act. Whenever a Justice of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund.

Section 7-2-108 Compensation of Judges

- (A) The compensation of all Judges of the District Court shall be set by appropriate legislation of the Tribal Legislative Body. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally.
- (B) Subsection (A) above shall not apply to Special Judges. The compensation of all shall be set by the Court Administrator.

Section 7-2-109 Removal of Judges

The Judges of the District Court shall be removed only for cause by the Tribal Legislative Body upon the recommendation of the Supreme Court. Neither the Supreme Court, nor the Tribal Legislative Body may remove a Judge of the District Court independently, but the Supreme Court must first recommend the removal, and the Tribal Legislative Body must then concur. The term "cause" shall include any reason sufficient for disbarment of an Attorney from the Bar of the Supreme Court, or a violation of the Canons of Judicial Ethics promulgated by the American Bar Association.

Section 7-2-110 Disqualifications, Conflict of Interest

- (A) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother;

brother; sister; grandfather; grandmother; or any other legal dependant. A Judge should attempt to prevent even the appearance of partiality or impropriety.

- (B) A party of interest or the Judge may raise the question of conflict of interest. Upon a decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned.
- (C) Any Judge disqualified because he is related to one of the parties enumerated in subsection (a) may hear a case if all parties are informed of the relationship in open Court and of their right to have a different Judge, and consent to further action by that Judge upon the record, or in a writing filed in the record.

Section 7-2-111 Decisions

- (A) Decisions of the District Court at trial may be recorded on a form approved by the Supreme Court or written findings of fact and conclusions of law. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision.
- (B) The decision form or the written findings of fact and conclusions of law may be placed in the case file.

Section 7-2-112 Records

The District Court shall be a Court of Record. To preserve such records:

- (A) In all Court proceedings, the Clerk shall record the proceedings by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings. At the close of each hearing, or as specified, the Reporter shall make a recording upon the request of any party or the Court as a permanent part of the case record.
- (B) To preserve the integrity of the electronic record, the Clerk shall store the recording in a safe place and release it only to relevant Court or pursuant to an Order.
- (C) The Clerk shall keep in a file bearing the case

name and number every written document filed in the case.

- (D) All Court records shall be public records except as otherwise provided by law.
- (E) After five (5) years, court records except judgments, appearance, and other dockets may be reproduced on computer disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.
- (F) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and public.

Section 7-2-113 Files

- (A) Except as otherwise provided by law, as in juvenile cases, Court files are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.
- (B) Any persons desiring to inspect the records of a case or obtain copies may inspect such files only during the ordinary working hours of the Clerk, and in their presence. Under no circumstances shall anyone, except a Judge or Clerk taking a file to a Judge or courtroom, take a file from the Clerk's office.
- (C) A copy of any document may be obtained from the Clerk for a reasonable copy fee, to be set by the Court Administrator. The Clerk is hereby authorized to certify that such copies are accurate reproductions of those documents on file. The Supreme Court by rule may provide for such certification.

Section 7-2-114 Motion Day

Unless impractical, the District Court shall establish regular times and places, at which motions requiring notice and hearing may be heard. The Judge at any time or place may make orders for the advancement, conduct, and hearing of actions. The Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

Section 7-2-115 through 7-2-119 Reserved

Section 7-2-120 Practice Before the Trial Court

- (A) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.
- (B) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Courts.

CHAPTER THREE SUPREME COURT

Section 7-3-101 General Provisions

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District Court, appeals of other orders of the District Court subject to interlocutory appeal by law, and original actions as may be provided by tribal law, and shall render its decision in writing to the parties of interest, file a copy thereof in the Supreme Court Clerk's office and, at the time of filing, submit a copy to the official reporter of the decisions of the Court. The decision of the Supreme Court shall be final and binding.

Section 7-3-102 Composition of the Supreme Court

The Supreme Court shall consist of one (1) Chief Justice, and six (6) Associate Justices.

Section 7-3-103 Minimum Qualifications of Justices

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

- (A) Be either
 - (1) An enrolled member of the Tribe, or
 - (2) The parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) Actually domiciled within the territorial jurisdiction of the Tribe, or
 - (4) An attorney, or
 - (5) A lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of seven years, or
 - (6) An Indian graduate of an American Bar As-

sociation approved Law School, or a Paralegal program approved by the Supreme Court; and

- (B) Have demonstrated moral integrity and fairness in his business, public and private life. Agree to participate in a program of study provided by the Tribal Court Administrator which review concepts of Tribal Sovereignty and United States, State and Tribal Court precedents, and
- (C) Have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years next preceding his appointment. The five year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (D) Have regularly abstained from the excessive use of alcohol and any use whatsoever of illegal drugs or psychotoxic chemical solvents.
- (E) Be not less than thirty (30) years of age.
- (F) Not be a member of the Tribal Legislative Body, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Legislative Body, or the holder of some other elective Tribal Office, may be confirmed as a Justice subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.
- (G) If less than fifty (50) years of age, have completed at least sixty (60) semester credit hours at an accredited college or university, or at least four years of previous experience as a Judicial Officer for some recognized Court.

Section 7-3-104 Selection of Justices

Justices shall be selected in accordance with the provisions above.

Section 7-3-105 Term of Office

All Justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or death or resignation. The first appointment of Justices hereunder shall be for terms which may vary in order to provide for staggered terms of office.

(A) The Tribal Judicial Offices of the District Court shall be designated and numbered as follows:

- (1) The Office currently held by Chief District Judge shall be named Chief Judge #1.
- (2) Associate District Judge #1.
- (3) Associate District Judge #2.

(B) The Tribal Judicial Offices of the Supreme Court shall be designated and numbered as follows:

- (1) The Office of Chief Justice of the Supreme Court shall be named Supreme Court Justice #1.
- (2) Associate Justice #2.
- (3) Associate Justice #3.
- (4) Associate Justice #4.
- (5) Associate Justice #5.
- (6) Associate Justice #6.
- (7) Associate Justice #7.

As amended by Ordinance #10-02 enacted by the Citizen Potawatomi Legislature on January 13, 2010.

Section 7-3-106 Oath of Office

Before assuming office each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before them with integrity and fairness, without regard to the persons to be administered by the Chief Justice, the Chief Executive Officer or the available Justice of the Court.

Section 7-3-107 Duties and Powers of Justices

All Justices of the Supreme Court, unless disqualified for conflict of interest of other cause, shall participate in the deliberation of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers. In doing so the Supreme Court shall:

- (A) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Courts to provide for the orderly and efficient administration of justice. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court, and:
- (B) Hear appeals from the District Court.

- (C) Enter all appropriate orders and judgments.
- (D) Keep all appropriate records.
- (E) Perform any and all duties as may be required for the operation of the Supreme Court and the District Court.
- (F) Supervise the actions of the District Court and all Clerks, Bailiffs, and other officers of the Courts.
- (G) Perform any of the duties and powers of a District Judge in appropriate cases.

Section 7-3-108 Reserved

Section 7-3-109 Compensation of Justices

The compensation of all Justices of the Supreme Court shall be set by legislation of the Tribal Legislative Body. No Justice shall have his compensation reduced during his term of office, except the compensation of all judicial officers may be reduced proportionally.

Section 7-3-110 Removal of Justices

Justices of the Supreme Court may not be removed from office except upon final conviction of a felony, or an offense punishable by banishment, or an offense involving moral turpitude, in which case the Supreme Court shall enter its order disbaring and expelling such Justice from the Court and declaring that Judicial Office vacant.

Section 7-3-111 Disqualifications, Conflict of Interest

- (A) No Justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.
- (B) A party in interest or the Justice may raise the question of conflict of interest. Upon decision by the Justice concerned or the Supreme Court that disqualification is appropriate, a Judge, or Special Justice may be appointed to sit on the Supreme Court to hear the matter.
- (C) Any Justice related to one of the parties enumerated in Subsection (a) may hear a case if all parties are informed of the relationship on the record and of their right to have the interested

Justice disqualified and consent in writing or upon the record to the conflict of interest. Normally, the Justice knowing of the conflict should file an order recusing from the action and stating the relationship. If the parties consent to that Justice hearing the action, they should file their consent for the Justice to continue in the cause. If all parties file such consents, the Justice may then enter his order withdrawing the recusal on grounds of the consents filed. A consent to the withdrawal of a Justices recusal may not be withdrawn.

Section 7-3-112 Decisions

- (A) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties, the District Court in appeal cases, filed in the Supreme Court Clerk's office and recorded on a form approved by the Supreme Court. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties, the issues presented of appeal or the substance of the complaint in an action within the Court's original jurisdiction, the relevant facts upon which the decision was made or found by the Court to be true in an original action, the Court's decision, and the legal principals and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.
- (B) Each Justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.
- (C) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

Section 7-3-113 Rules of the Court

- (A) The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme Courts not inconsistent with Tribal Ordinance or the Tribal Constitution. Such rules shall govern the conduct, demeanor, and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function efficiently.

(B) The Rules shall be filed in the Court Clerk's office.

(C) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

Section 7-3-114 Special Appointments

Whenever, due to vacancies for any cause three (3) Justices cannot be convened, the Court, including any disqualified Justices, may designate Judges of the District Court, not having tried the case, or some member of the Bar to sit as a special Justice for purposes of the appeal or original action, or request the Chairman with Tribal Legislative Body concurrence to make special appointments to hear specific named cases, or cases filed prior to the date three (3) Justices can be convened. No special procedure need be followed and special Justices need not meet the qualifications above.

Section 7-3-115 Supreme Court's Action on Appeals

In any appeal, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken, and may enter such order as is just or remand for the entry of a specified judgment, a new trial, or for further action in accordance with opinion or instructions.

Section 7-3-116 Terms of the Court

The regular term of the Court shall commence on the first Monday in October of each year, and upon that date the Supreme Court shall convene or meet by electronic means for the purpose of disposing of the actions and other business. The term shall continue until such time as the Court determines the term is declared completed. Special terms may be convened upon the call of the Chief Justice for dispensing with pressing matters which may not be justly delayed until the regular term.

Section 7-3-117 Court Fund

There is hereby authorized to be maintained by the Clerk under the supervision of the Court, a "Fund" into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required to be paid to the Courts which are not distributed. These funds shall be used exclusively for the purchase of supplies, materials, and personal property for the use of the Courts, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries.

CHAPTER FOUR COURT CLERK

Section 7-4-101 Establishment

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and Deputy Court Clerks. The Court Clerk shall be selected by Court Administrator, and Deputy Court Clerks shall be appointed by the Court Clerk and Court Administrator.

Section 7-4-102 Clerk to Serve Supreme and District Courts

The Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the District Court".

Section 7-4-103 Clerk as Department Director

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Court Clerk shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody upkeep and maintenance of the record, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk.

Section 7-4-104 Powers and Duties

The Court Clerk shall have the following powers and duties:

- (A) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of the office.
- (B) To supervise and direct the hiring, firing, and work of all deputy court clerks and other employees.
- (C) To collect all fines, fees, and costs paid to the Courts, to receipt, and to deliver them to the Tribal Treasurer for deposit.
- (D) To accept, when ordered, monies for the payment of civil judgments and to pay to the party entitled to them. The Clerk is authorized to maintain a bank checking account.
- (E) To administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Court.
- (F) To provide an accurate and complete record all proceedings of the Courts.

- (G) To provide stenographic and clerical services to the Court.
- (H) To keep and maintain the Court's law library.
- (I) To undertake all duties assigned or delegated to the Clerk's office.
- (J) Upon a written request for a Transcript, the Court may obtain the cost from two transcription services. The requesting party will by the transcription service the required amount directly and prior to preparation.

Section 7-4-105 Seal

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

Section 7-4-106 Certification of True Copies

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Tribe.

Section 7-4-107 Courts Always Open

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper.

Section 7-4-108 Trials and Hearings - Orders in Chambers

All trials, except as specifically provided and in children's cases, shall be conducted in open Court. All other acts or proceedings may be done or conducted by a Judge in chambers, without the clerk or other court officials and in any place either within or without the tribal jurisdiction; but no hearing, other than ex parte, shall be conducted outside the tribal jurisdiction without the consent of all parties affected. Except when determined to be necessary or expedient in children's cases arising under the Indian Child Welfare Act, or when the Tribe has entered into an agreement with another government for the sharing of judicial officers and courtroom space.

Section 7-4-109 Clerk's Office and Orders by the Clerk

The Clerk's office shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications and other proceedings which do not require court permission or order are grantable by the Clerk, but any action may be suspended or altered or rescinded by the Court.

Section 7-4-110 Notice of Orders or Judgments

Immediately upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party and shall make a note in the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the Court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

Section 7-4-111 Books and Records Kept by the Clerk and Entries Therein

- (A) The Clerk shall keep a "book" known as the "Civil Docket" in paper or electronic form and shall enter each civil action. Pursuant to rules and regulations prescribed by the Court Administrator.
- (B) In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgment records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action dockets of the Supreme Court.
- (C) The Clerk shall also keep such other books and records as may be required from time to time.

Section 7-4-112 Stenographic Report or Transcript as Evidence

- (A) Whenever the testimony of a witness was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript

certified by the person who reported the testimony.

- (B) Whenever the testimony of a witness was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording maintained in the custody of the Court Clerk or by some other person certified as correct by the Court Clerk, or authorized to administer oaths, who has prepared under their direction a transcript.

Section 7-4-113 Judgment Docket

The judgment docket shall be kept in the form pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-114 Execution Docket

In the execution docket the Clerk shall enter all executions as they are issued. Pursuant to rules and regulations prescribed by the Court Administrator.

Section 7-4-115 Clerk may Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive and receipt the amount of the judgment and costs, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution and the Clerk shall be liable in the same manner and amount as the Chief of the Tribal Police.

Section 7-4-116 through 7-4-122 Reserved

Section 7-4-123 Clerk to Provide Statistical and Other Information

The Clerk is directed to furnish as requested statistical and other information as the Executive, Legislature and Supreme Court may require, including, but without being limited to, the number and classification of cases:

- (A) Filed with the Court.
- (B) Disposed of by the Court, and the manner of such disposition.
- (C) The number of cases pending before the Court.

Section 7-4-124 through 7-4-125 Reserved

CHAPTER FIVE

CHIEF OF THE TRIBAL POLICE - PROCESS

Section 7-5-101 Reserved

Section 7-5-102 Appointment of Substitute for Tribal Police Chief

The Court upon an oral or written order, may appoint a

person to serve a particular process or order, who shall have the same power to execute it as the Chief of Police. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit.

Section 7-5-103 Tribal Police Chief to Indorse Time of Receipt on Process

The Chief of the Tribal Police shall indorse upon every document, the day and hour it was received by him.

Section 7-5-104 Tribal Police Chief to Execute and Return Process

The Chief of the Tribal Police shall execute every summons, order or other process, and return the same as required by law. If he fails unless prevented by inevitable accident he shall be fined by the Court in a sum not exceeding Five Hundred Dollars (\$500.00) upon motion and ten (10) days notice, and shall be liable to any person aggrieved by such failure. Provided that whenever any party shall make and file with the Clerk an affidavit, stating that they believe the Chief of the Tribal Police will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties. The Clerk shall direct the original, or other process, in such suit to the Chief Executive Officer of the Tribe or his designate who shall execute the same in like manner as the Chief of the Tribal Police might or ought to have done.

Section 7-5-105 When Bailiff or Tribal Police Chief May Adjourn Court

If the Judge fails to attend at the time and place appointed for holding Court, the Chief of the Tribal Police, or person appointed by the Court as bailiff, shall have power to adjourn the Court, until the regular or assigned Judge attend or a Special Judge, or Judge pro tempore, be selected.

Section 7-5-106 Reserved

CHAPTER SIX BONDS AND SURETIES

Section 7-6-101 Justification of Surety

A ministerial officer whose duty it is to take security shall require the person, if not a qualified surety or bonding company, to make an affidavit of qualifications, which affidavit may be made before such officer, and shall be indorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person shall be

shown and attached. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

Section 7-6-102 Qualifications of Surety

The surety in every undertaking unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed.

Section 7-6-103 Real Estate Mortgage as Bond

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty per cent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty per cent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty per cent valuation.

Section 7-6-104 Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits of two landowners or licensed real estate appraisers or brokers versed in land values in community where such real estate is located to the value of such real estate.

Section 7-6-105 False Valuation - Penalty

Any person willfully making a false affidavit shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured to the extent of the injuring proximately caused.

Section 7-6-106 Action by Tribal Department - No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, whatsoever. In case of an adverse decision, such costs as by law are taxable against a party shall be paid out of the available fund of the party under whose direction the proceedings were instituted.

Section 7-6-107 Appearance Bond - Enforcement

(A) If a bench warrant or command to enforce a Court order is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, makes a bond for his appearance, the bond made shall be disbursed by the Court Clerk by order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligation adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.

(B) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.

**CHAPTER SEVEN
MISCELLANEOUS**

Section 7-7-101 Deputy May Perform Official Duties

Any duty enjoined by the Tribal Code upon a ministerial officer, and any act permitted to be done by him, may be performed by this lawful deputy unless otherwise specifically stated.

Section 7-7-102 Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

Section 7-7-103 Publications in "Patent Insides"

(A) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and any Tribal Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

(B) All publications and notice required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by Subsection (a) of this Section if at least one side of such paper is printed within the legal area.

Section 7-7-104 Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law; entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled.

Section 7-7-105 May be Several Actions on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

Section 7-7-106 Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleading or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 7-7-107 Payments Into Court for Minors and Incompetents

Where any amount not exceeding Five Hundred Dollars (\$500.00) is deposited and paid into Court, for any minor or incompetent person having no legal guardian, and no person within ninety (90) days becomes the legal guardian, if the money is needed for support or in the best interest of the minor or incompetent, the Court may order payment made to a person as trustee. The order may be made in the original cause upon application of any interested person; and the Court may direct the Clerk to make payment in installments or one lump sum. If a guardian has been appointed with bond, the Court shall order the money paid to the guardian subject to restrictions and accounting.

Section 7-7-108 Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered for or on behalf of a person less than eighteen (18) years or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses, shall by Court order, be deposited in a banking or savings and loan institution. Until the person becomes eighteen (18) or competent, withdrawals of moneys from accounts shall be solely pursuant to Court order. When an application is made pro se, the Judge shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed. In that case, the Court may direct, money may be paid to the guardian, subject to restrictions and accounting.

Section 7-7-109 Sharing of Judicial Officers

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdiction for the shared use of magistrates, trial judges, and appellate court justices.

Section 7-7-110 Sharing of Other Judicial Personnel

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes and jurisdictions for the shared use of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial related or support personnel.

Section 7-7-111 Sharing of Material Resources

The Tribal Legislative Body is authorized to negotiate an agreement with other Indian Tribes, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

Section 7-7-112 Sharing of Financial Resources

Provisions may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any fines, fees, court costs, or penalties. Agreements may also provide for monetary contributions to the funding of the Court.

Section 7-7-113 Indians Employed in the Indian Service

All persons employed in the Indian Service shall be subject to the jurisdiction of the Court to the extent per-

mitted by law. Any employee appointed by the Secretary of the Interior shall not be subject to any sentence or judgment for actions while on official duty except to the extent permitted by federal law, unless such sentence or judgment shall have been approved by the Secretary of the Interior.

Section 7-7-114 Copies of Laws

(A) The Supreme Court law library will be provided with available copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.

(B) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Tribal Attorney General to furnish an opinion on the point in question.

Section 7-7-715 Cooperation by Federal Employees

(A) No field employee of the Indian Service shall obstruct, influence or interfere with the functions of the Courts or attempt to influence, interfere or obstruct, functions in any manner.

(B) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the court upon its request in the preparation and presentation of the facts, and in the proper treatment of offenders and juveniles.

Section 7-7-716 Effect of Prior Decisions of the Court

The prior decisions of the Courts shall be binding upon the parties. The rules of law stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court.

Section 7-7-717 Judicial Review of Legislative and Executive Actions

The District and Supreme Courts shall have the authority to review any act by the Tribal Legislative Body, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional authorized and not prohibited by the Indian Civil Rights Act, If the Court finds action, or the manner of its exercise, to be un-

lawful, it may enjoin the action, refuse to recognize the unlawful action or to apply the law or statute. If the Court finds the contemplated action is authorized by the Constitution, Tribal Statutes, or the common law and the manner the authorized action is exercised is not prohibited, the Court shall dismiss the case. The Court shall not review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee unless some specific provision authorizes judicial review of the merits of the discretionary decision or action.

Section 7-7-718 Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

**CHAPTER EIGHT
APPELLATE PROCEDURE
PREFACE**

Section 7-8-001 Scope and Applicability of Rules

(A) Scope. This Act governs the procedure in appeals to the Supreme court from the Tribal District court and in application for writs or other relief which the Supreme Court or a Justice thereof is competent to give. When this Act provides for the making of a motion or application in the Tribal District Court, the procedure for making such motion or application shall be in accordance with the practice of that Court.

(B) "Tribal Court" Defined. Unless otherwise specifically stated or required by the context, the term "Tribal Court" as used in this Act shall be deemed to refer to both the Tribal District Court and any Division, or Judge thereof.

(C) This Act shall not be construed to extend or limit the jurisdiction of the Supreme Court as may be established by other Tribal laws, and all provisions of this Act shall be subject to the Tribal Constitution.

Section 7-8-002 Suspension and Revision of Rules

(A) In the interest of expediting decision(s), the furtherance of the administration of justice and the efficient functioning of the Court, the Supreme Court is authorized to amend provisions of this Act by Court Rule duly adopted by a unanimous vote of the entire Court and filed in the Supreme Court clerk's Office and the Tribal Secretary's

Office. Any Rule of the court which would have the effect of amending the Act shall so state in its title, and shall not be effective until it has been filed in the Tribal Secretary's Office for a period of sixty days, within which time the Tribal Legislative Body may veto said Rul. If not vetoed, such Rules shall be placed in the Court's law library and shall take effect of the sixty-first day after filing or on such later date as may be provided by the Court.

- (B) Amendment is specifically limited to necessary changes in existing provisions but not the addition of provisions which expand the authority of the Court.

Section 7-8-003 Discretionary Authority

Where no procedure is provided in this Act, other statutes of the Tribe, or the Supreme Court rules, the Supreme Court may proceed to exercise its functions in any manner.

Section 7-8-004 Authority

The Supreme Court shall hear cases by a panel of three justices, provided that appropriate provision be made for en banc hearings at the request of a party.

SECTION ONE

APPEALS FROM JUDGMENTS AND ORDERS OF THE TRIBAL COURT

Section 7-8-101 Appeal As Of Right - How Taken

- (A) **Filing The Notice Of Appeal.** An appeal permitted as of right from the Tribal District Court to the Supreme Court shall be taken by filing a notice of appeal with the Clerk within the time allowed by Section 102, or by the statute applicable. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is grounds only for such action as the Supreme Court deems appropriate, which may include dismissal.

- (B) **Joint or Consolidated Appeals.** If two or more persons are entitled to appeal, and their interests make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separately, and they may proceed on appeal as a single appellant. Appeals may be consolidated by order of the Supreme Court upon its own motion or upon motion of a party, or by stipulation of the parties.

- (C) **Content of the Notice of Appeal.** The notice of appeal shall specify the parties to the appeal; shall designate the order, commitment, or judgment appealed, the docket of the Tribal District Court from which the appeal is taken, and a short statement of the reason or grounds for the appeal. An appeal shall not be dismissed for informality of form or title of the notice.

- (D) **Service of the Notice of Appeal.** The Clerk shall serve notice of the filing of an appeal by mailing a copy of the notice, which copy shall be provided by the appealing party, to counsel of record of each party other than the appellant, and to the party at his last known address; and shall certify and deliver to the Clerk of the Supreme Court for filing, a certified copy of the notice of appeal. The Clerk shall enter such filing upon the docket of the Supreme Court. When an appeal is taken by a defendant in a criminal case, the Clerk shall also serve a copy of the notice of appeal upon the appellant, either by personal service or by mail addressed to him. The Clerk shall note on each copy served the date on which the notice of appeal was filed. Failure of the Clerk to serve notice shall not affect the validity of the appeal. Service shall be sufficient notwithstanding the death of a party or his counsel. The Clerk shall note in the docket the names of the parties to whom copies are mailed, with the date of mailing.

- (E) **Payment of Fees.** Upon the filing of appeal, the appellant shall pay to the Clerk the filing fee which shall be in such amount as may be determined by the Court Administrator, except that a filing fee shall not be required from the Tribe, its officers, or agents when acting in their official capacity. If a private party joins in an appeal by the Tribe, tribal officers, or tribal agents, the private party shall pay the required filing fee. The Supreme Court, or a Justice thereof, may waive payment of the filing fee in criminal cases when the defendant, by affidavit or otherwise, establishes that he is without sufficient funds or resources with which to pay the required fees.

Section 7-8-102 Appeal As Of Right - When Taken

- (A) **Appeals In Civil Cases.**

- (1) In a civil case appeal permitted by law the notice of appeal shall be filed within the fol-

lowing time periods after entry of the judgment or order appealed from, if a time certain is not otherwise provided:

- (a) From an order or judgment in an action for forcible entry or forcible or unlawful detainer. Ten (10) Days;
 - (b) From an order, decree, or judgment of the Juvenile Division of the District Court, (except an order, decree, or judgment which terminates parental rights). Thirty (30) Days.
 - (c) From an order, decree, or judgment of the Juvenile Division of the District Court which terminates parental rights. Sixty (60) days.
- (2) Except as provided in subsection (a)(4) of this Section, a notice of appeal filed after the announcement of a decision or order but before the formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof.
- (3) If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Section, whichever period last expires.
- (4) If a timely motion under the Civil Procedure Act is filed in the Tribal District Court by any party.
- (a) For judgment notwithstanding the verdict, or
 - (b) To amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, or
 - (c) To alter or amend the judgment or for a new trial,
 - (d) then, and in that event, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured

from the entry of the order disposing of the motion as provided above. No additional fees shall be required for such filing.

- (5) The Tribal District Court, upon the showing of excusable neglect or good cause, may extend the time for filing a notice of appeal in a civil action upon motion filed not later than 15 days after the expiration of the time prescribed by this Section. Any such motion which is filed before expiration of the prescribed time for the filing of a notice of appeal may be ex parte unless the Tribal District Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with the Civil Procedure Act. No such extension shall exceed 10 days from the date of entry of the order granting the motion.
- (6) A judgment or order is entered when it is entered in compliance with the Civil Procedure Act.

(B) Appeals In Criminal Cases. In a criminal case, the notice of appeal by a defendant shall be filed in the Tribal District Court within 10 days after the entry of the final judgment and sentence or other order. A notice of appeal filed after the announcement of a decision, sentence, or order, but before formal entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment, or a motion for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 10 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within 10 days after entry of the judgment. When an appeal by the Tribe is authorized by statute, the notice of appeal shall be filed by the Tribe in the Tribal District Court within 10 days after the entry of the judgment or order appealed from unless a different time is specifically set by statute. A judgment or order is entered within the meaning of this subdivision when it is entered in the

criminal docket pursuant to the Criminal Procedure Act. Upon a showing of excusable neglect Tribal District Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this subdivision of this Section.

Section 7-8-103 Interlocutory Appeals in Civil Actions

(A) Interlocutory Appeals as of Right. A person may appeal to the Supreme Court by right any order make appealable by law, and the following judgments or orders of the Tribal District Court:

- (1) An order that grants or refuses a new trial or vacates or refuses to vacate a judgment on any grounds including that of newly discovered evidence or the impossibility of making a record.
- (2) An order that discharges, vacates, or modifies or refuses to discharge, vacate, or modify an attachment.
- (3) An order that denies, grants, or modifies a temporary injunction, or discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a temporary injunction.
- (4) An order that discharges, vacates, or modifies, or refuses to discharge, vacate, or modify a provisional remedy which affects the substantial rights of the parties.
- (5) An order that appoints a receiver, except where the receiver was appointed at an ex parte hearing where a full hearing will be held upon application therefore, refuses to appoint a receiver, or vacates or refuses to vacate the appointment of a receiver, or refuses or grants orders to wind up receiverships or to take steps to accomplish the purposes thereof, such a directing sales or other disposal of property.
- (6) An order that directs the payment of money pendente lite, except where granted at an ex parte where a full hearing will be held upon application therefore, refuses to direct the payment of money pendente lite, or vacates or refuses to vacate an order directing the

payment of money pendente lite.

- (7) An order that certifies or refuses to certify an action to be maintained as a class action.
- (8) An order with regard to probate matters:
 - (a) Granting, or refusing, or revoking letter testamentary or of administration, or of guardianship, or conservatorship, or
 - (b) Admitting, or refusing to admit, a will to probate, or
 - (c) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (d) Against or in favor of setting apart property, or making an allowance for a widow or child, or
 - (e) Against or in favor of directing the partition, sale or conveyance of any interest in real property, or
 - (f) Settling an account of an executor, or administrator or guardian, or
 - (g) Refusing, allowing or directing the distribution or partition of an estate, or any part thereof or the payment of a debt, claim, legacy or distributive share, or
 - (h) Refusing or allowing the release of any tax liability, or
 - (i) From any other judgment, decree, or order of the Court in a probate case, or of the Judge thereof, affecting a substantial right.
- (9) Any interlocutory order or decree made immediately appealable by Tribal statute.

(B) Time for Filing Interlocutory Appeals as of Right and Special Rules.

- (1) The party aggrieved may appeal the order without awaiting the final determination of the action, by filing the notice of appeal with the District Court Clerk within fifteen (15) days after the order is issued.
- (2) If the order discharges or modifies an attachment or preliminary injunction and it becomes operative, the undertaking given upon the allowance of an attachment or pre-

liminary injunction shall stay the enforcement of said order and said order shall remain in full force and effect until final order of discharge after appeal shall take effect.

- (3) If the order grants a preliminary injunction, the party seeking to appeal, if he desires to stay said order, shall give within ten (10) days after the order is rendered, an undertaking, with sufficient surety, in the sum as the Court deems proper, to secure the party procuring the injunction damages he may sustain, including reasonable attorneys fees, if it is finally decided that the preliminary injunction was properly granted. The undertaking shall stay the effect of the preliminary injunction pending appeal.
- (4) Where a receiver has been appointed, upon the appellant filing an appeal bond, with sufficient sureties, in a sum required of the receiver or a Judge, conditioned for the due prosecution of the appeal and the payment of all costs, or damages that may accrue to the Tribe or any officer or person, the authority of the receiver shall be suspended until the final determination of the appeal, and if the receiver has taken possession of any property, real or personal, it shall be returned and surrendered to the appellant upon the filing and approval of the bonds.

(C) Interlocutory Appeals by Permission. When a Judge, in making an order or decree in a civil action not appealable believes the order involves a controlling question of law which there is substantial grounds for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing. The Supreme Court may in its discretion, permit an appeal to be taken from such order, if application is made within ten days after the entry of the order, provided, however, that application for an appeal hereunder shall not stay proceedings in the Tribal District Court, unless the Judge or the Supreme Court, or a Justice of the Supreme Court shall so order.

(D) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed by Section 103(c) may be sought by filing a petition for permission to

appeal with the Clerk within 10 days after the entry of such order in the District Court with proof of service on all other parties to the action in the District Court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

- (1) The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined the District Court; a statement of the question itself; and a statement of why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include a copy of the order appealed and findings of fact, conclusions of law and opinion. Within 7 days after service of the petition, an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.
- (2) All papers may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.
- (3) Within 10 days after the entry of an order granting permission to appeal, the appellant shall:
 - (a) pay to the Clerk of the District Court the fees established for the filing of appeals by permission.
 - (b) file a bond for costs if required by the Supreme Court.

Upon receipt of payment the Clerk of the Supreme Court shall enter the appeal. The record shall be transmitted and filed as in cases of direct appeal by right. A notice of appeal need not be filed.

Section 7-8-104 Interlocutory Appeals In Criminal Actions

(A) Appeal by the Defendant. An interlocutory appeal to the Supreme Court may not be taken by the defendant except by leave of the Court in the same manner as the taking of interlocutory appeals by permission in civil actions.

(B) Appeal by the Tribe. An appeal by the Tribe may be taken from a decision or order of the Tribal Court prior to the beginning of trial suppressing or excluding evidence, or requiring the return of seized property in a criminal proceeding, or dismissing the criminal complaint, and after the verdict is returned, upon an order granting a new trial, or an order refusing to revoke probation or parole, or an order reducing a valid sentence previously imposed.

Section 7-8-105 Appeals by the Tribe in Criminal Actions

(A) An appeal to the Supreme Court may be taken by the Tribe from the final judgment in a criminal action in the following cases:

- (1) Upon judgment for the defendant quashing or setting aside the criminal complaint prior to trial.
- (2) Upon an order of the Court arresting the judgment.
- (3) Upon a question of law reserved by the Tribe, provided, that the criminal complaint shall be reinstated and the case shall proceed if the Tribe's appeal is upheld under subsection (A)(1) of this Section, the judgment and sentence arrested shall be entered and enforced if the Tribe's appeal is upheld under subsection (A)(2) of this Section, and a defendant may not be tried against for the same offense if the Tribe's appeal is upheld under subsection (A)(3) of this Section.

(B) Pending the prosecution and determination of the appeal in the foregoing instances, the defendant may be released in accordance with Section 108 of this Act.

Section 7-8-106 Bond For Costs On Appeal In Civil Cases

The District Court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Section 107(B) of this Act applies to a surety upon a bond given pursuant to this Section.

Section 7-8-107 Stay Or Injunction Pending Appeal

(A) Procedure. Application for a stay of the judgment or order of Tribal District Court pending

appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction pending must ordinarily be made first in the District Court. A motion may be made to the Supreme Court panel, or to a Justice thereof, but the motion shall show that application to the District Court is not practicable, or the District Court has denied an application, or has denied the relief with the reasons given. The motion shall also show the reasons for the relief and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies. The record as relevant shall be filed. Reasonable notice of the motion shall be given. The motion shall be filed with the Clerk. In exceptional cases due to the requirements of time, the application may be made to and considered by a single Justice of the Court pending review by the Court panel. In cases where relief has not been previously requested in the District Court, the Supreme Court may, if it determines such action to be appropriate under the circumstances, remand the motion to the District Court for its initial determination.

(B) Bond, Proceedings Against Sureties. Relief available in the Supreme Court under this Section may be conditioned upon the filing of a bond or other appropriate security in the District Court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the District Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. It is the responsibility of the surety to provide the Clerk with his proper and current address, and a supply of stamped, self addressed envelopes, if they wish copies of any papers served upon the Clerk as agent to be mailed. Liability may be enforced on motion in the District Court without the necessity of an independent action. The motion and notice of the motion as the District Court shall prescribe may be served on the Clerk who shall mail copies to the sureties if their addresses are known.

(C) Criminal Cases. Stays in criminal cases shall be had in accordance with the provisions of Criminal Procedure Act.

Section 7-8-108 Release in Criminal Cases

(A) Appeal Of Order Denying Release Pending Appeal.

An appeal authorized by law from an order refusing or imposing conditions of release pending appeal of the underlying judgment of conviction and sentence shall be determined promptly. The appeal in such matters shall be heard without briefs after reasonable notice to the appellee upon such papers, affidavits, and the record as the parties shall present. A Supreme Court, panel of three justices may order the release of the appellant pending the appeal.

(B) Procedure. Application for release after a judgment of conviction shall be made first in the Tribal District Court. If the Tribal District Court refuses release pending appeal, or imposes conditions of release, the Court shall issue an order. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to the Supreme Court or to a designated Justice. The motion shall be determined promptly upon such papers, affidavits, and the record as the parties shall present and after reasonable notice to the appellee. The Supreme Court panel may order the release of the appellant pending disposition of the motion.

(C) Criteria For Release. The decision as to release pending appeal shall be made in accordance with the criteria for bail established by tribal law in the Criminal Procedure Act. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

(D) The Defendant shall be required to post a cash bond in the amount of fines, fees, costs and restitution ordered by the District Court after a finding of guilt by the court or a jury.

Section 7-8-109. The Record on Appeal.

(A) Composition Of The Record On Appeal. The original papers and exhibits filed in the District Court, the transcript or tape recording of the proceedings, if any, and a certified copy of the docket entries prepared by the Clerk shall constitute the record on appeal.

(B) Transcript, Duty of Appellant To Order, Notice Of Partial Transcript.

- (1) Within 10 days after filing the notice of appeal the appellant shall order from the Clerk or reporter a transcript of such parts of the proceedings not already on file. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the District Court. If no parts of the proceedings are ordered, within the same period the appellant shall file a certificate to that effect.
- (2) If the appellant intends to urge on appeal that a finding or conclusions unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.
- (3) Unless the entire transcript is to be included, the appellant shall, within the 10 days time provided in subsection (B)(1) of this Section, file a statement of the issues he intends to present on appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings are necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days order the parts or move in the District Court for an order requiring the appellant to do so.
- (4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript. If a typewritten transcript is ordered, the Clerk or Reporter shall charge a fee to be set by the Court Administrator for each original page, and an additional fee for each copy of an original page. The Clerk may designate a Reporter to produce a transcript with the cost assigned to the party. If a copy of a tape recording of the proceedings is ordered, the Clerk shall charge a fee to be set by the Court Administrator for each tape ordered. All such fees paid on behalf of a Clerk or reporter who is employed by the Tribe and

paid a salary from tribal monies shall be deposited in the Court fund. All fees paid on to an independent reporter appointed or authorized by the District Court to record proceedings, not paid from tribal fund shall be paid over to such reporter.

(C) Procedure When No Transcript Available. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the appellee, who may serve objections or propose amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the District Court for settlement and approval and as settled and approved shall be included by the Clerk in the record on appeal.

(D) Agreed Statement As The Record On Appeal. In lieu of the record on appeal as defined in subsection (A) above, the parties may prepare and sign a statement showing how the issues presented arose and were decided and setting forth facts proved or sought to be proved essential to a decision of the issues presented. If the statement conforms to the truth, the statement together with additions the Court may consider necessary, shall be approved by the District Court, and be certified to the Supreme Court as the record and transmitted to the Supreme Court Clerk's records.

(E) Correction Or Modification Of The Record. If any difference arises as to whether the record truly discloses what occurred in the Tribal District Court, the difference shall be submitted to and settled by the Judge of that Court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the District Court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the Supreme Court.

Section 7-8-110 Transmission of Record

(A) Chief Clerk To Serve As Clerk of the Supreme Court. The Chief Clerk of the Tribal District Court may also serve as the Clerk of the Supreme Court whenever the position of Clerk of the Supreme Court is vacant.

(B) Transmission And Filing Of Record. In all cases, including juvenile and criminal actions, the Clerk within 15 working days after a Notice of Appeal is filed, prepare, certify, and deliver to the Clerk of the Supreme Court, for filing with the Supreme Court, all papers comprising the record of the case except the transcript. Such compilation shall be indexed with page numbers. All parties to the appeal shall be notified of the filing of the record with the Supreme Court, and a copy of the index to the record shall be attached to the notice for the benefit of the parties. Copies of any documents contained in the record shall be available to the parties at a cost per page to be set by the Court Administrator.

(C) Completion of Record. Upon receipt of an order for a transcript or additional tape recording, the Clerk or reporter shall acknowledge receipt and the date on which he expects to have the transcript or copy of the tape recording completed and shall transmit the order, to the Clerk of the Supreme Court. If the transcript cannot be completed within 30 days of receipt of the order the Clerk or reporter shall request an extension of time from the Clerk of the Supreme Court, and the action of the Clerk of the shall be entered and the parties notified. In the event of the failure to file the transcript or complete making copies of the tapes within the time allowed, the Clerk of the Supreme Court shall notify the Chief Justice and take such steps as may be directed by the Chief Justice of the Supreme Court. Upon completion of the transcript the clerk or reporter shall file it with the Clerk of the Tribal District Court and shall notify the Clerk of the Supreme Court that he has done so.

(D) Transmission of Transcript. Upon receipt of the Transcript, or notification that requested copies of tape recordings of the proceedings are completed, or the filing of a statement as provided in Section 109 (C) or (D) of this Act, the Clerk of the District Court shall notify the parties that the transcript, tapes, or statement is

completed and ready for transmittal to the Supreme Court and shall state in the notice the date upon which the notice was given, and the date the final record will be delivered to the Supreme Court. The parties may receive their copies (if ordered) of such transcript, tapes, or statement as soon as they become available whether before or after formal notice of such availability is mailed to the parties. Fifteen days after the mailing of the notice of completion of the transcript, tapes, or statement, the Clerk of the District Court shall deliver the original thereof to the Clerk of the Supreme Court for filing. Upon filing by the Clerk of the Supreme Court, the record shall be deemed received and completed.

Section 7-8-111 Docketing The Appeal; Filing The Record

(A) **Docketing The Appeal.** Upon receipt of the Notice of Appeal and of the docket entries and papers transmitted by the Clerk of the Tribal District Court pursuant to Section 110(B), the Clerk of the Supreme Court shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the Tribal District Court, with the appellant identified as such, but if the action in the Tribal District Court, with the appellant identified as such, but if such title does not contain the name of the appellant, his name, identified as appellant, shall be added to the title. In appeals from the Juvenile Division of the Court, the docket books shall contain the correct names of the parties, however, all opinions or other papers of the Court which may become public information shall contain only initials or other similar designations and not the names of the parties.

(B) Upon receipt of the completed record on appeal as provided in Section 110(D), the Clerk of the Supreme Court shall file it and shall immediately give notice to all parties and the date on which it was filed.

**SECTION TWO
HABEAS CORPUS**

Section 7-8-201 Habeas Corpus Proceedings.

An application for a writ of habeas corpus shall originally be made to the Tribal District Court. If application is made to the Supreme Court, or a Justice thereof in-

dividually, the application will ordinarily be transferred to the Supreme Court for determination. The Supreme Court, or a Justice thereof, will accept original jurisdiction in such matters only upon a showing of compelling necessity and urgency. If an application is made to or transferred to the Tribal District Court and denied, renewal of the application before the Supreme Court, or a Justice thereof is not favored; the proper remedy is by appeal to the Supreme Court from the order of the Tribal District Court denying the writ.

Section 7-8-202 Transfer Of Custody Pending Review

Pending review of a decision in a habeas corpus proceeding commenced before the Court, or a Justice or Judge for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this Section and the Court rules. Upon application of a custodian showing a need therefore, the Court rules. Upon application of a custodian showing a need therefore, the Court, Justice or Judge rendering a decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

Section 7-8-203 Detention Or Release Pending Review Of Decision Failing to Release

Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody or may be enlarged upon his recognizance or admitted to bail, with or without surety, as may appear fitting to the Court or Justice or Judge rendering the decision, or to the Supreme Court panel. This provision is subject to Section 108(D).

Section 7-8-204 Detention Or Release Pending Review Of Decision Ordering Release

Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon his recognizance, with or without surety, unless the Court or Justice or Judge rendering the decision, or the Supreme Court shall otherwise order. This provision is subject to Section 108(D).

Section 7-8-205 Modification of Initial Order Respecting Custody

An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern during review in the Supreme Court unless for special reasons shown to the Supreme Court the or-

der shall be modified, or an independent order respecting custody, enlargement or surety shall be made. This provision is subject to Section 108(D).

SECTION THREE PROCEEDINGS IN FORMA PAUPERIS

Section 7-8-301 Leave From Tribal District Court to Proceed to Supreme Court

A party to an action in the District Court who desires to appeal in forma pauperis shall file in the Tribal District Court a motion for leave so to proceed, together with an affidavit showing, in explicit detail, his inability to pay fees and costs or to give security, their belief that they are entitled to redress, and a statement of the issues which they intend to present. If the motion is granted, the party may proceed without further application to the Supreme Court, and without prepayment of fees or costs in either Court or the giving of security. If the motion is denied, the District Court shall state the reasons for the denial.

Section 7-8-302 Special Rule For Parties Previously Granted. Permission To Proceed In Forma Pauperis

A party who has been permitted to proceed in the District Court in forma pauperis, or who has been permitted to proceed there as financially unable to obtain an adequate defense in a criminal case, or a case involving the termination of parental rights, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed, in which event the District Court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed, in which event the Tribal District Court shall state the reasons for such certification or finding.

Section 7-8-303 Remedy For Denial Of Motion By Tribal District Court

If a motion for leave to proceed on appeal in forma pauperis is denied by the District Court, or if the District Court shall certify that the appeal is not taken in good faith or shall find that the party is not entitled to proceed in forma pauperis, the Clerk shall serve notice of such action. A motion for leave may then be filed in the Supreme Court within 30 days after service of notice of the action of the District Court. The motion shall be accompanied by a copy of the affidavit filed in the

District Court, or by the affidavit prescribed by Section 311 of this Subchapter if no affidavit has been filed in the District Court, and by a copy of the statement of reasons given by the District Court for its actions.

SECTION FOUR GENERAL PROVISIONS

Section 7-8-401 Filing and Service

Papers required or permitted to be filed in the Supreme Court shall be filed with the Clerk. Filing may be accomplished by mail addressed to the Clerk, but filing shall not be timely unless the papers are received by the Clerk within the time fixed for filing, except that briefs and appendices shall be deemed filed on the day of mailing if first class mail or any more expeditious form of delivery by mail, excepting special delivery or overnight mail, is utilized. If a motion requests relief which may be granted by a single Justice, the Justice may permit the motion to be filed with him, in which event he shall note thereon the date of filing and shall thereafter transmit it to the Clerk.

Section 7-8-402 Service of All Papers Required

Copies of all papers filed by any party and not required by this Act to be served by the Clerk shall, at or before the time of filing, be served by that party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel or lay advocate shall be made on the counsel or lay advocate.

Section 7-8-403 Manner Of Service

Service may be personal or by mail in any manner allowed by the Civil Procedure Act for service of motion or briefs. Personal service includes delivery of the copy to a Clerk, secretary, or other responsible person at the office of counsel or lay advocate. Service by mail is complete upon mailing.

Section 7-8-404 Proof Of Service

Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the name of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The Clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly.

Section 7-8-405 Computation of Time

In computing any period of time, by an order of the

Court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day which not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is equal to or less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this Section, "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States or the Legislative Body of the Tribe.

Section 7-8-406 Enlargement Of Time

The Court for good cause shown may upon motion enlarge the time prescribed by this Act or Court rule or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the Supreme Court may not enlarge the time for filing a notice of appeal.

Section 7-8-407 Additional Time after Service By Mail

Whenever a party is required or permitted to do an act within a prescribed period after service of a paper upon him and that paper is served by mail, 3 days shall be added to the prescribed period.

**SECTION FIVE
MOTIONS AND BRIEFS**

Section 7-8-501 Content, Response, and Reply to Motions

Unless another form is elsewhere prescribed by this Act, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of this Act governing such a motion, shall set forth the order or relief sought. If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within 7 days after service of the motion, but motions authorized by Sections 107, 108, and 469 may be acted upon after reasonable notice, and the Court may shorten or extend the time for responding to any motion.

Section 7-8-502 Determination of Motions for Procedural Orders

Notwithstanding the provisions of Section 311 of this Act as to motions generally, motions for procedural orders, including any motion under Section 306, may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the Court, motions for specified types of procedural orders may be disposed of by the Clerk. Any party adversely affected by such action may by application to the Court request consideration, vacation or modification of such action.

Section 7-8-503 Power of a Single Judge to Entertain Motions

Consistent with the authority expressly conferred by this Act or by other Tribal law, a single Justice of the Supreme Court may entertain and may grant or deny any request for relief which under this Act may properly be sought by motion, except that a single Justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by Court panel. The action of a single Justice may be reviewed by a Court panel.

Section 7-8-504 Form of Papers; Number of Copies

All papers relating to motions may be typewritten. Ten copies shall be filed with the original, but the Court may require that additional copies be furnished.

Section 7-8-505 Brief of Appellant

The brief of the appellant shall contain under appropriate headings and in the order here indicated:

- (A) A cover page as described in Section 329.
- (B) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with reference to the pages of the brief where they are cited.
- (C) A statement of the issues presented for review.
- (D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the Court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see Section 319).
- (E) An argument. The argument may be preceded by a summary. The argument shall contain the

contentions of the appellant with respect to the issues presented, and the reasons therefore, with citations to the authorities, statutes and parts of the record relied on.

- (F) A short conclusion stating the precise relief sought.

Section 7-8-506 Brief of Appellee

The brief of the appellee shall conform to the requirements of Section 315, except that a statement of the issues or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

Section 7-8-507 Reply Brief

The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of Court.

Section 7-8-508 References in Briefs to Parties

Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as “appellant” and “appellee”. It promotes clarity to use the designations used in the lower Court or the actual names of the parties, or descriptive terms such as “the employee,” “the injured person,” “the taxpayer,” the car,” or the names of the parties.

Section 7-8-509 References in Briefs to the Record and Statutes

- (A) References in the briefs to parts of the record reproduced in any appendix filed with the brief of the appellant shall be to the pages of the appendix where they appear and to the pages in the original record. If an appendix is prepared after the briefs are filed, references in the briefs to the record shall be made to the original record. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record or of the transcript where the evidence was identified, offered, and received or rejected.
- (B) If determination of the issues presented requires the study of statutes, rules, regulations, or similar material or relevant parts, they shall be reproduced in the brief or in an addendum, or they may be supplied to the Court in pamphlet form.

Section 7-8-510 Length of Briefs

Except by permission of the Court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, and similar material.

Section 7-8-511 Briefs in Cases Involving Cross Appeals

If a cross appeal is filed, the plaintiff in the Court below shall be deemed the appellant for the purposes of this Chapter and Sections 326, 327, and 328, unless the parties otherwise agree or the Court otherwise orders. The brief of the appellee shall contain the issues and argument involved in his appeal as well as the answer to the brief of the appellant.

Section 7-8-512 Briefs and Cases Involving Multiple Appellants or Appellees

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

Section 7-8-513 Citation of Supplemental Authorities

When pertinent and significant authorities come to the attention of a party after his brief has been filed, or after oral argument but before decision, a party may promptly advise the Clerk of the Court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Section 7-8-514 Brief of an Amicus Curiae

A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of Court granted on motion or at the request of the Court, except that consent or leave shall not be required when the brief is presented by the Tribe, the United States or an officer or agency thereof, or by another Tribe or a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Save as all parties otherwise consent, any

amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an amicus curiae other than the Tribe to participate in the oral argument will be granted only for extraordinary reasons, or on the Court's own motion. A motion of the Tribe to present oral argument as amicus curiae shall be granted unless extraordinary reasons appear for refusing to grant such a motion.

Section 7-8-515 Appendix to the Briefs

Whenever the record on appeal, or the transcript is particularly voluminous, the Court may order the appellant to prepare, with notice and consultation by the appellee, an appendix to the briefs which shall contain the papers, documents, and portions of the transcript necessary to the determination of the issues presented on appeal. The preparation of an appendix does not prevent further referrals to the original record by any party or the Court. A party may append pertinent parts of the record to his brief when such is necessary for a clear presentation of the issues raised on appeal.

Section 7-8-516 Time for Filing and Service of Briefs

The appellant shall serve and file his brief within 20 days after the date on which the completed record is received and filed in the Supreme Court. The appellee shall serve and file his brief within 20 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 5 days before argument.

Section 7-8-517 Number of Copies to Be Filed and Served

Ten copies of each brief shall be filed with the Clerk in addition to the original, unless the Court by order shall direct a lesser or greater number, and two copies shall be served on counsel for each party separately represented. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies shall be filed with the Clerk, and one copy shall be served on counsel for each party separately represented.

Section 7-8-518 Consequence of Failure to File Briefs.

If an appellant fails to file his brief within the time provided by this Act, or within the time as extended, an

appellee may move for dismissal of the appeal. If an appellee fails to file his brief, he will not be heard at oral argument except by permission of the Court.

Section 7-8-519 Form of Briefs, the Appendix and Other Papers

- (A) Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper, including legible photocopies. All printed matter must appear in at least 12 point (pica) type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 1/2 by 11 inches and type matter not exceeding 6 1/2 by 9 1/2 inches, with double spacing between each line of text, except that quoted matter may be single spaced. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this Section may be inserted in the appendix; such pages may be informally renumbered if necessary.
- (B) If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of a intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front cover of the briefs and of appendices shall contain.
 - (1) The name of the Court and the number of the case;
 - (2) The title of the case;
 - (3) The nature of the proceedings in the Court (e.g., Appeal; Petition for Review) and the name of the Court below;
 - (4) The title of the document (e.g. Brief for Appellant, Appendix); and
 - (5) The names, addresses, and telephone number of counsel representing the party on whose behalf the document is filed.

Section 7-8-520 Form of Other Papers

- (A) Petitions for rehearing shall be produced in a manner prescribed by a Section 329.

(B) Motions and other papers may be produced in a like manner, or they may be typewritten upon opaque, unglazed paper 8 1/2 by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

(C) A motion or other paper addressed to the Court shall contain a caption setting forth the name of the Court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

SECTION SIX ARGUMENT

Section 7-8-601 Prehearing Conference

The Court may direct the attorneys for the parties to appear before the Court or a Justice thereof for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding. The Court or Justice shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admission or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Section 7-8-602 Oral Argument in General

Oral argument shall be allowed in all cases unless the Court, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. In such cases the Court shall notify the parties of its intention to proceed without oral argument, and shall provide any party with an opportunity to file a statement setting forth the reasons why, in his opinion, oral argument should be heard. Oral argument will be allowed upon request unless the Court unanimously determines.

- (A) The appeal is frivolous; or
- (B) The dispositive issue or set of issues has been recently authoritatively decided; or
- (C) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Section 7-8-603 Notice of Argument; Postponement

The Clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefore, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

Section 7-8-604 Order and Content of Argument

The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case. Counsel will not be permitted to read at length from briefs, records or authorities.

Section 7-8-605 Cross and Separate Appeals

A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the Court otherwise directs. If a case involves a cross-appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this Subchapter unless the parties otherwise agree or the Court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

Section 7-8-606 Non-Appearance of Parties

If the appellee fails to appear to present argument, the Court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the Court may hear argument on behalf of the appellee, if his counsel is present. If neither party appears, the case will be decided on the briefs unless the Court shall otherwise order.

Section 7-8-607 Submission on the Briefs

By agreement of the parties, a case may be submitted for decision on the briefs, but the Court may direct that the case be argued.

Section 7-8-608 Use of Physical Exhibits at Argument; Removal

If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the courtroom before the Court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the courtroom unless the Court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the Clerk, they shall be destroyed or otherwise disposed of as the Clerk shall think best.

Section 7-8-609 When Hearing or Rehearing En Banc Will Be Ordered

A majority vote of the nine Justices may order that any motion or other proceeding be heard or reheard by the Supreme Court en banc. Such hearing or rehearing is not favored and ordinarily will not be ordered except:

- (A) When consideration by the full Court is necessary to secure or maintain uniformity of its decisions, or
- (B) When requested by the Chief Judge of the District Court
- (C) When the proceedings involves a question of exceptional importance, to the Tribe or Tribal Government.

Section 7-8-610 Suggestion of a Party for Hearing or Rehearing En Banc

A party may suggest the appropriateness of a hearing or rehearing en banc. No response shall be filed unless the Court shall so order. The clerk shall transmit any such suggestion to the Justices of the Court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard en banc unless a Justice in regular active service or the Justice who rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

- (A) When the majority of the nine Justices vote that a matter will be heard en banc the cost of the en banc hearing until be appropriated to the parties equally at the rate of the current daily Justices pay. Such amount to be paid to the Court Clerk before the conduct of such hearing, unless waived by the Court.
- (B) A party may request an appeal hearing en banc by depositing the amount to cover the additional Justices, beyond the three Justice panel. The amount deposited shall cover the daily pay rate of the additional Justices. A request under this provision, where one party assumes the additional costs will ordinarily be granted unless the Justice vote to reject such a request. The moving party under this provision assumes the additional costs of further hearings if they are required by the circumstances of the case.

Section 7-8-611 Time for Suggestion of a Party for Hearing or Rehearing En Banc; Suggestion does not Stay Mandate

If a party desires to suggest that a motion or proceeding

be heard initially en banc, the suggestion must be made by the date the appellee's brief is filed. A suggestion for rehearing a motion en banc must be made within ten days after notice of the decision of the Justice initially hearing the motion. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the Supreme Court or stay the issuance of the mandate.

**SECTION SEVEN
JUDGMENT**

Section 7-8-701 Entry of Judgment

The notation of a judgment in the docket constitutes entry of the judgment. The Clerk shall prepare, sign and enter the judgment following receipt of the opinion of the Court unless the opinion directs settlement of the form of the judgment, in which event the Clerk shall prepare, sign and enter the judgment following final settlement by the Court. If a judgment is rendered without an opinion, the Clerk shall prepare, sign and enter the judgment following instruction from the Court. The Clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

Section 7-8-702 Interest on Judgments

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the District Court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the District Court the mandate shall contain instruction with respect to allowance of interest.

Section 7-8-703 Damages for Delay

If the Supreme Court shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

Section 7-8-704 To Whom Costs Allowed

Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the Court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the Court.

Section 7-8-705 Costs For Or Against the Tribe

In cases involving the Tribe or an agency or officer thereof, if an award of costs against or for the Tribe is authorized by tribal statute, costs shall be awarded in accordance with the provisions of Section 364, otherwise, costs shall not be awarded against the Tribe or its agencies or officers in their official capacity, provided that cost shall be awarded as a matter of course against a criminal defendant when the conviction is affirmed.

Section 7-8-706 Costs of Briefs, Appendices, and Copies of Records

Unless otherwise provided by tribal statute or Court rule, the cost of printing, or otherwise producing necessary copies of briefs, appendices, and copies of records shall be taxable in the Supreme Court at rates not higher than those generally charged for such work.

Section 7-8-707 Bill Of Costs; Objections; Costs Inserted In Mandate Or Added Later

A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which he shall file with the Clerk, with proof of service, within 14 days after the entry of judgment. Objection to the bill of costs must be filed within 10 days of service unless the time is extended. The Clerk shall prepare and certify an itemized statement of costs taxed in the Supreme Court for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the Clerk of the Supreme Court to the Clerk.

Section 7-8-708 Costs On Appeal Taxable in the Tribal District Court

Costs incurred in preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the District Court as costs of the appeal in favor of the party entitled to costs under this Act.

Section 7-8-709 Petition For Rehearing

- (A) **Time For Filing, Content, Answer, Action By Court.** A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order of the Court. The petition shall state with particularity

the points of law or fact which in the opinion of the petitioner the Court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted except upon the Court's own motion. No answer to a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the Court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other order as are deemed appropriate under the circumstances of the particular case.

- (B) **Form of Petition; Length.** The petition shall be in a form prescribed by Section 329, and copies shall be served and filed as prescribed by Section 327 for the service and filing briefs. Except by permission of the Court, a petition for rehearing shall not exceed 15 pages.

Section 7-8-710 Issuance of Mandate

The mandate of the Court shall be issued 21 days after the entry of judgment unless the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the Court, if any, and any direction as to costs shall constitute the mandate, unless the Court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the Court. If the petition is denied, the mandate shall issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

Section 7-8-711 Voluntary Dismissal

- (A) **Dismissal in The Tribal District Court.** If an appeal has not been docketed, the appeal may be dismissed by the District Court upon the filing in that Court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.
- (B) **Dismissal in The Supreme Court.** If the parties shall sign and file with the Clerk of the Supreme Court an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the Clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the Court. An appeal may be dismissed

on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the Court.

Section 7-8-712 Substitution of Parties

(A) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is pending in the Supreme Court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party. The motion of a party shall be served upon the representative in accordance with the provisions of Sections 302, 303, and 304. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the Supreme Court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the District Court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by his attorney of record within the time prescribed by this Act. After the notice of appeal is filed substitution shall be effected in the Supreme Court in accordance with this Section.

(B) Substitution for Other Causes. If substitution of a party in the Supreme Court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subsection (A).

(C) Public Officers; Death or Separation from Office.

(1) When a public officer is a party to an appeal or other proceeding in the Supreme Court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the Court may require that his name be added.

Section 7-8-713 Cases Involving Constitutional or Indian Civil Rights Act Questions Where the Tribe Is Not A Party

It shall be the duty of a party who draws in question the constitutionality (or unlawfulness under the Indian Civil Rights Act of 1968) of any statutes, ordinance, or other action of the Tribal Legislative Body in any proceeding in the Supreme Court to which the Tribe, or any agency, officer, or employee in their official capacity is not a party, upon the filing of the record, or as soon as the question is raised in the Supreme Court, to give immediate notice in writing to the Court of the existence of the question. The Clerk shall certify such fact to the Tribal Attorney and/or Tribal Prosecutor who may intervene.

CITIZEN POTAWATOMI NATION
ADMISSIONS, PRACTICE AND DISCIPLINE OF ATTORNEYS
TITLE 8

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CHAPTER ONE

ATTORNEYS AND LAY ADVOCATES RULES

Rule 8-1-101 Admission to the Bar

(A) Roll of Attorney and Lay Advocates. The Bar of this Court shall consist of those attorneys and lay advocates heretofore and those hereafter admitted to practice before this Court, who have taken the oath prescribed by the rules in force at the time they were admitted or the oath prescribed by this rule, and have signed the roll of attorneys of this Court.

(B) Procedure for Admission. There is hereby constituted a Committee on Admissions and Grievances, consisting of three member of the Bar of this Court, to be appointed by the Court. Every applicant for admission shall file with the Clerk, on a form prescribed by the Court, a written petition for admission, which shall be referred immediately to the Committee on Admissions and Grievances for investigation into the qualifications of the applicant and his fitness to be admitted to the Bar of this Court. The Committee shall report its recommendations in writing to the Clerk of this Court. Upon a favorable report of the Committee, filed with the Clerk, the applicant, if an attorney, may be admitted. Lay Advocates shall be admitted upon examination as described below. An applicant for admission, who has qualified for admission, may, upon request, be admitted upon order of the Court after having filed his oath of attorney without appearing in Court. Any applicant for admission, who has qualified for admission, may appear at any session of Court during its term and be admitted by taking the oath of attorney in open Court upon motion of any member of the Bar of this Court.

It is desired that the procedure for admission by the Committee include a Tribal practice program which is designed to acquaint the applicants with pertinent aspects of practice in this Court, emphasizing the Tribal law and Tribal Court Rules. It is anticipated that this program would be held in the ceremonial courtroom, and would, if possible, include presentations by Court officials and judicial officers. The Court will endeavor to set aside a portion of one day at the beginning of each term of a Tribal practice program which should be attended by those

expecting to be admitted during that term unless such attendance would create a hardship for the prospective admittee.

Individual Justices may, from time to time, in emergent situations upon special request admit individual lawyers who have been approved by the Committee. Before being admitted as a member of the Bar of this Court each applicant shall take and subscribe to the oath shown in Exhibit I to these rules.

(C) Eligibility. Any member in good standing of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or any person appointed as Tribal Justice, Judge, or magistrate, or a member in good standing of the Bar of the highest court of any Indian Tribe or State of the United States, is eligible for admission to the Bar of this Court.

Any member of a federally recognized Indian Tribe shall be eligible for admission as a lay advocate upon successfully taking a comprehensive examination on the laws and rules applicable in the Tribal Court, which examination shall be promulgated by the Admissions Committee with the approval of the Court, and administered by the Admissions Committee at least once each year or at such other intervals as may be ordered by the Court. Upon receiving a passing score on the examination and showing their moral fitness to practice law, such persons should receive a favorable report from the Admissions Committee and be admitted to the practice of law in this Court and all inferior Tribal Courts. Thereafter, such lay advocates shall be held to the same standards, be entitled to the same rights, privileges, obligations, and duties, and be accorded all the honors to the same extent as any attorney admitted to practice before the Courts of the Tribe within this reservation.

(D) Reciprocity. Any attorney who shall have been admitted to practice in any Federal Court within this State may be admitted to practice in this Court upon the motion of a member of the Bar, in open Court, and the filing of a written application without the necessity of appearing before the Admissions Committee.

(E) Attorneys for the United States. Attorneys who are employed or retained by the United States or its agencies may practice in this Court in all cases or proceedings in which they represent the United States or such agencies.

(F) Admission of Non-Resident Attorney for Limited Practice. Any member of the Bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or of the highest Court of any Indian Tribe or State of the United States, who is a non-resident of the State may be admitted to the Bar of this Court for limited practice upon oral application and without compliance with subsection (B) hereof. Limited practice shall be restricted to appearance and practice in a case or proceeding then on file in the court.

(G) Temporary Admission. Any attorney who appears eligible for admission to the Bar of this Court may in the discretion of a Judge of the District Court or Justice of this Court be granted temporary admission to practice in a pending case.

(H) Withdrawal from Case. In any action, wherein appearance is made through counsel, there shall be no withdrawal by counsel except by leave of Court upon reasonable notice to the client and all other parties who have appeared in the case. Withdrawal of counsel may be granted subject to the condition that subsequent papers may continue to be served upon the counsel for forwarding purposes or upon the Clerk of the Court, as the Court may direct, unless and until the client appears by other counsel or in propria persona, and any notice to the client shall so state and any filed consent of the client shall so acknowledge.

(I) Discipline. Any member of the Bar of this Court guilty of a violation of the prescribed oath of office, or of a violation of the disciplinary rules set forth in the Code of Professional Responsibility of the American Bar Association, or of any conduct unbecoming a member of the Bar of this Court, shall be subject to reprimand, suspension, disbarment, or such other disciplinary action as the Court deems appropriate.

(J) Summary Discipline. For misconduct in the

presence of the Court, an order may issue forthwith administering such discipline as the Court deems appropriate, including a fine of not to exceed \$500.00 or confinement of not to exceed ten (10) days, but summary discipline shall not include the right of the Court to suspend or disbar the offending lawyer from practicing in this Court. An attorney summarily disciplined as herein provided may appeal any punishment imposed hereunder to the Supreme Court, or if summary discipline is administered by a Justice, to the remaining Justices of the Court sitting en banc. The Justice or Judge administering the discipline shall not sit in the hearing of such an appeal. In order to allow such an appeal the discipline imposed will, upon request of the attorney, and by his posting a supersedeas bond in a reasonable amount to be fixed by the Court, be stayed for seven (7) days to allow such attorney to perfect an appeal. If no written appeal be filed within said seven (7) days, the punishment so imposed shall be forthwith administered unless in the interim the Judge or Justice imposing same has rescinded or modified his original action. Nothing herein provided is intended to preclude the right to the disciplined attorney to appeal direct to the Supreme Court.

(K) Conviction; Discipline in Other Courts. Any member of the Bar of this Court convicted in either federal, state, or tribal court of a felony or other crime punishable by banishment or involving moral turpitude, and any member disbarred or suspended from practice in any Court of competent jurisdiction, shall be suspended automatically from practice in this Court and may be reinstated, excepting however that in the event the discipline imposed in the other jurisdiction has been stayed there the discipline imposed in this Court shall likewise be deferred until such stay expires in the other jurisdiction. And provided further however that in the event a member of the Bar of this Court is disciplined in some other jurisdiction and this Court determines upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

- (2) that there was such a infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) that the imposition of the same discipline by the Court would result in grave injustice; or
- (4) that the misconduct established is deemed by the Court to warrant substantially different discipline,

then and in either of such events said attorney shall not be automatically similarly disciplined in this Court.

An attorney of this Bar who is under investigation for misconduct, or who is facing disbarment proceedings in any Court of competent jurisdiction, who resigns from the Bar of the investigating jurisdiction, or who voluntarily permits his license to practice therein to terminate, shall be, by this Court, deemed to have been disbarred in the other jurisdiction and shall forthwith be disbarred from practicing in this Court.

(L) Disciplinary Procedures. Proceedings to discipline a member of the Bar of this Court, except as set forth in paragraphs (J) and (K) hereof, shall be upon an order to show cause issued by the Court, reciting the charges and fixing notice of the date of hearing (which shall not be less than thirty (30) days from the date of the notice), and reciting the place of the hearing and such hearing procedures as may be reasonable and consistent with due process. Notice to the attorney shall be made by personal service or by registered or certified mail, addressed to the respondent-attorney at his last known address. The Court may, in its discretion, refer any Bar disciplinary matter to its Committee on Admissions and Grievances for proper investigation and recommendation to the Court, either before or after issuance of an order to show cause. The recommendation of the Committee on Admissions and Grievances, if same suggests disbarment or suspension, shall not be adopted until the procedure set forth above has been followed. Any attorney disbarred or suspended pursuant to these rules may apply to the Court for leave to petition for reinstatement.

Rule 8-1-102 Appearance of Counsel and Withdrawal of Counsel

(A) Appearance. Any attorney appearing for a defendant in a civil or criminal case shall enter his appearance by signing and filing a pleading or by entry of appearance on a form prescribed by the Clerk of this Court. In the event a plaintiff should change counsel or add additional counsel, the new or additional counsel for such plaintiff shall enter his appearance on a form to be provided by the Clerk for that purpose. Counsel of record in any case shall be permitted to withdraw conformably to Rule 101 (H) only by order of the Judge to whom the case is assigned.

(B) Certificate of Familiarity With Local Court Rules. Every person, upon entering an appearance in any case of proceeding in this Court, or upon first tendering for filing any pleading or paper therein, shall be required to certify that such person has received, read and is familiar with the current Rules of this Court, specifically including all of the most recent published amendments to them.

Such certification shall be required before any such entry of appearance, pleading or paper shall be filed by the clerk, provided however, for good cause shown, the Clerk may in his discretion receive and file any such matter on condition that the required certificate be filed within ten (10) days thereafter, failing in which the matter so filed shall be stricken.

The same certification shall also be required of every other person thereafter participating in such cause or proceeding.

The Clerk shall keep a master file of all such certificates. Once a person has so certified his familiarity, he shall not be required to do so in a subsequent cases unless required by order of the Court. A Judge of this Court may authorize the Clerk to waive the requirement as to certain persons or categories of persons when such will best serve the administration of Justice.

Rule 8-1-103 Courtroom Decorum

(A) The Canon of Professional Ethics were adopted by the American Bar Association and this Court

as a general Guide, because as stated in the preamble of the American Bar Association Canons, “No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life.” The preamble further admonishes that “the enumeration of particular duties should not be construed as a denial of the existence of other equally imperative, though not specifically mentioned.” In that spirit, all lawyers should become familiar with their duties and obligations as defined and classified generally in the Canons, the common law decisions, the statutes and the usages, customs, and practice of the bar of this Court. These Canons, and the statutes and common law of the Tribe relating to attorney conduct, are applicable to all attorneys and lay advocates who practice before this Court.

(B) The purpose of this rule is to emphasize, not to supplant, certain portions of those ethical principles applicable to the lawyer’s conduct in the courtroom. In addition to all other requirements, therefore, lawyer’s appearing in this Court shall:

- (1) Be punctual in attendance at Court.
- (2) Refrain from addressing one another in Court by their first names.
- (3) Refrain from leaving the courtroom while Court is in session, unless it is absolutely necessary, and then only if the Court’s permission has been first obtained.
- (4) See that only one of them is on his feet at a time unless an objection is being made.
- (5) Refrain from approaching jurors who have completed a case unless authorized by the Court.
- (6) Avoid approaching the bench as much as possible. In this connection, counsel should try to anticipate questions which will arise during the trial, and take them up with the Court and opposing counsel in chambers. If however, it becomes necessary for an attorney to confer with the Court at the bench, the Court’s permission should be obtained, and opposing counsel should be openly invited to accompany him.

- (7) Refrain from employing dilatory tactics.
- (8) Deliver jury arguments from the lectern placed in a proper position facing the jury. If it is necessary to argue from an exhibit, the Court will, upon request, grant permission to do so.
- (9) Hand all papers intended for the Court to see to the Clerk, who, in turn will pass them up to the Judge.
- (10) Hand to the Clerk, rather than the Court Reporter, any exhibits to be marked which have not previously been identified.
- (11) Advise clients, witnesses, and other interested persons concerning rules of decorum to be observed in Court.
- (12) Stand and use the lectern when interrogating witnesses, unless otherwise instructed by the Court. However, when interrogating a witness concerning an exhibit the Court may, upon request, grant permission to approach the witness stand or the exhibit, as the case may be, for that purpose.
- (13) Never conduct or engage in experiments involving any use of their own persons or bodies except to illustrate in argument which has been previously admitted in evidence.
- (14) Not conduct a trial when they know, prior thereto, that they will be necessary witness, other than as to merely formal matters such as identification or custody of a document or the like. If, during the trial, they discover that the ends of justice require their testimony, they should from that point on, if feasible and not prejudicial to their client’s case, leave further conduct of the trial to other counsel. If circumstances do not permit withdrawal from the conduct of the trial, lawyers should not argue the credibility of their own testimony.
- (15) Avoid disparaging personal remarks or acrimony toward opposing counsel and remain wholly uninfluenced by any ill-feeling between the respective clients. They should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel.

- (16) Rise when addressing, or being addressed by the Court.
- (17) Refrain from assuming an undignified posture. They should always be attired in a proper and dignified manner as befits an officer of the Judicial Branch of the Government and should abstain from any apparel or ornament calculated to attract attention to themselves.
- (18) Comply, along with all other persons in the courtroom, with the following:
 - (a) No tobacco in any form will be permitted at any time.
 - (b) No propping of feet on tables or chairs will be permitted at any time.
 - (c) No bottles, beverage containers, paper cups or edibles should be brought into the courtroom, except with permission of the bailiff.
 - (d) No gum chewing or reading of newspapers or magazines (except as a part of the evidence in a case) will be permitted while Court is in session.
 - (e) No talking or other unnecessary noises will be permitted while Court is in session.
 - (f) Everyone must rise when instructed to do so, upon opening, closing, or declaring recesses of Court.
 - (g) All male lawyers and male Court personnel must wear both coats and ties, women lawyers and women Court personnel must be suitably attired.
 - (h) Any attorney who appears in Court intoxicated or under the influence of intoxicants, drugs or narcotics may be summarily held in contempt.

Rule 8-1-104 Attorney Conference With Respect To Discovery Motions

With respect to all motions or objections relating to discovery, the Tribal District Court shall refuse to hear any such motion or objection unless counsel for the movant shall first advise the Court in writing that he

has conferred in good faith with opposing counsel, but that, after a sincere attempt to resolve differences has been made, the attorneys have been unable to reach an accord.

Rule 8-1-105 Free Press - Fair Trial

- (A) It is the duty of the lawyer or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which a lawyer or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.
- (B) With respect to a pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.
- (C) From the time of arrest, issuance of an arrest warrant or the filing of a criminal complaint in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:
 - (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status and, if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

- (2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;
 - (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
 - (4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
 - (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
 - (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.
- (D) The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.
- (E) During a jury trial on any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public records of the Court in the case.
- (F) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.
- (G) All Court supporting personnel, including among others, Tribal and Bureau of Indian Affairs Police and their deputies, marshals, deputy marshals, court clerks, deputy court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not a part of the public records of the Court. Such personnel are also forbidden from divulging information concerning in camera arguments and hearings held in chambers or otherwise outside the presence of the public.
- (H) In a widely publicized or sensational civil or criminal case, the Court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the Court may deem appropriate for inclusion in such an order.
- Such a special order may be addressed to some or all of the following subjects:
- (1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors and court officials) which might divulge prejudicial matter not of public record in the case.
 - (2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury

and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial.

- (3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and from communicating with others in any manner during their deliberations.
- (4) Sequestration of the jury on motion of either party or by the Court, without disclosure of the identity of the movant.
- (5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by the Tribal Court, and that no photograph be taken or sketch made of any juror within the environs of the Court.
- (6) Insulation of witnesses during the trial.
- (7) Specific provisions regarding the seating of spectators and representatives of news media, including:
 - (a) An order that no member of the public or news media representative be at any time permitted within the bar railing;
 - (b) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the newsmen.
- (I) The taking of photographs and operation of tape recorders in the courtroom or its environs and radio or television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a Tribal judge, whether or not Court is actually in session, is prohibited. A Judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or

similar proceedings, and (3) the use of electronic or photographic equipment including recording apparatus by tribal officers or employees on the regular course of their business within their normal area of operation within the Courthouse when such will not interfere with the trial of the case.

- (J) As used in this Rule the term “environs” means any place in or near the tribal courtroom, or within the building in which the tribal courtroom is situated.

Rule 8-1-106 Plan of the Tribal Court for the Representation of Indigent Defendants

- (A) **For Whom Appointed.** As designated and provided by the Tribal Court for criminal defendants, and parents, and children in child custody actions when such persons are found to be financially unable to obtain adequate representation, and free representation is available, or when the Court has adequate funds, not otherwise obligated, to pay for such representation.
- (B) **Appointment Panel.** Private attorneys will be appointed by the Judges of this Court. Said appointments shall be made on a rotational basis, subject to the Court’s discretion to make exceptions due to the nature and complexity of the case, an attorney’s experience, and geographical considerations. Periodically as necessary, the panel will be republished by the Judges of this Court. If sufficient attorneys volunteer to be placed on this panel to satisfy the needs of the Court for representation of indigent persons and children, other attorneys may be excused from service on the panel, provided, that the Court may still request the assistance of such attorneys if necessary or useful to the Court.
- (C) **Pay.** Appointees may be compensated at a rate determined by a Judge of this Court but not to exceed \$30.00 per hour for time expended in court and \$20.00 per hour for time expended out of court in addition to reasonable expenses as determined by a Judge of this Court as the Court budget and court fund will allow. The compensation for legal services shall not exceed \$1,000.00 for an attorney in a case in which a crime punishable by banishment is charged, or in termination of parental rights cases, including all representation before the Supreme Court

through appeal of the case, and shall not exceed \$400.00 for an attorney in a case in which a misdemeanor is charged including all representation before the Court through appeal of the case. Compensation in post-conviction cases, probation and parole revocation hearings and material witness matters shall not in any event exceed \$250.00 per attorney per case. In all events, the compensation paid shall be in that amount approved by a Judge of this Court.

(D) Claims. Standard forms shall be used throughout and claims for legal compensation and expenses and for services other than counsel shall be submitted within 45 days after services are completed.

(E) Obligation of Court-Appointed Counsel to Disclose Client's Assets. If at anytime after appointment, counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the Court.

(F) Refusal to Represent Indigents. An attorney who neglects or refuses to serve as counsel for an indigent or child in this Court when duly appointed so to do so by either a Judge or a Magistrate may have his name removed from the list of those admitted to practice law in this Court, provided, that no attorney shall be required, without his consent, to represent more than one person each calendar year without receiving compensation therefore as provided in paragraph (v) of this rule. For good cause shown, the Court may excuse as attorney from an appointment although such action is not favored. No Government attorney shall be appointed in any such cases.

(G) Persons Obligated To Refund Court Fund For Attorney Fees Or Pay Attorneys.

Every indigent person, and the parents of every child, for whom, a court appointed attorney is obtained, shall be liable to the Tribe for all sums paid to their court appointed counsel as fees and expenses in the action, or all sums which the court, upon motion of appointed counsel, taxes against that person as the fair costs of such rep-

resentation at the conclusion of the case, which amount shall not exceed the amount which the Court would have paid from the court fund or court budget if funds for payment had been available. This liability may be enforced, by motion filed in the case by the parties attorney, the Tribal Attorney, or Tribal District Attorney, at any time after the amount of such attorneys fees and costs have been set by the Court, and process may be issued as in civil cases to enforce this liability. All amounts recovered shall be repaid into the Court fund or Court budget, and if the attorney has not received payment for his fees and costs, the Clerk of the Court shall forthwith pay over to the attorney such amount as he is entitled to pursuant to the order of the Court setting the attorney fees and costs.

CHAPTER TWO OATH OF ATTORNEY

I do solemnly swear:

I will support the Constitution of the United States, and the Constitution of the Tribe. I will maintain the respect due to Courts of justice and judicial officers.

I will be bound by the Code of Professional Responsibility of the American Bar Association and will conduct myself in compliance therewith at all times.

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law.

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval.

I will abstain from all offensive personalities, and advance no facts prejudicial to the honor or reputation of a party or a witness, unless required by the justice of the cause with which I am charged.

I will never reject, for any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's causes for lucre or malice. So help me God.

CITIZEN POTAWATOMI NATION
CIVIL PROCEDURE
TITLE 9

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PREFACE

Section 9-0-001 Scope of This Act

This Act governs procedure in all suits of a civil nature whether at law or in equity. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 9-0-002 Jurisdiction in Civil Actions

- (A) The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, and any specific restrictions or prohibitions contained in Federal law.
- (B) The Citizen Potawatomi Nation maintains civil and criminal jurisdiction over its members and others who enter into a voluntary relationship with the Nation.
- (C) Citizenship or membership in the Citizen Potawatomi Nation is voluntary. Anyone who chooses to disassociate himself or herself from the Nation may do so by withdrawing from the tribal rolls. Therefore, those individuals who maintain membership in the Citizen Potawatomi Nation do so knowing that they voluntarily “assume tribal relations” with the Nation
- (D) Individuals who voluntarily “assume tribal relations” with the Citizen Potawatomi Nation through voluntary tribal membership, intermarriage, Residence, or other substantial activities are subject to the criminal and civil jurisdiction of the Citizen Potawatomi Nation. Criminal and civil jurisdiction over tribal members shall not be dependent upon the location or jurisdiction of their residence.

Section 9-0-003 Title of this Act

This Act shall be known as the Code of Civil Procedure.

Section 9-0-004 Force of the Tribal Common Law

The customs and traditions of the Tribe, to be known as the Tribal Common Law, as modified by the Tribal Constitution and statutory law, judicial decisions, and the condition and wants of the people, shall remain in full force and effect in like force with any statute insofar as the common law is not modified, but all Tribal statutes shall be liberally construed to promote their object.

Section 9-0-005 Definitions

- (A) “Chief Executive Officer” shall mean the Chairman of the Tribe.

(B) “Other Indian Tribe” shall mean any Federally recognized Indian Tribe.

(C) “Real Property” or “non-trust interest in real property” shall mean any interest in real property within the Tribal jurisdiction other than Indian trust title or fee title subject to a restriction upon alienation by the United States. Nothing in this Act shall be construed as affecting or attempting to affect the trust or restricted title to trust or restricted Indian land.

(D) “Reservation” means the recognized treaty reservation boundaries.

(E) “Tribal Legislative Body” means the Constitutional Legislature.

(F) “Tribal jurisdiction” means all Indian Country as defined in 18 U.S.C. §1151 and all other jurisdiction consistent with Federal law.

Section 9-0-006 No Effect Upon Sovereign Immunity

Nothing in this Act contained shall be construed to be a waiver of sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or a consent to any suit beyond limits now or hereafter specifically stated by Tribal law.

Section 9-0-007 Declaratory Judgment

The Court, in any actual controversy shall have the authority to declare the rights of the parties even though a money judgment or equitable relief is not requested or due. The Court may issue its declaratory judgment recognizing Tribal common law marriages and divorces, and provide for the custody of children and division of property in such divorces.

Section 9-0-008 Court Costs Not Charged to Tribe

The Tribe, its officers, employees, agents, or political subdivisions acting in their official capacity shall not be ordered to pay Court costs or attorney fees but if these entities prevail, the cost may be charged to the losing party.

Section 9-0-009 Laws Applicable to Civil Actions

- (A) In all civil cases, the Tribal District Court shall apply:
 - (1) The Constitution, Statutes, and Common Law of the Tribe not prohibited by applicable Federal law, and, if none, then
 - (2) The Federal law including Federal common

law, and, if none, then

(3) The laws of any State or other jurisdiction which the Court finds to be compatible with the public policy and needs of the Tribe.

(B) No Federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of Subsection (A) if inconsistent with the laws or public policy of the Tribe.

(C) Where any doubt arises as to the customs and usages of the Tribe, the Court, on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors.

Section 9-0-010 through 9-0-011 Reserved

Section 9-0-012 Court Action When No Procedure Provided

In any case in which no specific procedure is provided by Tribal law or Court rule the Court may proceed in any lawful fashion not inconsistent with Tribal law, the rules of the Court, or the Indian Civil Rights Act.

CHAPTER ONE PLEADINGS, MOTIONS, AND ORDERS

Section 9-1-101 Commencement of Action

A civil action is commenced by filling a complaint.

Section 9-1-102 One Form of Action

There shall be one form of action to be known as a “civil action”.

Section 9-1-103 “Claim” Defined

The term “claim” means any right of action which may be asserted in a civil action or proceeding.

Section 9-1-104 Constructive Notice of Pendency of Action

Upon the filing of a complaint in the District Court, the action gives constructive notice to third persons of its pendency. While an action is pending, no third persons shall acquire an interest in the subject matter of the suit against plaintiff’s title, except as provided in Sections 9-1-105 and 9-1-106.

Section 9-1-105 Notice of Pendency Contingent Upon Service

Notice of the pendency of an action shall have no effect unless service of process is made upon the defendant within one hundred twenty (120) days.

Section 9-1-106 Special Notice for Actions Pending in Other Court

No action pending in either state, federal or other Tribal Court shall constitute notice to any real property or personal property located within Tribal jurisdiction until a notice of pendency, identifying the case and the court and giving the legal description of the land or the description of the personal property and its location is filed with the Court Clerk.

Section 9-1-107 Pleadings Allowed: Form of Motions

(A) There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person not an original party is summoned under Section 9-1-117; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except the Court may order a reply to an answer or a third-party answer.

(B) Motions and Other Papers.

(1) An application for an Order shall be by motion which, unless made during shall:

- (a) Be made in writing,
- (b) State particular grounds and
- (c) State the relief or order sought.

The requirement is fulfilled if stated in a written notice of the motion hearing.

(2) The rules applicable matters of form apply to all papers filed.

Section 9-1-108 General Rules of Pleading

(A) Claims for Relief: A claim for relief, whether an original, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement showing the pleader is entitled to relief, and (2) a demand for judgment alternative relief may be demanded.

(B) Defenses; Form of Denials: A party shall state in short and plain terms his defenses and shall admit or deny the allegations. He may make his denials or generally denies. A pleader may deny only a part or a qualification; they shall specify what is true and deny the remainder. When they intend to controvert all, including the Court’s jurisdiction, he may do so by general denial

subject to Section 9-1-111. If they is without knowledge or information sufficient to form a belief, he shall so state.

(C) Affirmative Defenses: A party shall state defense relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of Frauds;
- (18) Statute of Limitations;
- (19) Waiver;
- (20) Any other matter.

If a defense is designated as a counterclaim or counterclaim as a defense, the Court, shall treat the pleading as if properly designated. If a defense is not raised it is deemed waived.

(D) Effect of Failure to Deny: Allegations other than as to the amount of damage are admitted when not denied. Allegations to which no responsive pleading is required shall be taken as denied or avoided.

- (1) A party may state and rely upon two or more statements of a claim or defense or hypothetically, either in one or in separate counts or defenses. When two or more alternative statements are made and one independently would be sufficient, the pleading is not insufficient by one or more of the alternative statements. A party may state separate

claims or defenses regardless of consistency and grounds. All statements shall be made subject to Section 9-1-111.

(E) Construction of Pleadings: All pleadings shall be liberally construed to do substantial justice.

Section 9-1-109 Pleadings Special Matters

(A) Capacity: It is not necessary to state the capacity or the authority of a representative party to sue or be sued or the legal existence of an association made a party, except to show the jurisdiction of the Court. When a party the legal existence of any party or capacity the party is representative capacity to sue or be sued he shall so specifically state and include particulars within the pleader's knowledge, and shall have the burden of proof.

(B) Fraud, Mistake, Condition of the Mind: In all allegations of fraud or mistake, the circumstances shall be stated with particularity. Malice, intent, knowledge, and other conditions of mind may be generally alleged.

(C) Conditions Precedent: In pleading the performance or occurrence of conditions precedent, it is sufficient to allege generally all conditions precedent have occurred. A denial of performance or occurrence of conditions precedent shall be particularly plead.

(D) Official Document or Act: It is sufficient to assert an official document or act was issued or done lawfully.

(E) Judgment: It is sufficient to assert the judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer without showing jurisdiction to render it.

(F) Time and Place: Assertions of time and place are material and shall be considered like other materials matters.

(G) Special Damage: Special damages shall be specific, but amounts need not be alleged to obtain judgment.

Section 9-1-110 Form of Pleadings, Motions, and Briefs

(A) Caption; Names of Parties: Every pleading shall contain the name of the Court, title of the action, file number, and a designation in Section

9-1-107 (A) terms. The title of the action shall include names of all parties; in later pleadings it is sufficient to state the first party on each side with an indication of other parties. In the initial third party complaint, counterclaim, cross-claim, motion and petition in intervention or a pleading suing or being sued in a representative capacity, designations of all parties shall be made. Thereafter, papers may contain only the name of the first party in each category with an indication of other parties.

(B) Paragraphs; Separate Statements: All assertions shall be made in numbered paragraphs, each shall be limited to a single set of circumstance; and may be referred to by number in all succeeding filings. Claims founded upon a separate transaction or occurrence and defenses other than denials shall be stated separately.

(C) Adoption b Reference; Exhibits: Statements in filings may be adopted by reference. A copy of any written instrument which is a filed exhibit is part thereof for all purposes.

Section 9-1-111 Signing of Pleadings

(A) Every pleading by an attorney or advocate shall be signed by an attorney or advocate of record including address and telephone number.

(B) A party shall sign and state his address and telephone number except when specifically provided pleadings need not be verified or accompanied by affidavit.

Section 9-1-112 Defenses and Objections - When and How Presented – By Pleadings or Motions - Motion for Judgment on the Pleadings

(A) When Presented:

- (1) A defendant shall serve his answer within 20 days after service of summons and complaint, except when service is made under Section 9-2-116, 9-2-118 or 9-2-121 and a different time is prescribed by order of Court, or Tribal Law.

A Party served with a cross-claim shall serve an answer within 20 days after service. The plaintiff shall serve his reply to a counterclaim within 20 days after service of the answer, or, if a reply is ordered by the Court, within 20 days after service unless otherwise directed. The Tribe or an of-

ficer or agency shall serve an answer to the complaint or cross-claim, or counterclaim, within 60 days after service upon the Tribal attorney (or Chief Executive Officer if no Tribal attorney) of the pleading, no default judgment shall be entered against the Tribe.

The service of a motion under this Section alters time periods, unless fixed by Court order. (1) If the Court denies the motion or postpones its disposition until trial, the response shall be served within 10 days after notice of the Court's action. (2) If the Court grants a motion for a more definite statement the response shall be served within 10 days after the service.

- (2) Within the time an answer may be served, a defendant may file any entry of appearance and reserve twenty (20) additional days to answer or defend. Any entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (B) provided a waiver of sovereign immunity shall not be implied under number 9 of paragraph (B).

(B) How Presented: Every defense, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading if one is required, except the following defenses may be made by motion:

- (1) Lack of subject matter jurisdiction;
- (2) Lack of personal jurisdiction;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure of state a claim upon which relief can be granted;
- (7) Failure to join a party under Section 303;
- (8) Another action pending between the same parties and claim;
- (9) Lack of capacity to be sued; and
- (10) Lack of capacity to sue.

No defense or objection is waived by being joined with one or more defenses or objections a claim which the adverse party is not required to serve a responsive pleading, he may assert at trial any defense. If, a motion

asserting number (6) to dismiss matters outside the pleading are presented and not excluded by the Court, the motion shall be treated as a summary judgment as provided in Section 9-9-105, and parties shall present all materials made pertinent by Section 9-9-105. Every motion to dismiss shall be accompanied by a brief in support unless waived by the Court.

(C) Motion for Judgment on the Pleadings: After pleadings are closed, any party may move for judgment on the pleadings. If matters outside the pleadings are presented and not excluded, the motion shall be treated as one for summary judgment and parties shall be given opportunity to present all materials made pertinent by Section 9-9-105. Every motion to dismiss shall be accompanied by a brief in support unless waived by the Court.

(D) Preliminary Hearing: The defenses enumerated in subdivision (B) and the motion for judgment in subdivision (C) shall be heard and determined before trial on application unless the Court orders the hearing and determination be deferred.

(E) Motion for More Definite Statement: A pleading to which a response is permitted is so vague or ambiguous a party cannot be required to respond, he may move for a more definite statement. The motion shall point out defects and the details desired. If the motion is granted and the order is not obeyed within 10 days after notice or within time fixed, the Court may strike the pleading and make such order as just. Such motions are not favored.

(F) Motion to Strike: Upon motion before responding to a pleading or, if no response pleading is permitted upon motion made within 20 days after service of the pleading or upon the Court's own initiative, the Court may order stricken any insufficient defense or redundant, immaterial, impertinent, or scandalous matter. A motion to strike an insufficient defense if matters outside the pleadings are presented and not excluded, the motion shall be treated as partial summary judgment and parties shall be given opportunity to present all materials made pertinent by judgment rules.

(G) Waiver or Preservation of Certain Defenses:

(1) A defense of lack of jurisdiction over the

person, improper venue or an inconvenient form, insufficiency of process, insufficiency of service or process or lack of capacity to sue is waived (A) if omitted as described in subdivision (G), or (B) if neither made by motion nor in a responsive pleading or an amendment permitted (Section 9-1-118 (A) or (C)) if a permissive counterclaim is filed (Section 9-1-114 (B)).

(2) A defense of failure to state a claim failure to join a party indispensable (Section 9-3-103), and an objection of failure to state a legal defense and a defense of another action pending may be made in any pleading permitted or ordered (Section 9-1-107 (A)), or by motion for judgment on the pleadings, or at the trial.

(3) The Court may, permit additional defenses or objections at any time prior to a decision.

Section 9-1-113 Final Dismissal on Failure to Amend

Upon dismissing a claim for relief, the Court shall grant leave to amend and shall specify the time for filing which should normally be ten (10) days. If not filed timely, final judgment of dismissal with prejudice shall be entered on motion except for excusable neglect. Within the time for filing an amended pleading, a plaintiff may voluntarily dismiss the action without prejudice.

Section 9-1-114 Counterclaim and Cross-Claim

(A) Compulsory Counterclaims: A pleading shall state a counterclaim against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of opposing party's claim and does not require the presence of third parties of whom the Court cannot acquire jurisdiction. The pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action or (2) the opposing party brought suit by attachment or other process by which the Court did not acquire jurisdiction pleading a compulsory counterclaim does not waive any defenses which are properly raised.

(B) Permissive Counterclaims: A pleading may state a counterclaim not arising out of the transaction or occurrence that is the subject matter of opposing party's claim.

(C) Counterclaim Exceeding Opposing Claim:

A counterclaim may diminish, defeat, exceed or be different from that sought by opposing party.

(D) Counterclaim Against the Tribe: This Act shall not enlarge limits on the right to assert counterclaims or to claim credits against the Tribe or an officer or agency. A compulsory counterclaim does not waive the defenses of sovereign immunity when made by the Tribe or an officer or an agency thereof. A permissive counterclaim waives the defense of sovereign immunity for the purpose of determining the permissive counterclaim stated by the Tribe, its officer, or agency, but does not waive such defenses for any other purpose.

(E) Counterclaim Maturing or Acquired After Pleading: A claim which matured or was acquired may, with permission be presented by supplemental pleading.

(F) Omitted Counterclaim: When a pleader omits counterclaim when justice requires, he may by permission be allowed an amendment with leave of the Court (Section 9-1-118 (A)).

(G) Cross-claim Against Co-party: A pleading may state a cross-claim against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim or relating to any property the subject matter of the original action. Such cross-claim may include a claim the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

(H) Joinder of Additional Parties: Persons may be made parties to a counterclaim or cross-claim (Section 9-3-103 and 9-3-104).

(I) Separate Trials; Separate Judgments: If the Court orders separate trials (Section 9-7-105 (B)), judgment on a counterclaim, cross-claim, or third party claim may be rendered (9-9-101 (B)) even if claims of the opposing party have been dismissed or disposed.

Section 9-1-115 Counterclaim: Effect of the Statutes of Limitation

(A) Where a counterclaim and the claim of the opposing party arise out of the same transaction or occurrence, the counterclaim shall not be barred

by a statute of limitation and the counterclaimant shall not be precluded from recovering an affirmative judgment.

(B) Where a counterclaim and the claim of the opposing party:

- (1) Do not arise out of the same transaction or occurrence; and
- (2) Both claims are for money judgments; and
- (3) Both claims occurred before either was barred by a statute of limitation; and
- (4) The counterclaim is barred by a statute of limitation, the counterclaim may be asserted only to reduce the opposing party's claim.

(C) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose; the barred counterclaim cannot be used for any purpose.

Section 9-1-116 Counterclaims Against Assigned Claims

A party, other than a holder in due course, who acquired a claim takes the claim subject to any defenses or counterclaims that could have been asserted against the original claimant, but the recovery of a counterclaim may be asserted against the assignee only to reduce the recovery of the opposing party.

Section 9-1-117 Third-Party Practice

(A) When Defendant May Bring in Third Party: A defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party who may be liable to him for all or part of plaintiff's claim or who may be liable to him on a claim arising out of the transaction or occurrence the subject matter of any claim(s). The third-party plaintiff need not obtain leave to make service if he files the third-party complaint not later than 10 days after he serves his original answer. Otherwise he must obtain leave upon notice to all parties. The person served with the summons and third-party complaint; hereinafter the third-party defendant shall make his defenses to the third-party plaintiff's claim, counterclaims and cross-claims against other third-party defendants. The third-party defendant may assert any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plain-

tiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant shall assert his defenses and counterclaims and cross-claims.

(B) Party Defendants in Real Property Actions:

In an action involving real property, any person appearing in the title, or claiming or appearing to claim some interest in the real property, may be included as a party defendant by using substantially the following "said defendant named herein claims some right, title, lien, estate, encumbrance, claim, assessment, or interest in and to the real property involved herein, adverse to plaintiff which constitutes a cloud upon the title of plaintiff and defendant has no right, title, lien, estate, encumbrance, claim, assessment, or interest, either in law or in equity, in and to the real property involved herein", that same is insufficient to include any and all claims, known or unknown, that such defendant may have in and to the real property involved in such case, it not being necessary to set out the reason for such claim or claims or other pleading for such person.

Section 9-1-118 Amended and Supplemental Pleadings

(A) Amendments: A party may amend once before a responsive pleading is served or, if the pleading is one which no responsive pleading is permitted and has not been placed upon the trial calendar, amend within 20 days after it is served, including adding omitted counterclaims or cross-claims or to add or drop parties. Otherwise a party may amend only by leave of Court or by written consent of the adverse party; and leave shall be freely. A party shall respond to an amended pleading within the time remaining for the original pleading or within 10 days after service of the amendment whichever period is longer, unless otherwise ordered.

(B) Amendments to Conform to the Evidence: When issues not plead are tried by express or implied consent of parties, they shall be treated as if plead Amendment may be necessary

to conform to the evidence and may be made upon motion at any time, even after judgment; but failure to amend does not affect the result. If evidence is objected to on the ground it is not within the issues plead the Court may allow amendment and shall do so freely when the actions merited and the admission of such evidence would not prejudice the Court. The Court may grant a continuance to the objecting party. Where the pretrial conference order has superseded the pleadings, the pre-trial order is controlling and is sufficient to amend the order and the pleadings need not be amended.

(C) Relation Back of Amendments: Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence in the original pleading, the amendment or supplemental pleading relates back to the date of the original pleading. An amendment changing the party relates back if the foregoing provision is satisfied and, within the period provided for commencing the action the party brought in (1) has received notice of the action he will not be prejudiced in maintaining his defense, and (2) know or should have known, but for a mistake identity the action would have been against him.

The delivery or mailing of process by the Tribal Attorney, his designee, or Attorney General, or an agency or officer to a proper defendant satisfies clauses (1) and (2) with respect to the Tribe.

(D) Supplemental Pleadings: Upon motion the Court may, upon reasonable notice and just terms permit service of supplemental; pleadings of transactions or occurrences happening since the date of the original pleading. Permission may be granted though the original pleading's claim for relief or defense is defective. The Court may order an adverse party to respond.

Section 9-1-119 Pre-Trial Procedure; Formulating Issues

(A) The Court may direct attorneys to appear for a conference to:

- (1) Simplify issues;
- (2) Amend or supplement pleadings;
- (3) Obtain admissions of acts and documents;
- (4) Limiting expert witnesses;

(5) Consider submission of issues to a master for findings to be used as evidence when a jury trial;

(6) Consider other matters.

(B) The Court shall make an order reciting action taken amendments allowed and agreements made which limits issues to those not disposed of by admissions or agreements; and such order when entered controls, unless modified at trial to prevent injustice. The Court may establish by Rule a pre-trial calendar.

Section 9-1-120 Lost Pleadings

If a pleading is lost or withheld, the Court may allow substitution.

Section 9-1-121 Tenders of Money or Property

When a tender of money or property is alleged, it shall not be necessary to deposit the same in Court at filing but it shall be sufficient if deposited at trial, or when ordered.

Section 9-1-122 Dismissal of Actions

(A) Voluntary Dismissal: Effect Thereof:

(1) By Plaintiff: An action may be dismissed without Court Order (Section 9-3-107) or (Section 9-8-102).

(a) By filing a notice of dismissal before service by the adverse party of an answer or motion of summary judgment, or

(b) By filing a stipulation of dismissal signed by all parties who have appeared. Unless stated the dismissal is without prejudice, except a notice of dismissal without the consent of the defendants operates as an adjudication upon the merits when filed by a plaintiff who has once voluntarily dismissed, without consent of defendants, in any Tribal, State or Federal Court, an action based on or including the same claim, unless the dismissal was entered due to inability to obtain personal jurisdiction over an indispensable party or lack of subject matter jurisdiction. If the plaintiff claims the exceptions, it shall so state in its notice of dismissal and shall ap-

ply to the District Court, upon notice for an order determining the previous dismissal was within the exceptions and the plaintiff is entitled to dismiss is without prejudice. The Court may grant such application with regard for costs, attorney fees, and inconveniences, and any motive to harass, embarrass, or delay the defendants.

(2) By Court order Except as in paragraph (1) an action shall not be dismissed at the plaintiff's instance save upon Court order and terms and conditions the Court deems proper. If a counterclaim has been plead prior to service of plaintiff's motion to dismiss, the action shall not be dismissed against defendant's objection unless the counterclaim remains pending for independent adjudication.

Unless specified, a dismissal is without prejudice.

(B) Involuntary Dismissal: Upon plaintiff's failure to prosecute or comply with this Act, rule, or order defendant may move for dismissal. After plaintiff, in a bench trial has completed presentation of evidence, the defendant, without waiving his right to offer evidence may move for dismissal on the ground plaintiff has shown no right to relief. The Court may then render judgment against plaintiff or may decline. If the Court renders judgment against plaintiff, the Court shall make findings. Unless the Court order specifies, a dismissal other than a dismissal for lack of jurisdiction, or for failure to join a party is an adjudication upon the merits.

(C) Dismissal of Counterclaim, Cross-Claim, or Third Party Claim: This section applies to the dismissal of any counterclaim, cross-claim, or third-party claim.

CHAPTER TWO PROCESS, SUMMONS

FILING OF PLEADINGS AND OTHER PAPERS

Section 9-2-101 Issuance of Summons

Upon filing of complaint, the Court Clerk shall issue a summons and deliver it for service with a copy for plaintiff's attorney, Chief of Tribal Police or person specially appointed to serve it. Upon request of plaintiff,

separate or additional summons shall issue against any defendants.

Section 9-2-102 Form of Summons

The summons shall be signed by the Court Clerk under the seal of the Court, contain the Court's name and names of parties, be directed to the defendant, state name and address of plaintiff's attorney, if any, otherwise plaintiff's address, and time within which defendant is to appear, and notify him that his failure may result in judgment by default. When service is made, the summons, or notice, or order in lieu of summons shall correspond to that required.

Section 9-2-103 Personal Service

- (A) Process including a subpoena, if served in person, shall be served by the Chief of the Tribal Police or his deputy, a person licensed, or a person specially appointed by the Court.
- (B) When process has been served and return filed with the Court Clerk, a copy of the return shall be sent to the serving party's attorney within three (3) days.
- (C) Process, other than subpoena, shall not be served by a party's attorney except (Section 9-2-104). A pro se party may make service in the same manner and to the same extent.
- (D) The Court shall freely make special appointments.

Section 9-2-104 Service by Mail

- (A) A summons and petition, and a subpoena, may be served by mail by plaintiff's attorney, or any person authorized.
- (B) Service is obtained by mailing the subpoena, or copy of summons and petition, by certified mail, return receipt requested and delivery restricted to the addressee.
- (C) Service shall not be the basis for a default judgment unless the record contains a return receipt showing acceptance or returned envelope showing refusal of process by the defendant. If delivery is refused, upon notice of refusal and at least ten (10) days before applying for entry of default judgment, the person serving process shall mail defendant by first-class a copy of the summons and petition and a notice that despite refusal the case will proceed and judgment will be rendered. A copy of said notice and proof

of mailing shall be filed prior to the entry of a judgment. Any such judgment shall be set aside upon defendant's motion, the return receipt was signed, or delivery was refused by an unauthorized person. Such motion shall be filed within one (1) year after the defendant has notice of default.

- (D) Concerning a legal entity (Section 9-2-117 (C)) acceptance or refusal by any officer or by employee of the registered office or principal place of business who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal.
- (E) Concerning a governmental organization acceptance or refusal by an employee of the office (Section 9-2-117) who is authorized to or who regularly receives certified mail shall constitute acceptance or refusal.

Section 9-2-105 Service by Publication

Publication is permitted when stated in the petition, verified by plaintiff or attorney, or in a separate affidavit that with due diligence service cannot be made by any other method.

Section 9-2-106 Publication Service Upon Parties and the Unknown Successors of Named Parties

- (A) Service of summons upon named parties, their unknown successors named decedent, or dissolved partnership, corporation, or other association may be made by publication when stated in the complaint, verified by plaintiff or attorney, or in a separate affidavit that the verified or affiant does not know, and with due diligence cannot ascertain.
 - (1) Whether a person is alive, and, if dead, the names or whereabouts of his successors;
 - (2) The names or whereabouts of a party and unknown successors, of the named decedent or other parties.
 - (3) Whether a partnership, corporation, or other association continues to have legal existence or the name or whereabouts of its officers or successors.
 - (4) Whether any person designated as trustee continues as trustee; or names or whereabouts of successors, or
 - (5) The names or whereabouts of owners or

holder of special assessment or any bonds, or bills or similar instruments.

- (B) Service shall be made by notice, signed by the Court Clerk, in a newspaper authorized to publish legal notices within Pottawatomie County and of general circulation at a last known address.
- (C) All named parties, unknown successors, and other persons may be included in one notice. The notice shall state:
 - (1) The name of the Court,
 - (2) The names of the parties,
 - (3) Designate parties whose unknown successors are being served,
 - (4) That the named parties and their unknown successors have been sued and must answer on or before a date certain not less than thirty-one (31) days from date of publication or a described judgment, will be rendered,
 - (5) Notice need not state the judgment will include recovery of costs.
- (D) If jurisdiction is based on property, any real property and property or debts to be attached or garnished must be described.
- (E) Service is complete upon publication.

Section 9-2-107 Publication Notice for Recovery of Money

It is not necessary to state separate items but the total money amount claimed must be stated. It is not necessary to state the rate of interest, the date from which interest is claimed, or that interest is claimed until the obligation is paid.

Section 9-2-108 Publication Notice in Quiet Title Actions

In real property quiet title actions it is not necessary to state the nature of the claim or interest of either party, and in describing the requested judgment should defendant fail to answer, it is sufficient to state a decree quieting plaintiff's title to the described property will be entered. It is not necessary to state a decree barring the defendant from asserting any interest in or to the property is sought or will be entered if the defendant does not answer. In quiet title actions notice shall be published twice. The second publication shall not be less than seven nor more than forty-five days after

the first publication. The answer shall be due thirty-one days after the second publication, and service is complete upon the second publication.

Section 9-2-109 Completion of Publication Service

Service by publication shall be proved by the affidavit of any person having knowledge of the publication with a copy of the published notice. No default judgment may be entered until proof of service by publication is filed and approved by the Court.

Section 9-2-110 Entry of Default on Party Served by Publication

Before entry of a default judgment or order, the Court shall conduct an inquiry whether the plaintiff, or someone acting on their behalf, made a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of parties. Before entry of a default judgment or order against the unknown successors of a named defendant, a named decedent, or a dissolved partnership, corporation, or association, the Court shall conduct an inquiry to ascertain whether the requirements of publication procedure have been satisfied.

Section 9-2-111 Vacating Default Judgments Where Service is by Publication

- (A) A Party against whom a default judgment or order has been rendered, may, at any time within three (3) years after the date of the judgment or order, have the judgment or order opened.
- (B) Before a judgment or order is opened, the applicant shall notify the adverse party, and shall
 - (1) File a full answer,
 - (2) Pay all costs if required and,
 - (3) Satisfy the Court by affidavit or evidence that during the pendency he had no actual notice in time to appear and defend.
- (C) The title to any property which passed to a purchaser in good faith by or in consequence of the judgment or order to be opened shall not be affected by this proceeding. Nor shall proceedings affect the title of any property sold before judgment under an attachment.
- (D) The adverse party shall be allowed to present evidence against the application.

Section 9-2-112 Certain Technical Errors Not Grounds for Vacating Judgment

- (A) No judgment against unknown heirs or devisees shall be construed, or held to be, either void or voidable upon the ground that an affidavit of the plaintiff that the names of heirs or devisees, and their residences, are unknown was not annexed to his complaint if one affidavit is on file and all judgments, if not void, are declared to be valid and binding.
- (B) No judgment against any person or party served by publication shall be construed or held to be void or voidable because the affidavit on file was made by plaintiff's attorney or because the complaint or other pleading was verified, by plaintiff's attorney or party seeking such service. It shall be conclusively presumed, if otherwise sufficient, the allegations and statements made by such attorney shall have the same force and effect as if actually made by plaintiff.

Section 9-2-113 Meaning of "Successors" for Publication Purposes

"Successors" includes all heirs, executors, administrators, devisees, trustees, and assigns, immediate and remote, of a named individual, partnership, corporation, or association.

Section 9-2-114 Minimum Contacts Required for Effective Long Arm Service

Service outside of Tribal jurisdiction does not give the Court personal jurisdiction over a defendant not subject to the Tribe's jurisdiction, or who has not, in person or through an agent, submitted to the jurisdiction either by appearance, consent, or entered into sufficient contacts with the Tribe, its members, or territory to justify tribal jurisdiction consistent with due process and federal Indian law.

Section 9-2-115 Consent is Effective Substitute for Service

Acknowledgment on the back of summons or voluntary appearance of defendant equals service.

Section 9-2-116 Reserved

Section 9-2-117 Manner of Making Personal Service

The summons and complaint shall be served together. The plaintiff shall furnish necessary certified copies. If the complaint is not served with summons, the case shall

not be dismissed but time to answer may be extended upon motion. The person serving shall state on the copy the date service is made. Where service is made by mail, the summons shall state on the copy the date of mailing. These provisions are not jurisdictional. If failure to comply prejudices the party served, the Court may extend the time to answer. Service of summons, complaint and subpoenas shall be made:

- (A) Upon an individual, not an infant or incompetent, by delivering to them personally or by leaving copies at their dwelling or usual place of abode with some person fifteen (15) years of age or older then residing therein or by delivering to an appointed agent.
- (B) Upon an infant or minor, by delivering a copy to either parent, legal guardian, or person with whom they reside if under fourteen years. If over fourteen years, by serving either parent or legal guardian, or person with whom they reside and by serving personally if the legal guardian cannot be located.
- (C) Upon a corporation, partnership or unincorporated association, by delivering or mailing a copy to an officer, manager or agent. Service may be had by delivering the summons and complaint to a place of business and leaving a copy with the person in charge at the time.
- (D) Upon the United States, by delivering a copy to the United States Attorney's office for the Western District of Oklahoma and by sending a copy registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy by registered or certified mail to such officer or agency.
- (E) Upon any office or agency of the United States, by serving the United States and by delivering a copy of the summons and complaint to such office or agency.
- (F) Upon a state, municipal corporation, any other Indian Tribe or governmental organization subject to suit, by delivering copy of the summons and complaint to the Chief Executive Officer or by serving prescribed by law of that state or Tribe.
- (G) Upon the Tribe, Tribe offices or agency by de-

delivering a copy of the summons and complaint to the Chief Executive Officer or officer, and by registered or certified mail, return requested, to the Tribal Attorney and in any action attacking the validity of an order of an officer or agency of the Tribe not made a party, by also sending a copy by registered or certified mail return receipt request to such officer.

Section 9-2-117.1 Effect of Service of Some of Several Defendants

- (A) Against multiple defendants, and not all are served, plaintiffs may:
 - (1) Against defendants jointly indebted upon contract, tort, or other cause plaintiff may proceed against defendants served, and if judgment (is recovered), it may be entered against: (a) all defendants only as may be enforced against the joint property of all, and (b) against defendants served as may be enforced against the separate property and if subject to arrest, against defendants served.
 - (2) Against defendants severally liable, plaintiff may, without prejudice against those not served, proceed against defendants served as if the only defendants.
- (B) A judgment against defendants served shall not bar judgment against those not served.

Section 9-2-118 Service Upon Party Not Inhabitant of or Found Within the Reservation

- (A) Whenever an ordinance or Tribal order provided for service of summons, or notice, or order in lieu of summons upon a party not an inhabitant of or found within the jurisdiction of the Tribe service may be made as prescribed, or, if no provision exists prescribing the service by following this act.
- (B) Against a foreign corporation or association where service is authorized upon a Tribal Officer, and the party elects to serve the Tribal Officer, service shall be made:
 - (1) The Court Clerk shall issue a summons and shall mail or personally serve copies with a copy of the complaint and service fee to the Tribal Officer. The Court Clerk shall indicate the date copies were delivered. Within three (3) working days, the Tribal Officer shall send copies to such foreign

corporation or association, by registered or certified mail, return receipt requested, at its office by the latest information filed. The summons shall state the last known address by due diligence. The Tribal Officer shall maintain one copy.

- (2) The original summons served on the Tribal Officer shall be in form and substance the same as suits against residents. The summons shall state an answer date not less than forty-five (45) days or more than sixty (60) days from the date issued.

Section 9-2-119 Territorial Limits of Effective Service

- (A) All process may be served anywhere within the territorial jurisdiction of the Nation, and when authorized by an ordinance of the Tribe, or by this Act, or by Order of the Court, beyond these territorial limits.
- (B) Persons brought in as parties, or as additional parties or counterclaim or cross-claim, may be served at all places outside the reservation of the Tribe but within the United States, and persons not tribal members required to respond to an order of commitment for civil contempt may be served, but not arrested. Tribal members may be served and arrested.
- (C) When the jurisdiction is authorized, service of summons and complaint may be made outside this reservation:
 - (1) By personal delivery;
 - (2) In the place's lawful manner where service is made;
 - (3) By publication;
 - (4) As directed by the foreign authority or Court.

Section 9-2-120 Return of Service of Process

- (A) The server shall make proof of service within the response time. If service is other than the police Chief or deputy, or an attorney by mail, he shall make affidavit. Return of receipt shall be attached to the proof of service. A copy of each publication of notice shall be attached to the return of service. Failure to make proof of service does not affect the validity of service.
- (B) The person serving summons shall state on the

copy served and the return, the date of service. Where service is by mail, the person shall state the date of mailing. These provisions are not jurisdictional, if failure to comply prejudices the party served, the Court may extend time to answer.

Section 9-2-121 Alternative Provisions for Service in a Foreign Country

(A) Manner: When the service is upon a party in a foreign country, it is sufficient if service of the summons and complaint is made: (1) in the lawful manner of the Tribe, state, or foreign country; or (2) as directed by the foreign authority; or (3) upon an individual, personally, and a corporation, partnership or association, officer, managing or general agent; or (4) by mail, requiring a signed receipt, dispatched by the Clerk; or (5) as directed by Court order. Service (3) or (5) above may be made by persons not a party and 18 years of age or designated by order of the District Court or the foreign Court. On request, the Clerk shall deliver the summons to the plaintiff for transmission to the person or the foreign Court or officer who will make service.

(B) Return: Proof of service may be made by the law of the Tribe, state, or foreign country, or by order of the Court. When service is made by mail proof of service shall include a receipt signed by the addressee or other evidence of the delivery.

Section 9-2-122 Subpoena

(A) For Attendance of Witnesses; Form; Issuance: Every subpoena shall be issued by the Clerk, shall state the name of the Court and the title of the action, and shall command each person to attend and give testimony at a time and place specified. The Clerk shall issue a subpoena or a subpoena for the production of documentary or physical evidence signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service.

(B) For Production of Documentary Evidence: A subpoena may command a person to produce books, papers, documents, or tangible things designated. The Court, upon motion at or before the time specified for compliance may (1) quash or modify if unreasonable and oppressive or (2) condition denial of the motion upon the payment of reasonable costs.

(C) Service: A subpoena may be served by the Police Chief, deputy, or by authorized person not a party and 18 years of age. Fees and mileage may be charged. When issued on behalf of the Tribe, fees and mileage need not be tendered, but fees paid shall be charged to such Tribal Officer or agency. A subpoena may be served if accepted by the addressee. All subpoena service expenses may be recovered as costs.

(D) Subpoena for Taking Depositions; Place of Examination:

(1) Proof of service to take a deposition or presentation of notices attached constitutes sufficient authorization for the clerk's issuance of subpoenas. The subpoena may command the person to produce and permit inspection and copying of designated books, papers, documents, or tangible things permitted.

The person may, within 10 days after service or on or before the time specified for compliance, if such time is less than 10 days serve upon the attorney written objection. If objected, the server shall not inspect and copy the materials except pursuant to Court order. The server may, move upon notice to the deponent for an order at any time.

(2) A resident of Tribal jurisdiction may be required to attend an examination within the Tribal jurisdiction, may be required to attend in the country or district of residence or is employed or transacts his business, or at a convenient place by Court order. A nonresident may be required to attend in the county where served or resides or at a convenient place by Court order.

(E) Subpoena for Hearing or Trial:

(1) At a party's request subpoenas shall be issued by the Clerk and may be served within Tribal jurisdiction, or any place without the Tribal jurisdiction and, when provided the Court upon application and cause shown may authorize the service of a subpoena at any other place.

(2) A subpoena directed to a witness in a foreign country shall issue as may be provided by any Tribal statute.

(F) Contempt: Failure by any person without adequate excuse to obey a subpoena or other order of the Court may be deemed a contempt of the Court.

Section 9-2-123 through 9-2-229 Reserved

Section 9-2-130 Summons, Time Limit for Service

(A) If service of process is not made within one hundred twenty (120) days after filing and plaintiff cannot show good cause why such service was not made, the action shall be dismissed without prejudice upon the Courts own initiative with notice to the plaintiff or upon motion.

(B) If service of process is not made within one hundred eighty (180) days after filing, the action shall be deemed dismissed without prejudice. This Section shall not apply to service in a foreign country.

Section 9-2-131 Service and Filing of Pleadings and Other Papers

(A) Service: When Required: Except as otherwise provided every order pleading, discovery papers, written motion notice, appearance, demand, offer of judgment, designation of record and similar paper shall be served upon the parties. No service need be made on parties in default for failure to appear except pleadings asserting new or additional claims shall be served in the manner provided.

In an action begun by seizure of property, in which no person need be or is named as defendant, any service required to be made prior to the filing of an answer, claim, or appearance shall be made upon the person having custody or possession at the time of seizure, and any person then known to claim an ownership interest.

(B) Service: How Made: Service shall be made upon the party's attorney unless otherwise ordered, which shall be made by delivering or by mailing a copy, if no address is known, by leaving it with the Clerk who shall mail a copy to the party's last address. Delivery of a copy means: handing it to the attorney or party; or leaving it at his office with his Clerk or other person in charge; or leaving it in a conspicuous place; or if no office leaving it at his dwelling or place of abode with some person fifteen years of age or older resident.

(C) Service: Numerous Defendants: If there are unusual numbers of defendants, the Court, upon motion or on its own, may order service of defendant's pleadings and replies need not be made between defendants and any cross-claim, counterclaim, or matter constituting an avoidance by other parties and the filing of such pleading and service upon plaintiff constitutes due notice to the parties. A copy of such order shall be served upon the parties.

(D) Filing: All papers after the complaint shall be filed either before service or within a reasonable time. Discovery materials need not be filed except by Court order.

(E) Filing with the Court Defined: The filing of pleadings and papers shall be made with the Clerk. A Judge may permit filing with them, they shall note the date and transmit them.

Section 9-2-132 through 9-2-139 Reserved

Section 9-2-140 Computation and Enlargement of Time

(A) Computation: In computing any period of time, the day of the event, act or default shall not be included in the designated period. The last day shall be included, unless a Saturday, Sunday, or legal holiday, or any day when the Clerk's office is closed before 4:00 p.m. The period runs until the next day which is not Saturday, Sunday or legal holiday or any other day when the Clerk's office is closed before 4:00 p.m. When the period of time 7 days or less, Saturdays, Sundays, and legal holidays or any day the Clerk's office is closed before 4:00 p.m. shall be excluded. "Legal holiday" includes any day appointed as a holiday by the United States President or Congress or the Tribe.

(B) Enlargement: The Court for cause shown may (1) with or without motion or notice order the period enlarged if a request is made before the expiration of the period or (2) upon motion after the expiration, permit the act where the failure was the result of excusable neglect; but it may not extend the time for, except under their conditions.

(C) For Motions – Affidavits: A written motion and notice of the hearing shall be served 5 days before the hearing, unless a different period is fixed. Such order may be made ex parte. When

a motion is supported by affidavit, the affidavit shall be served with the motion; and except opposing affidavits may be served 1 day before the hearing.

(D) Additional Time After Service by Mail:

Whenever notice or paper is served upon 2 parties by mail, 3 days shall be added to the prescribed period.

Section 9-2-141 General Cases in Which Extraterritorial Service Authorized

Service of summons and complaint, third party complaints, and other Process by which an action is instigated may be made outside the territorial limits described in Section 9-2-119.

Section 9-2-142 Legal Newspaper

All newspapers published weekly for two years prior to publication of a notice within the Jurisdiction or any adjacent county and the Tribal newspaper shall be a legal newspaper for the publication of notice.

**CHAPTER THREE
PARTIES**

Section 9-3-101 Parties, Plaintiff, and Defendant: Capacity

(A) Real Party in Interest: Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee, a party with whom or in whose name a contract has been made for the benefit of another, or authorized party may sue in their own name.

No action shall be dismissed because it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall be retroactive to the action's commencement.

(B) Capacity to Sue or Be Sued: Every person, corporation, partnership, or incorporated association shall have the capacity to sue or be sued in its own name.

(C) Infants or Incompetent Persons: Whenever an infant or incompetent persons has a representative, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have

a duly appointed representative they may sue by next friend or by a guardian ad item. The Court shall appoint a guardian ad item for an infant or incompetent person or shall make other order for their protection.

(D) Assignment of Tort Claims Prohibited:

Claims arising in tort may not be assigned and must be brought by the injured party; this shall not preclude subrogation for any party, who have compensated the injured party.

Section 9-3-102 Joinder of Claims, Remedies, and Actions

(A) Joinder of Claims: A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable as they may have.

(B) Joinder of Remedies; Fraudulent Conveyances: Whenever a claim is cognizable only after another claim has been concluded, the two claims may be joined in a single action; but the Court shall grant relief only in accordance with the relative substantive rights of the parties. Plaintiff may state a claim for money and a claim to set aside a fraudulent conveyance, without first having obtained a judgment establishing the claim for money.

(C) Joinder of Actions By the Court: Whenever separate actions are pending between the same parties, or involving the same facts or law, the Court may, without prejudicing the parties, order said actions joined for all, or a portion of, the proceedings.

Section 9-3-103 Joinder of Persons Needed for Just Adjudication

(A) Persons to Be Joined if Feasible: A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter shall be joined if:

- (1) In their absence complete relief cannot be accorded, or
- (2) They claim an interest to the subject and the disposition in their absence may:
 - (a) Impair or impeded their ability to protect that interest, or
 - (b) Leave any of the persons already par-

ties subject to a substantial risk of double, multiple, or otherwise inconsistent obligations by reason of their claims interest.

If they have not been joined, the Court shall order them be made a party. If they should join as a plaintiff but refuses, he may be made a defendant, or an involuntary plaintiff.

(B) Determination by Court Whenever Joinder

Not Feasible: If a person cannot be made a party, the Court shall determine whether in equity and good conscience the action should proceed among the parties, or should be dismissed, the absent person being regarded as indispensable. The factors to be considered include:

- (1) To what extent a judgment rendered in the person's absence might be prejudicial to them or existing parties;
- (2) The extent to which, by protective provisions by shaping of relief, or other measures, the prejudice can be lessened or avoided;
- (3) Whether a judgment in the person's absence will be adequate; and
- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

(C) Pleading Reasons for Non-joinder: A pleading asserting a claim for relief shall state the names, if known, of any persons who are not joined, and the reasons why they are not joined.

Section 9-3-104 Permissive Joinder of Parties

(A) Permissive Joinder

- (1) All persons may join in one action if they assert any right jointly or severally arising out of the same series of transactions, or occurrence, or if any question or fact common to all will arise, or if the claims are connected with the subject matter.
- (2) All persons may be joined in one action as defendants if there is asserted jointly, severally, any right to relief arising out of the same series of transaction or occurrences, or if any question of law or facts in common will arise, or if connected with the subject matter.
- (3) A plaintiff or defendant need obtain or de-

fend against all relief demanded. Judgment may be given for one or more of the plaintiff's rights to relief, and against one or more defendant's liabilities.

(B) In actions to quiet title or actions to enforce mortgages or other liens upon property, persons who assert an interest in the property may be joined although their interest does not arise from the same transaction or occurrence.

(C) Separate Trials: The Court may prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim, or who asserts no claim against him, and may order separate trials or prevent delay or prejudice.

Section 9-3-105 Misjoinder and Non-joinder of Parties

Misjoinder of parties is not ground for dismissal. Parties may be dropped or added by Court order on motion or its own initiative at any stage. Leave shall not be required when the pleader amends his pleadings within the time period for amendment. Any claim may be severed and proceed separately.

Section 9-3-106 Interpleader

(A) Claims against the plaintiff may be joined as defendants and required to interplead when the plaintiff is or may be exposed to multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another, or that the plaintiff declares they are not liable in whole or in part to of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. These provisions supplement and do not limit the joinder or parties.

(B) These provisions shall be applicable to actions brought against a Tribal policeman or other officer for the recovery of personal property under execution or for the proceeds sold by them; and the defendant shall be entitled to the benefit of this section against the party obtaining the execution.

(C) The Court may order safekeeping of the subject or for payment or delivery into the court or

Court directed person. The Court may order the interpleader to give a bond, conditioned upon compliance with future orders or judgments. Where the interpleader claims no interest in the subject and the subject has been deposited. The Court should discharge them from liability to claims of other parties with costs and, may grant reasonable attorney fee.

- (D) In cases of interpleader, costs may be adjudged for or against any party.

Section 9-3-107 Class Actions

(A) Prerequisites to a Class Action: One or more members of a class may sue or be sued as representative parties on behalf of all only if:

- (1) The class is so numerous that joinder of all members is impracticable,
- (2) There are questions of law or fact common to the class,
- (3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and
- (4) The representative parties will fairly and adequately protect the interests of the class.

(B) Class Actions Maintainable: Additionally:

- (1) The prosecution of separate actions by or against individual members of the class would create a risk of:
 - (a) Inconsistent or varying adjudications to individuals which would establish incompatible standards of conduct for the respondent; or
 - (b) Adjudications to individuals which would be dispositive of the interests of other non-party members or substantially impair or impede their ability to protect their interests; or
- (2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, making final injunctive relief or declaratory relief appropriate to the class as a whole; or
- (3) The Court finds the question of law or fact in common predominate over questions affecting only individuals and that a class action is superior for fair and efficient adjudication. The matters pertinent to the findings

include: (A) The interest of members in individually controlling the prosecution or defense of separate actions; (B) The extent and nature of any litigation concerning the controversy already commenced by or against members; (C) The desirability or undesirability of concentrating the litigation in the particular forum; (D) The difficulties likely to be encountered in the management of a class action.

(C) Determination by Order Whether Class Action to be Maintained, Notice, Judgment, Actions Conducted Partially as Class Actions.

- (1) As soon as practicable the Court shall determine by order whether a class action is maintained. An order may be conditional, and may be altered or amended before the decision.
- (2) In any class action maintained the Court shall direct to the members the best notice practicable, including individual members who can be identified through reasonable effort. The notice shall advise each member;
 - (a) The Court will exclude them if they request by a specific date;
 - (b) The judgment, will include all members who do not request exclusion; and
 - (c) Any member who does not request exclusion may, enter an appearance through counsel.
- (3) The judgment shall include and describe those to be members of the class. The judgment shall include and specify or describe those to whom the notice was directed, and who have not requested exclusion, and whom the Court finds to be members of the class.
- (4) When appropriate
 - (a) An action may be brought or maintained as a class action with respect to particular issues, or
 - (b) A class may be divided into subclasses and each subclass treated as a class, and the provisions of this Section shall be construed and applied accordingly.

- (5) Where the class contains more than five hundred (500) members who can be identified, it shall be necessary to direct individual notice but members to whom individual notice is not directed shall be given notice as the Court directs, which may include publishing notice, posing reasonably calculated to bring notice provided the cost of such notice shall be reasonable in view of the amounts that may be recovered. Members to whom individual notice was not directed may request exclusion from the class before liability is determined, and commencing an individual action before the issue or liability is determined shall be equivalent of requesting exclusion.

(D) Orders in Conduct of Actions: The Court may make appropriate orders:

- (1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
- (2) Requiring, for the protection of members or fair conduct, notice be given to some or all of the members at any step or of the proposed extent of the judgment, or of the opportunity to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses;
- (3) Imposing conditions on the representative parties or on interveners;
- (4) Requiring the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly.

The orders may be combined and may be altered or amended.

(E) Dismissal or Compromise: A class action shall not be dismissed or compromised without the approval of the Court and notice of the proposed dismissal or compromise shall be given as the Court directs.

Section 9-3-108 Derivative Actions by Shareholders and Members

- (A) In a derivative action the complaint shall be verified and allege:
- (1) The plaintiff was a shareholder or member

at the time of the transaction of which he complains or that their share or membership thereafter was transferred by operation of law, and

- (2) The action is not collusive to confer jurisdiction, which the Court would not otherwise have. Allege with particularity plaintiff's efforts, to obtain action he desires and reasons for failure to obtain action or for not making the effort.

(B) The derivative action may not be maintained if plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated. The action shall not be dismissed or compromised without the Court's approval and notice of the proposed dismissal or compromise shall be given to shareholders or members. The Court shall not take jurisdiction concerning internal affairs of corporations or other entities organized under another jurisdiction's law absent the consent of all parties or some compelling reason.

(C) An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if the representative parties will fairly and adequately protect the interests of the association and its members.

Section 9-3-109 Intervention

(A) Intervention of Right: Upon timely application anyone shall be permitted to intervene: (1) When Tribal Law confers an unconditional right to intervene; or (2) When the applicant claims an interest relating to the property or transaction and the disposition may impair or impede their ability to protect that interest, unless their interest is adequately represented by existing parties.

(B) Permissive Intervention: Upon timely application anyone can be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common. When a party's claim or defense relies upon any statute or executive order by a Tribal, Federal, or State officer or agency or upon any regulation, order, requirement or agreement issued or made, the officer or agency may be permitted to intervene. The Court shall consider whether the intervention will unduly delay or prejudice the adjudication.

(C) Procedure: A person shall serve a motion to intervene upon the parties. The motion shall state grounds and shall be accompanied by a pleading setting forth the claim or defense. If granted, other parties may serve a responsive pleading upon leave of the Court.

(D) Intervention By the Tribe: In any action, which the Tribe, where the constitutionality or enforceability of any Tribal statute affecting the public interest is questioned, the parties, or the Court shall certify such fact to the Chief Executive Officer of the Tribe, the Tribal Attorney, and Tribal Legislative Body and the Court shall permit the Tribe to intervene. The Tribe shall, have all rights of a party, and be subject to the – as to court costs only to the extent necessary for a proper presentation of the facts and law. It shall be the duty of the party raising such issue to promptly give notice to the Court either orally upon the record or by written notice filed and served, and to state when and how notice will be or has been certified to the Tribe.

Section 9-3-110 Substitution of Parties

(A) Death:

- (1) If a party dies, the motion for substitution may be made by any party or by the successors or representatives of the deceased and, together with the notice of hearing, shall be served and upon persons not parties and may be served within or without the Tribal jurisdiction. Unless the motion is made within 90 days after death, the action shall be dismissed as to the deceased party.
- (2) If one or more of the plaintiffs or of the defendant's dies in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be stated upon the record and the action shall proceed in favor of or against the surviving parties.
- (3) Actions for liable, slander, and malicious prosecution shall abate at the death of the defendant.
- (4) Other actions, including actions for wrongful death shall survive the death of a party.

(B) Incompetency: If a party becomes incompetent, upon motion served the Court may allow the action to be continued by or against his representative.

(C) Transfer of Interest: In case of any transfer of interest, the action may be continued by or against the original party, unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided.

(D) Public Officers; Death or Separation From Office:

- (1) When a public officer is a party and ceases to hold office, the action does not abate. His successor is automatically substituted. Proceedings shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered.
- (2) When a public officer sues or is sued, he may be described by his official title rather than by name but the Court may require his name to be added.

CHAPTER FOUR DEPOSITIONS AND DISCOVERY

Section 9-4-101 General Provisions Governing Discovery

(A) Discovery Methods: Depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and requests for admission. The frequency of these methods is not limited except, by Protective Order. Discovery may be obtained in aid of execution upon a judgment.

(B) Scope of Discovery: Unless otherwise limited, the scope of discovery is:

- (1) Parties may obtain discovery regarding any matter, not privileged, relevant to involved subject matter whether to the claim or defense, including the existence, description, nature, custody, condition and location of

any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible if reasonably calculated to lead to admissible evidence.

- (2) Insurance agreements: A party may obtain the existence and contents of any insurance agreement under which an insurance business may satisfy a judgment or indemnify or reimburse for payments. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence. An application for insurance shall not be treated as part of an insurance agreement.
- (3) Trial preparation: A party may obtain documents and tangible things otherwise discoverable under in anticipation of litigation or trial by or for another party or that other party's representative only upon a showing of substantial need in case preparation and they are unable without undue hardship to obtain the substantial equivalent by other means. In ordering discovery the Court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, non-party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. A statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

- (4) Trial preparation: Experts: Discovery of facts known and opinions held by experts, otherwise discoverable under and acquired

or developed in anticipation of litigation or trial may be obtained only as follows:

- (a) A party may through interrogatories require any other party to identify each person to be called as an expert witness, to state the substance of the facts and opinions and a summary of the opinion's grounds.
- (b) Upon motion, the Court may order further discovery by other means, subject to restrictions.
- (c) A party may discover facts known or opinions held by an expert employed by another party in anticipation of litigation or preparation for trial who is not expected to be called as a witness, only as provided or upon a showing of exceptional circumstances under which it is impracticable to obtain facts or opinions by other means.
- (d) Unless manifest injustice would result, the court shall require the party seeking discovery to pay a reasonable fee for time spent in responding to discovery.

(C) Protective Orders: Upon motion and good cause shown, the Court may protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including the following: (1) No discovery; (2) Specify terms and conditions; (3) An alternative method of discovery; (4) Limit matters or the scope or; (5) Discovery be conducted with designated person; (6) A sealed deposition be opened only by Court order; (7) A trade secret or confidential research development, or commercial information not be disclosed or be disclosed in a designated way; (8) The parties simultaneously file specified sealed documents or information to be opened as directed.

(D) Sequence and Timing of Discovery: Unless the Court upon motion, orders otherwise, discovery may be used in any sequence and the fact a party is conducting discovery, shall not operate to delay any other party's.

(E) Supplementation of Responses: A party who has responded that was complete when made is under no duty to supplement to include information thereafter acquired, except

- (1) To supplement any question directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person to be called as an expert witness the subject matter, and substance of his testimony.
- (2) To amend if he obtains information the basis of which (A) he knows the response was incorrect when made, or (B) he knows the response though correct when made is no longer true and that a failure to amend is in substance a knowing concealment.
- (3) A duty to supplement may be imposed by Court order agreement of the parties, at any time prior to trial.

Section 9-4-102 Depositions Before Action or Pending Appeal

(A) Before Action:

- (1) **Petition:** A person may file a verified petition in the District Court if the tribal jurisdiction is the residence of any expected adverse party. The petition shall be entitled in the name of the petitioner and shall show: (1) That the petitioner expects to be a party to an action but is presently unable to bring it or cause it to be brought, (2) The subject matter of the expected action and interest, (3) The fact desired, (4) The names or description of the persons he expects will be adverse parties and their addresses so far as known, and (5) The names and addresses of the persons to be examined and the substance expected and shall ask for an order to take depositions of persons named.
- (2) **Notice and Service:** The petitioner shall serve a notice upon each person named with a copy of the petition, stating that the petitioner will apply, at a time and place named therein, for an order. At least 20 days before the hearing the notice shall be served either within or without the Tribal jurisdiction. If personal service cannot with due diligence be made, the Court may order service by publication or otherwise.
- (3) **Order and Examination:** If the court is satisfied perpetuation of the testimony may

prevent a failure or delay of justice, it shall order designating or describing whose depositions may be taken specifying subject matter and whether by oral examination or written interrogatories.

- (4) **Use of Deposition:** If a deposition is taken or if, although not so taken, it would be admissible in the Courts of the jurisdiction in which taken, it may be used in any action involving the same subject matter subsequently brought in the District Court.

- (B) **Pending Appeal:** If an appeal has been taken or if the time therefore has not expired, the court may allow the taking of the depositions of witnesses for use in the event of further proceedings. The party may motion the District Court to take the depositions, upon the same notice and service as if the action was pending. The motion shall show (1) The names and addresses of persons and the substance of the testimony. (2) The reasons for perpetuating their testimony. If the Court grants the motion to avoid a failure or delay of justice, it may allow depositions and may make orders and the depositions may be taken and used under the same conditions as actions pending in the District Court.

- (C) **Perpetuation by Action:** This Section does not limit the power of a Court to perpetuate testimony.

Section 9-4-103 Persons Before Whom Depositions May Be Taken

- (A) **Within the Tribal Jurisdiction:** Within the Tribe's jurisdiction, depositions shall be taken before an Office authorized to administer oaths, or Court appointed person. A person so appointed has power to administer oaths and take testimony.
- (B) **Outside Tribal Jurisdiction:** Depositions may be taken (1) on notice before a person authorized, where the examination is held, or (2) before a person commissioned to administer oaths and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms. A finding the taking of the deposition in any other manner is impracticable or inconvenient is not required and both may designate the person before whom the deposition is to be tak-

en. A letter rogatory may be addressed “To the Appropriate Authority in (Here Name of Tribe, State, or Country).” Evidence obtained need not be excluded for the reason it is not a verbatim transcript or the testimony was not taken under oath or for any similar departure from the requirements for depositions within Tribal jurisdiction.

(C) Disqualification for Interest: No deposition shall be taken before a person who is a relative, employee, attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

Section 9-4-104 Stipulations Regarding Discovery Procedure

Unless the Court orders otherwise, the parties may by stipulation (1) provide depositions be taken before any person, time or place, upon any notice, and manner and be used like other depositions, and (2) modify procedures except stipulations extending time must be Court approved.

Section 9-4-105 Depositions Upon Oral Examination

(A) Depositions May Be Taken: After commencement any party may take testimony of any person, including a party, by oral deposition. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks a deposition prior to 30 days after service of the summons and complaint or service made by publication, leave is not required (1) if defendant has served a notice of deposition or otherwise sought discovery, or (2) if special notice is given. The attendance of witnesses may be compelled. A person confined in prison may be deposed only by Leave of Court.

(B) Notice of Examination: General Requirements; Special Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization.

(1) A party desiring oral examination shall give reasonable notice to all parties. The notice shall state time, place and name and address of each person if known, and, if not known, a general description to identify them or the particular class or group. If a subpoena is to be served, the designation of the materials

to be produced shall be attached or included in the notice.

(2) Leave of Court is not required by plaintiff if the notice (A) states the person to be examined is about to go out of Tribal jurisdiction, or of the United States, and will be unavailable unless the deposition is taken before the 30 day period, and (B) sets forth facts to support the statement. Plaintiff's attorney shall sign the notice, and his signature constitutes a certification to the best of his knowledge, information, and belief the statement and supporting facts are true. The sanctions are applicable to the certification.

If a party shows when served he was unable through due diligence to obtain counsel at the deposition, the deposition may not be used against him.

(3) The Court may for cause shown enlarge or shorten the time for taking the deposition.

(4) The Court may upon motion order the testimony at a deposition be recorded by other than stenographic means; the order shall designate the manner of recording, preserving, and filing the deposition, and include provisions to assure testimony will be accurate and trustworthy. A party may have a stenographic transcript made at his own expense.

(5) The notice to a party deponent may be accompanied by a request for the production of documents and tangible things at the deposition.

(6) A party's notice and subpoena may name a public or private corporation or partnership or association or governmental agency and describe with particularity the matters on which examination is requested. The organization shall designate officers, or other persons who consent to testify and the matters on which they will testify. A subpoena shall advise a non-party organization of its duty to make a designation. [(B)(6)] does not preclude. A deposition by any other procedure is not precluded.

(C) Examination and Cross-Examination; Record of Examination; Oath; Objections: Examinations and cross-examination may proceed

as at trial. The officer before whom the deposition is taken shall put the witness on oath and shall record the testimony. The testimony shall be taken stenographical or recorded by other means ordered.

All objections to the qualifications of the officer or the manner or evidence or conduct of any party, and any other objection shall be noted upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participation parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall ask and record the answers.

(D) Motion to Terminate or Limit Examination:

At any time on motion of a party or deponent and upon a showing the examination is being conducted in bad faith or unreasonable manner to annoy, embarrass, or oppress the deponent or party, the District Court may order the officer to cease or limit the scope and manner. If terminated, the examination shall be resumed only by District Court order. Upon demand of the objecting party, or deponent, the deposition shall be suspended for the time necessary to motion for an order.

(E) Submission to Witness; Changes; Signing:

When the testimony is transcribed the deposition shall be submitted to the witness for examination unless are waived. Any changes which the witness desires shall be entered upon the deposition with a statement of reasons given by the witness. The deposition shall be signed by the witness within 30 days of submission to him, the officer shall sign it and state on the record the waiver or illness or absence of the witness or the refusal to sign with the reason. The deposition may then be used as though signed unless on a motion to suppress the Court holds the reasons given for refusal to sign require rejection.

(F) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing:

(1) The officer shall certify the witness was sworn and the deposition is a true record of the testimony. He shall then seal the deposition endorsed with the title of the action and marked "Deposition of name of witness"

and shall promptly file it or send it by registered or certified mail to the Clerk.

Documents and things produced for inspection during the examination of the witness, shall upon request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except (A) the persons producing the materials may substitute copies marked for identification, if all parties have fair opportunity to verify the copies by comparison, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person and the materials may then be used as if annexed and returned with the deposition. Any party may move for an order the original be annexed and returned with the deposition.

- (2) Upon payment of reasonable charges, the officer shall furnish a deposition copy to any party or to deponent. The Court may, establish the maximum charges which are reasonable.
- (3) The party taking the deposition shall give prompt notice of its filing to all other parties.

(G) Failure to Attend or to Serve Subpoena; Expenses:

- (1) If the party giving notice of the deposition fails to attend and another party attends in person or by attorney, the Court may order the party giving notice to pay the expenses incurred in attending, including reasonable attorney's fees.
- (2) If the party giving notice of a deposition fails to serve a subpoena and the witness does not attend, and if another party attends or by attorney, the Court may order the party giving the notice to pay the reasonable expenses incurred in attending, including reasonable attorney's fees.

Section 9-4-106 Depositions Upon Written Questions

(A) Serving Questions; Notice: After commencement, any party may take the testimony of any

person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by subpoena. The depositions of a prison inmate may be taken only by leave of Court.

A party deposing upon written questions shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer, if known, and if not known, a general description sufficient to identify him or his particular class or group and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or partnership or association or governmental agency.

Within 30 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The Court may enlarge or shorten the time.

(B) Officer to Take Responses and Prepare Record: A copy of the notice and copies of all questions served shall be delivered by the party to the officer designated, who shall proceed to take testimony in response to the questions and prepare, certify, and file or mail the deposition, attaching the copy of the notice and the questions.

(C) Notice of Filing: When the deposition is filed the party taking it shall promptly give notice to all other parties.

Section 9-4-107 Use Of Depositions In Court Proceedings

(A) Use of Depositions: At trial or motion hearing or an interlocutory proceeding, any part or all of a deposition, so far as admissible applied as though the witness were present and testifying, may be used against any party who was present or represented at the deposition or who had reasonable notice, in accordance with any of the following:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent.

- (2) The deposition of a party or of anyone who at the time of the deposition was an officer, or a person designated to testify may be used by an adverse party for any purpose.
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the Court find: (A) The witness is dead; or (B) The witness is outside the jurisdiction and cannot be served to testify unless the absence of the witness was procured by the party offering the deposition; or (C) The witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) Upon application and notice, that exceptional circumstances exist in the interest of justice and with regard to presenting the testimony of witnesses orally in open court to allow the deposition to be used.
- (4) If part of the deposition is offered in evidence, an adverse party may require him to introduce any other part, and any party may introduce any other parts, subject to Rules of Evidence.

Substitution of parties does not affect the right to use depositions and, when an action in any Indian Tribe, United States, or State has been dismissed and another same subject matter and parties action is brought or their representatives or successors in the District Court, all depositions lawfully taken and duly filed in the former action may be used in the latter.

(B) Objections to Admissibility: Objections may be made at trial or hearing to receiving any deposition which would require exclusion of the evidence if the witness were testifying.

(C) Effect of Errors and Irregularities in Depositions:

- (1) Notice:** All errors and irregularities in the notice are waived unless written objection is promptly served.
- (2) Disqualification of Officer:** Objection because of disqualification of the officer before whom taken is waived unless made before the taking of the deposition begins or as

soon thereafter as disqualification becomes known or could be discovered with reasonable diligence.

(3) Taking of Deposition:

- (a) Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the deposition, unless the ground is one which might have been obviated or removed if timely presented.
- (b) Errors and irregularities occurring at the oral examination in the manner, in the form of questions or answers, in the oath or affirmation, or in conduct and errors which might be obviated, removed or cured if promptly presented, are waived unless seasonable objection is made.
- (c) Objections to the form of written questions are waived unless served in writing within the time allowed for serving the succeeding cross or other questions and within 5 days after service of the last questions authorized.

(4) Completion and Return of Deposition:

Errors and irregularities in the manner the testimony is transcribed, prepared, or otherwise dealt with are waived unless a motion to suppress is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Section 9-4-108 Interrogatories to Parties

- (A) Availability; Procedures for Use:** Any party may serve upon any other party written interrogatories. Interrogatories may, without leave be served upon the plaintiff after commencement of the action and any other party with or after service of the summons and complaint.

Each interrogatory shall be answered in writing under oath. If objected to, the reasons shall be stated in lieu of an answer. The full text of the interrogatory shall immediately precede the answer. The answers are to be signed by the person and the objections signed by the attorney. The party upon whom the interrogatories have

been served shall serve a copy of the answers, and objections, within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint. The Court may allow a shorter or longer time. The party submitting the interrogatories may move for an order concerning objection or other failure to answer.

- (B) Scope; Use at Trial:** Interrogatories may relate to any matters which are proper and answers may be used as permitted by the Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

- (C) Option to Produce Business Records:** Where the answer may be derived or ascertained from the business records or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary and the burden of deriving the answer is substantially the same for both parties, it is sufficient to specify the records and give the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and make copies, compilations, abstracts or summaries.

Section 9-4-109 Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

- (A) Scope:** Any party may serve on any other party a request (1) to produce and permit the party to inspect and copy designated documents (including other data compilations from which information can be obtained or translated by the respondent through detection devices), or to inspect and copy or sample any tangible things which constitute or contain matters and which are in the possession, custody or control of the party or (2) to permit entry upon designated land or other property in the possession or control of the party for the purpose of inspection, measuring, or sampling of any designated object or operation.

(B) Procedure: The request may, without leave of court, be served upon the plaintiff and upon any other party with or after service of the summons and complaint. The request shall set for the items to be inspected, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts.

The served party shall serve a written response within 30 days after service, except a defendant may serve a response within 45 days after service the summons and complaint. The court may allow a shorter or longer time. The response shall state, that inspection and related activities will be permitted and if the request is objected to, the reasons for objection. The party submitting may move for an order.

(C) Persons Not Parties: This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Section 9-4-110 Physical and Mental Examination of Persons

(A) Order for Examination: When the mental or physical condition (including DNA blood group) of a party, or of a person in the custody or legal control of a party, is in controversy, the Court may order the party to submit to physical or mental examination or to produce the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person or persons examining.

(B) Report of Examining Physician:

- (1) If requested by the party or person examined, they shall receive to him a copy of a examining physician's report setting out findings, including test results, diagnoses and conclusions, with reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive a like report of any examination made, of the same condition, unless, in the case of a report or examination of a person not a party,

the party shows that he is unable to obtain it. The Court on motion may order requiring delivery of a report and if a physician fails or refuses to make a report the court may exclude testimony at trial.

- (2) By requesting and obtaining a report of the examination or by taking the deposition of the examiner, the party examined waives any privilege he may have involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.
- (3) This subdivision applies to examinations made by agreement of the parties, unless the provided otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician otherwise available.

Section 9-4-111 Requests for Admission

(A) Request for Admission: A party may serve upon any other party a written request for admission, for the pending action only, of the truth of any matters set forth that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents. Copies of documents shall be served with the request unless they have been furnished or made available. The plaintiff may, without leave of Court, be served after commencement of the action and upon any other party with or after service of the summons and complaint.

Each admission requested shall be separate. The matter is admitted unless, within 30 days after service or within such time as the Court may allow the respondent serves upon the party a written answer or objection, signed or by him or his attorney, unless the Court shortens the time, a defendant shall not be required to serve answers or objections before 45 days after service. If objection is mad, reasons shall be stated. The answer shall specifically deny the matter or detail the reasons why the answering party cannot truthfully admit or a denial shall meet the substance of the requested admission, and when good faith requires a party qualify his answer or deny, he shall specify what is true and qualify or deny the remainder. An answer-

ing party may not give lack of information or knowledge as reasons for failure to admit or deny unless he states he has made reasonable inquiry and the information known or readily obtainable by him is insufficient. A party who considers an admission matter presents a trial issue may not, on that ground alone, object he may, deny or state reasons why he cannot admit or deny it.

The requesting party may move to determine sufficiency of answers or objections. Unless the Court determines an objection is justified, it shall order an answer be served. If the Court determines an answer does not comply with this Section, it may order the matter admitted or an amended answer be served. The Court may, determine that final disposition of the request be made at a pre-trial conference or a designated time prior to trial.

(B) Effect of Admission: Any matter admitted is conclusively established unless the Court permits withdrawal or amendment. The Court may permit withdrawal or amendment when the merits will be served and the party who obtained the admission fails to satisfy the Court withdrawal or amendment will prejudice him. An admission made by a party for the pending action is not an admission for any other purpose and may not be used against him in other proceedings.

Section 9-4-112 Failure to Make Discovery: Sanctions

(A) Compelling Discovery: A party, upon reasonable notice to other parties and all persons affected may apply for an order compelling discovery as follow:

(1) Appropriate Court: An application for an order may be made to the District Court, or, on matters relating to a deposition, to the court in the jurisdiction where the deposition is taken if necessary. An application for an order to a deponent who is not a party may be made to the Court in the jurisdiction where the deposition is taken.

(2) Motion: If a deponent fails to answer a question or submitted or a corporation or other entity fails to make a designation or Section or a party fails to answer or a party fails, to respond or permit inspection the

discovering party may move for an order compelling an answer, or designation, or compelling inspection. When taking an oral deposition the proponent may complete or adjourn the examination before he applies for an order.

(3) Evasive or Incomplete Answer: An evasive or incomplete answer is a failure to answer.

(4) Award of Expenses of Motion: If the motion is granted, the Court shall, after hearing, require the party or deponent whose conduct necessitated the motion or party or attorney advising such conduct or both to pay the reasonable expenses incurred, including attorney's fees, unless the Court finds the opposition was justified or an award is unjust.

If the motion is granted and denied in part, the Court may apportion the reasonable expenses.

(B) Failure to Comply with Order:

(1) Sanctions by Court in Jurisdiction Where Deposition is Taken. If a deponent fails to be sworn or answer a question after being directed by the court in which the deposition is taken, sanctions imposed by any foreign court shall be given full faith and credit and promptly enforced. The Tribal Court may modify the sanctions.

(2) Sanction by Court In Which Action is Pending. If a party or an officer, director, or managing agent of a party or a person designated fails to obey an order, the Court in which the action is pending may:

(a) Order the matters or facts shall be established in accordance with party's claim.

(b) Not allow the disobedient party to support or oppose designated claims or defenses, or prohibit them from introducing matters.

(c) Strike pleadings or stay proceedings until the order is obeyed, or dismissing the action or proceeding, or rendering a judgment by default.

(d) Additionally, issue an order treating as contempt the failure to obey any orders except an order to submit to a physical or mental examination.

Additionally the Court shall require the party failing to obey or attorney advising or both to pay expenses, including attorney's fees, unless the Court finds the failure was substantially justified or an award of expenses is unjust.

(C) Expenses on Failure to Admit: If a party fails to admit the genuineness of any document or the truth of any matter, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, they may apply for an order requiring the other party to pay expenses incurred, including reasonable attorney's fees. The Court shall make the order unless it finds (1) the request was held objectionable (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to believe they might prevail or (4) other good reason.

(D) Failure of a Party to Attend Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection: If a party or an officer, director, or managing agent of a party or a person designated fails (1) to appear before the officer after being served or (2) to serve answers to objections to interrogatories or (3) to serve a written response to a request for inspection. The District Court may make orders and it may take any action authorized in addition the court shall require the party or the attorney advising or both to pay expenses, including attorney's fees, unless the Court finds the failure justified or make an award is unjust.

The failure to act may not be excused on the ground the discovery sought is objectionable unless the party has applied for a protective order.

CHAPTER FIVE

SECTION ONE

WITNESSES

Section 9-5-101 Issue and Service of Subpoena for Witnesses

The clerk shall, on application issue a subpoena for a witness. The clerk may issue separate subpoenas, or one subpoena carrying names of all persons, or may issue subpoenas in blank. A subpoena may be served

by Tribal Police, the party, or any other person. When a subpoena not served by Police, proof of service shall be shown by affidavit; costs of service shall be allowed when served by Tribal Police, a licensed process server, or a person serving by special appointment.

Section 9-5-102 Subpoenas - Contents

The subpoena shall be directed to the person named, requiring them to attend at a particular time and place and it may direct the witness to bring any book, writing or other thing, which he is bound by law to produce.

Section 9-5-103 Subpoena for Deposition

When the attendance before any officer authorized to take depositions, is required, the subpoena may be issued by such officer.

Section 9-5-104 Subpoena for Agency Hearings

When the attendance is required before any Tribal Agency authorized to issue a subpoena, the subpoena may be issued by any office of the agency or person authorized.

Section 9-5-105 Witness May Demand Fees - Exception

A witness may demand travel and attendance fees set by Court rule, when the subpoena is served and if not paid, the witness shall not be obliged to obey.

The fact of such demand and non-payment shall be stated in the return. Witnesses subpoenaed by any Tribal department, or body authorized to issue subpoenas shall be paid when testimony is concluded. A witness may not refuse because they were not paid in advance when issued by Tribal agencies.

Section 9-5-106 Disobedience of Subpoena

Disobedience of a subpoena, or refusal to be sworn or answer when lawfully ordered, may be punished as contempt.

Section 9-5-107 Attachment of Witness

When a witness fails to attend, the Court or officer may issue an attachment to the Chief of Police, commanding them to arrest and bring the person before the Court or officer, at a time and place fixed in the attachment, to answer for the contempt. If the attachment is not for immediate appearance, the witness may give surety not to exceed Two Hundred Fifty Dollars (\$250.00); such sum shall be indorsed on the back and if no sum is fixed, it shall be Two Hundred Fifty Dollars (\$250.00). If the witness is not personally served, the Court may, order them to show cause why an attachment should not issue against him.

Section 9-5-108 Punishment for Contempt

(A) If the witness fails to attend; the Court or officer may fine the witness not exceeding Three Hundred Dollars (\$300.00). If the witness attends but refuses to be sworn or testify, the Court or officer may fine the witness exceeding Three Hundred Dollars (\$300.00) or may imprison him to remain until he be sworn, testify, or give his deposition. The fine imposed shall be paid into the Tribal treasury, and that imposed at a deposition shall be to the party issuing the subpoena. The witness shall, be liable to the party injured for any damages.

(B) The punishment provided shall not apply where the witness refuses to subscribe a deposition. The punishment provided is civil and shall not be interpreted as a criminal punishment, nor shall the person be deemed convicted of any criminal offense.

(C) When the witness purges, the Court, officer, or agency may suspend any punishment.

Section 9-5-109 Discharge When Imprisonment Illegal

A witness so imprisoned by an officer may apply to the Tribal Court who shall have power to discharge him.

Section 9-5-110 Requisites of Attachment – Order of Commitment

Every attachment for arrest or commitment of a witness must be under the seal of the Court or officer, and must specify the cause and if the commitment be for refusing to answer a question such question must be stated.

Section 9-5-111 Examination of Prisoner

A person confined in Tribal jail may by order be required to be produced for oral examination at a hearing but in all other cases his examination must be by deposition.

Section 9-5-112 Prisoner's Custody During Examination

While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge who shall afford reasonable facilities for the taking of the deposition.

Section 9-5-113 Witness Privileged

A witness shall not be liable to be sued in the Tribal Court if he does not reside within the Tribal jurisdiction by being served with a summons while going, returning, or attending in obedience to a subpoena.

Section 9-5-114 Witness May Demand Fees Each Day - Exception

At the commencement of each day after the first day, a witness may demand his fees and if be not paid, he shall not be required to remain, except witnesses subpoenaed by any Tribal body.

Section 9-5-115 Special Provisions for Tribal Agencies

(A) No Tribal agent or employee may be required to attend and testify in their official capacity for any private party absent consent of their Department head or higher ranking superior.

(B) No Tribal agent or employee may be paid a witness fee if on duty when required to attend unless they request leave without pay. When agents or employees appear and testify the normal witness fee shall be charged as costs for benefit of the Tribe and paid into the Tribal Treasury and the employee's supervisor may require prepayment as a condition of approval. Witnesses shall be entitled to receive their travel costs, from the party in advance.

Section 9-5-116 through 9-5-149 Reserved

**SECTION TWO
TESTIMONY UNDER PRIVILEGE AGAINST
PROSECUTION**

Section 9-5-201 Privilege For Committee Testimony

No testimony before the Tribal Legislative Body, or any agency having power to subpoena, shall be used as evidence in any criminal proceeding except in a prosecution for perjury if such person is granted immunity. An official paper of record produced is not within this privilege.

Section 9-5-202 Procedure for Claiming Privilege

When two-thirds (2/3) of the full committee or agency shall grant immunity after having claimed their privilege against self-incrimination, to testify or produce such person shall be privileged. An Order may be issued upon application by an authorized representative the committee or agency accompanied by the written approval of the Tribal Legislative Body. The Court shall not grant immunity without first having notified the Tribal Attorney. The Tribal Attorney shall be given an opportunity to be heard prior to the Order of the District Court. No witness shall be exempt

from prosecution for perjury or contempt Committed while giving testimony or producing evidence under compulsion as provided in this Section.

Section 9-5-203 Oaths

The Tribal Legislative Body, Chairman or equivalent officer of any committee or agency to issue subpoenas, and any officer or employee authorized is empowered to administer oaths.

Section 9-5-204 Penalties

(A) Every person summoned as a witness by the Tribal Legislative Body or other tribal agency authorized under a grant of immunity who willfully defaults or refuses to answer shall be punishable by a civil fine of not more than Five Thousand Dollars (\$5,000.00) and commitment to be imposed by that body to the Tribal jail until testimony be given.

(B) Additionally and alternatively the agency may proceed in Tribal Court for an order requiring such witness to testify and if such order is disobeyed the witness shall be guilty of an offense, and may be fined not more than One Thousand Dollars (\$1,000.00), or imprisoned not exceeding six months or both.

Section 9-5-205 Disgrace as Ground for Refusal to Testify

No witness is privileged to refuse to testify or produce any paper, upon the ground his testimony may tend to disgrace or render him infamous, provided such fact or paper is reasonably related to the purpose of the hearing and the purpose of the hearing is reasonably related to the exercise of authority delegated by law.

Section 9-5-206 Prosecution

Whenever a body before whom a witness was granted immunity believes criminal prosecution should be instituted, it shall certify such to the Tribal Attorney General or prosecutor, who shall prosecute if the person has not purged their contempt within 48 hours.

Section 9-5-207 Fees and Mileage

(A) Witnesses before legislative and administrative bodies compelled to attend by subpoena shall be paid the same fees and mileage as are paid in civil cases.

(B) Witness fees and allowances for mileage shall be set by the Court. Mileage fees shall not exceed the Federal mileage rate.

CHAPTER SIX JURORS

Section 9-6-101 Meeting for Selection of Jurors

(A) At any time upon the Chief District Judge's order, shall select from a list all qualified jurors for service as necessary.

(B) It shall be the duty of the following officer to provide the list of qualified prospective jurors to the Court Clerk:

(1) The Tribal Secretary shall supply a list of potential qualified jurors who are enrolled Tribal members over twenty-five (25) years of age who reside within a fifty mile radius of the Tribal Court located in Shawnee, Oklahoma, according to zip code or any portion of any zip code within a fifty mile radius, and shall have voted in one (1) of the previous two (2) regular or special tribal elections.

(C) The list shall contain, the date of birth or age, name, address, and actual place of residence of each person.

(D) The list may be printed from a computer.

Section 9-6-102 Reserved

Section 9-6-103 Preparation of Jury Wheel

The Chief Judge shall direct the Information Technology Office to produce a computer generated list of eligible potential jurors. The Court Clerk will maintain this list in a safe and secure place. Only persons specifically authorized by the Court shall have access to the list. The expenses to be paid from the Court fund.

Section 9-6-104 Drawing General Jury Panel

(A) The Chief Judge shall, prior to each jury Trial determine approximately the number of jurors necessary and shall order the generation of this number to be known as the general panel of jurors.

(B) The Chief Judge shall direct the Information Technology Office to generate a list of persons for a jury panel. The persons are to be selected in any manner which is random and indiscriminate as ordered by the Court.

(C) The Court may excuse or discharge any person drawn and summoned.

Section 9-6-105 Use of Jury Panel

The general panel of jurors shall be used to select juries tried during for the jury trial for which they were summoned.

Section 9-6-106 Certifying and Sealing Lists

The list of names for the general panel shall be kept by the Court Clerk to be the list for the jury docket, and shall be kept in an envelope endorsed “jurors for the jury docket of the Tribal District Court scheduled to commence on _____” (filling in the appropriate date).

Section 9-6-107 Oath and Delivery of Envelopes

The attending Judge shall administer to the Court Clerk and deputies an oath as follows: “You and each of you do solemnly swear that you will not disclose the jury list nor permit it to be disclosed, and you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in the Court, So help you God.”.

Section 9-6-108 Reserved

Section 9-6-109 Reserved

Section 9-6-110 Summoning Jurors

The summons shall be served by the Court Clerk by mailing such summons by registered or certified mail, or as directed by the Judge not less than ten (10) days before the day the person is to appear. The Court Clerk shall file a statement containing the date of mailing and type of mail used. This shall not prevent service by the Police Chief when Court directed.

Section 9-6-111 On-Call System Jurors

- (A) When an on-call system is implemented by the Chief Judge each juror subject to call shall be required to contact the Court for information as to the time and place of appearance.
- (B) “On-call” system means a method whereby the Chief Judge estimates the number of jurors required and jurors not needed are released subject to call.
- (C) Pursuant to summons for service on petit juries each qualified, nonexempt juror is retained for service subject to call.

Section 9-6-112 Drawing Trial Jurors From Panel

Prospective jurors for trial shall be drawn from the general panel by a computer random number generator and numbering each general panel member or by some

form of random drawing approved by the Court. The initial jurors shall be drawn as shortly before the trial as is reasonably practical. As prospective jurors are removed or dismissed by challenge, the Clerk shall move to the next name from the general panel and be subject to voir dire.

Section 9-6-113 Qualifications and Exemptions of Jurors

- (A) All members of the Tribe and other citizens of the United States who are over twenty-five (25) years of age and have resided within the Tribal jurisdiction for a period of thirty (30) days, who are of sound mind and discretion and of good moral character are competent to act as jurors, except;
- (B) The following persons are not qualified:
 - (1) Justices of the Supreme Court or their employees
 - (2) Judges or Magistrates of the District Court, or their employees
 - (3) The Court Clerk, or their employees
 - (4) The Chief of the Tribal Police, deputies, and employees
 - (5) Jailors or other tribal, state, or federal law enforcement officers
 - (6) Licensed Attorneys or Advocates
 - (7) Persons who have been convicted of any felony or crime involving moral turpitude, provided that when such conviction has been vacated, overturned upon appeal, or pardoned or when they have been fully restored to their civil rights by the jurisdiction wherein such conviction occurred, the person shall be eligible
 - (8) Elected Tribal Officials.
 - (9) Persons who are closer than a second cousin by blood or marriage to any defendant or litigant.
- (C) Persons over seventy (70) years of age, ministers, practicing physicians, optometrists, dentists, public school teachers, federal employees, regularly organized full time fire department employees, and women with otherwise unattended minor children not in school may be excused upon request.

Section 9-6-114 Substantial Compliance

Substantial compliance with this Chapter, shall be sufficient to prevent the setting aside of any verdict, unless the irregularity in drawing, and summoning, or empanelling resulted in depriving a party litigant of some substantial right; provided, such irregularity must be specifically presented at or before the time the jury is sworn.

Section 9-6-115 Oath to Jury

After selection and prior to the opening statements, the Court or Clerk shall place the jury under oath or affirmation to well and truly try and determine the action before them exclusively upon the evidence presented and the law as given by the Court, and to return their true verdict thereon without partiality for any unlawful cause or reason.

Section 9-6-116 through 9-6-120 Reserved**Section 9-6-121 Discharge of Employee for Jury Service - Penalty**

Every person, firm, or corporation who discharges an employee or causes an employee to be discharged because of absence from employment by reason of having been required to serve as a juror shall be guilty of an Offense, and upon conviction, shall be punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).

Section 9-6-122 Civil Liability - Damages

Every person, firm, or corporation who discharges or causes to be discharged an employee because of absence from employment by reason of having been required to serve as a juror shall be liable in a civil action for both actual and punitive damages. Damages shall include all pecuniary losses suffered including, but not limited to, lost earnings, both past and future, mental anguish, and all reasonable damages incurred in obtaining other suitable employment, including the cost of relocation and retraining and a reasonable attorney fee.

**CHAPTER SEVEN
SECTION ONE
TRIALS**

Section 9-7-101 Trial of Issues

Issues of law must be tried by the Court. Issues of fact, when a jury trial is provided, may be tried by a jury, if a jury trial is demanded, unless a reference is ordered. All other issues of fact shall be tried to the Court.

Section 9-7-102 Jury Trial of Right

- (A) **Right:** Any action may be tried by a jury upon demand, where the amount in controversy is over Ten Thousand Dollars (\$10,000.00) arising in contract or tort, except Title 10 actions.
- (B) **Demand:** Any party entitled to a jury trial may demand a trial by a jury by serving upon the other parties a demand after the commencement of the action and not later than forty-five (45) days before Trial. The demand shall not be effective unless, at the time of filing or at such later time as the Court shall allow, the party making such demand deposit with the Court Clerk a reasonable jury fee as the Court Administrator shall by rule determine. The amount shall be set as may be necessary to offset the costs without being unreasonable. The rules shall provide a waiver of the deposit for proceeding in forma pauperis.
- (C) **Same; Specification of Issues:** A party may specify issues; otherwise they shall be deemed to have demanded trial by jury for all issues. If trial by jury for some of the issues, any other party within ten (10) days after service of the demand or lesser time as the Court may order, may serve a demand for trial by jury of any other or all issues.
- (D) **Waiver:** The failure of a party to serve a demand and to file it constitutes a waiver. A demand for trial by jury may not be withdrawn without the consent of the parties. Even though previously demanded, the trial by jury may be waived by the parties, in actions arising on contract, and with the assent of the Court in other actions, in the following manner: By the consent of the party appearing, when the other party fails to appear at trial. By written consent, in person or by attorney, filed with the clerk; By oral consent, or in open court.

Section 9-7-103 Trial by Jury or by the Court

- (A) **By Jury:** When Trial by jury has been demanded the action shall be designated as a jury action. The trial of all issues so demanded shall be by jury, unless:
 - (1) The parties or their attorneys of record, by written stipulation filed with the Court or by an oral stipulation made in open Court consent to trial without a jury;

- (2) The Court upon motion or of its own initiative finds a right of trial by jury does not exist.

(B) By the Court: Issues not demanded for trial by jury shall be tried by the Court; but, the Court in its discretion or upon motion may order a trial by jury of any or all issues properly triable to a jury.

Section 9-7-104 Assignment of Cases for Trial

The District Court shall place of actions on the trial calendar

- (1) Without request or
- (2) Upon request of a party and notice to the other parties or
- (3) In such other manner as the Court deems expedient.

Section 9-7-105 Consolidation; Separate Trials

(A) Consolidation: When different actions involving a common question of law or fact are pending, the Court may order a joint hearing or trial to avoid unnecessary costs or delays.

(B) Separate Trials: The Court may order a separate trial of any claim, cross-claim, counter-claim, or third-party, or of any separate issue or of any number of claims, cross-trial by jury.

Section 9-7-106 through 9-7-119 Reserved

SECTION TWO IMPANELING JURY

Section 9-7-201 Causes for Challenging Jurors

Any juror, who has been convicted of any crime which disqualifies them or has been an arbitrator on either side, relating to the same controversy; or has an interest in the action; or who has an action pending between him and either party; or who has formerly been a juror on the same claim, or who is the employer, employee, counselor, agent, steward or attorney of either party; or who is subpoenaed as a witness; or who is of kin to either party within the second degree by blood or marriage, may be challenged for cause; it shall be considered as a principal challenge, and the validity decided by the Court; and any juror may be challenged on suspicion of prejudice or partiality, or any other cause; but a resident or taxpayer of the tribal jurisdiction, or a member of the Tribe or any municipality therein shall not be disqualified in actions in which the Tribe or such

municipality is a party. The validity of all principal challenges and challenges for cause shall be determined by the Court.

Section 9-7-202 Examination of Jurors

The Court may permit the parties or their attorneys to conduct or may itself conduct the examination. In the latter event, the Court may permit the parties or their attorneys to supplement the examination as it deems proper or ask such additional questions submitted by parties or attorneys.

Section 9-7-203 Alternate Jurors

The Court may impanel not more than two additional jurors as alternate jurors. Alternate jurors shall be selected, treated and authorized as regular jurors. An alternate juror not used shall be discharged after the jury retires. Each side is entitled to one peremptory challenge in addition to those otherwise allowed for alternate jurors. The additional peremptory challenges may be used against an alternate juror only, and the other peremptory challenges shall not be used against an alternate juror.

Section 9-7-204 Order of Challenges

Plaintiff first, and afterward the defendant, shall complete his challenges for cause. They may then, in the same order, have the right to challenge, until each shall have peremptorily challenged three jurors, but no more.

Section 9-7-205 Challenges to Jurors – Filling Vacancies

After each challenge, the vacancy shall be filled before further challenges and any new juror thus introduced may be challenged for cause and peremptorily.

Section 9-7-206 Alternate Method of Selecting Jury

Notwithstanding other methods authorized, the trial judge may direct a jury be selected by calling and seating twelve prospective jurors and then examining them on voir dire; when twelve prospective jurors have been passed for cause, each side shall exercise its peremptory challenges out of the hearing of the jury by alternately striking three names each and the remaining six persons shall be sworn.

If there be more than one defendant and the trial judge determines on motion there is a serious conflict of interest he may, allow each defendant to strike three names from the list of jurors seated and passed for

cause. In such case he shall appropriately increase the number of jurors initially called and seated.

Section 9-7-207 Oath of Jury

The jury shall be sworn to well and truly try the matters submitted to them in the case before them, and to give a true verdict, according to the law and the evidence.

Section 9-7-208 Juries of Less Than Six – Majority Verdict

All juries shall be six persons, and a unanimous verdict shall be required, except the parties may stipulate any number less than six and greater than three, or a verdict or a finding of a stated majority shall be taken as the verdict or finding.

Section 9-7-209 through 9-7-229 Reserved

SECTION THREE TRIAL PROCEDURE

Section 9-7-301 Order of Trial

When the jury has been sworn or when the Court is ready the trial shall proceed in the following order, unless the Court for special reasons otherwise directs:

- (A) The party with the burden of proof may briefly state their case, and the evidence they expect to sustain it.
- (B) The adverse party may then briefly state their defense and the evidence they expect to offer. The adverse party may reserve opening statement until the presentation of evidence.
- (C) The party with whom rests the burden of proof the issues must first produce evidence; after the closing the adverse party may interpose a motion for a directed verdict upon the ground that no claim for relief or defense is proved. Judgment shall be rendered for the party whose motion is sustained.
- (D) If the motion for a directed verdict is overruled, the adverse party shall then produce evidence.
- (E) The parties will then be confined to rebutting evidence unless the Court permit them to offer evidence in the original case.
- (F) After the close of evidence, and when jury instructions have been finalized by the Court, the parties may then make their closing arguments as to the evidence proved and reasonable inferences to be drawn. The party having the burden of proof shall first present argument. Thereafter,

the other party shall present his argument, and then, an opportunity for rebuttal argument. The Court may place reasonable limitation upon the time provided, each side should have the same total time for argument.

- (G) After closing arguments, the Court shall instruct the jury as to the law and shall give a copy of the written instructions to the jury.
- (H) The Court shall then place the bailiff or some other responsible person under oath to secure the jury against interference and the jury shall retire to determine its verdict.

Section 9-7-302 Taking of Testimony

- (A) **Form:** In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided.
- (B) **Affirmation in Lieu of Oath:** Whenever an oath is required a solemn affirmation may be accepted.
- (C) **Evidence on Motions:** When a motion is based on facts not appearing of record the Court may hear the matter on affidavits but the Court may direct the matter be heard on oral testimony or depositions.
- (D) **Interpreters:** The Court may appoint an interpreter of its own selection and fix compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the Court may direct.

Section 9-7-303 Exceptions Unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary; it is sufficient a party, at the time the ruling or order is made or sought. To make known the action desired or objection to Court the action and grounds and, if a party has no opportunity to object to a ruling or order at the time made, the absence of an objection does not thereafter prejudice him.

Section 9-7-304 Instruction to Jury - Objection

- (A) The time the Court directs, any party may file written requests the Court instruct the jury on the law. The Court shall inform counsel of its proposed action prior to their arguments to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error the giving or failure to give an instruction unless he objects or proposes the re-

quested instruction before the jury retires stating distinctly the matter to which he objects and the grounds. Opportunity shall be given to make the objection out of the hearing of the jury.

- (B) All instructions requested, and modifications shall be in writing, numbered, and signed asking the same and filed.
- (C) When either party asks special instructions be given the Court shall either give such instructions or positively refuse or gives instructions with modification so that it shall distinctly appear what instructions with modification so that it shall distinctly appear what instructions with modification were given and those refused so that either party may except.
- (D) All instructions given must be numbered, signed by the judge and filed together with those asked for by the parties.

Section 9-7-305 Uniform Jury Instructions

The Supreme Court, is authorized to promulgate uniform jury instructions which, shall be used unless the Court determines the instruction do not accurately state the law.

Section 9-7-306 Objections to Instructions – Copies to Parties

A party objecting to the instructions, or refusal shall not be required to file a formal bill of exceptions; but it shall be sufficient to make objection noting on the record out of the hearing of the jury, before the reading of all instructions, the number of the particular instruction that was requested, refused, and objected to, or the number of the particular instruction given by the Court. The Court shall furnish the instructions to Plaintiff and Defendant prior to giving said instructions.

Section 9-7-307 View by Jury

Whenever, it is proper for the jury to have a view of the subject property or place any material fact occurred, it may order them conducted, in a body, under the charge of an officer, which shall be shown by some person appointed by the Court. While the jury is absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Section 9-7-308 Deliberations of the Jury

When the case is submitted to the jury, they shall retire for deliberation. When they retire, they must be kept together, in some convenient place, under charge of an

officer, until they agree upon a verdict or be discharged by the Court. The Court may permit them to separate at night, and at meals. The officer having them under his charge shall not make nor suffer any communication to be made to them, except to ask if they are agreed upon their verdict, and to communicate a request by the jury to the Court in open Court, unless by order of the Court; and they shall not, before their verdict is rendered, communicate the state of their deliberations, or the verdict.

Section 9-7-309 Admonition of Jury on Separation

If the jury is permitted to separate, they shall be admonished that it is their duty not to converse with, or allow themselves to be addressed by, any other person, on any subject of the trial, and not to form or express an opinion until the case is finally submitted.

Section 9-7-310 Information After Retirement

After the jury has retired for deliberation, if there be a disagreement or if they desire to be informed as to any part of the testimony, or if they desire to be informed as to any part of the law they may request the officer to conduct them to the Court, where the information on the point of law shall be given in writing, and the Court may given its recollections as to the testimony or cause the same to be read or played back by the reporter in the presence of, or after notice to, the parties. Upon motion the Court may order that other portions of the record relating to the same issue also be read or played back to the jury upon the questioned point.

Section 9-7-311 When the Jury May Be Discharged

The jury may be discharged by the Court on account of the sickness of a juror, or other accident or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it appears that there is no probability of their agreeing.

Section 9-7-312 Re-trial

In all cases where the jury is discharged it may be tried again immediately, or at a future time.

Section 9-7-313 Proof of Official Record

(A) Authentication:

- (1) **Domestic:** An official record kept within the United States, or any Indian Tribal jurisdiction, state, district, commonwealth, terri-

tory, or possession thereof, when admissible may be evidenced by an official publication or by a copy attested by the officer having legal custody or deputy, and accompanied by a certificate. The certificate may be made by a judge authenticated by the seal of the court, or may be made by any public office having official duties.

(2) Foreign: A foreign official record or an entry therein, when admissible may be evidenced by an official publication or copy attested by an authorized person and accompanied by a certification as to the genuineness of the signature and official position.

- (a) Of the attesting person; or
- (b) Of any foreign official whose certification of genuineness of signature and official position related to the attestation or is in a chain of certificate of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United State, or a diplomatic or consular official of the foreign county assigned or accredited to the United States. If opportunity has been given to investigate the authenticity and accuracy of the documents, the Court may, for good cause shown;
- (c) Admit an attested copy without final certification; or
- (d) Permit the foreign official record to be evidenced by an attested summary with or without a final certification.

(B) Lack of Record: A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated in the case of a domestic record, or for summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(C) Other Proof: This Section does not prevent the proof of official records or of entry or lack of entry by any other method authorized by law.

Section 9-7-314 Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice in his pleadings or other reasonable written notice. The Court, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Tribal Rules of Evidence. The Court's determination shall be treated as a ruling on a question of law. The District Court shall take judicial notice of the law of any foreign jurisdiction within the United States published in an official publication of that jurisdiction upon reasonable notice. The term "foreign jurisdiction within the United States" includes every federally recognized Indian Tribe, every state, territory, or possession of the United States, the United States, and their political subdivisions and agencies.

Section 9-7-315 Appointment and Duties of Masters

(A) Appointment and Compensation: The District Court with the concurrence of a majority of the Judges may appoint one or more standing masters, and the trial judge, may appoint a special master to act in a particular case. The word "master" includes a referee, an auditor, and an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action. The master shall not retain his report as security for his compensation; but when the party ordered to pay does not pay after notice and within the time prescribed by the Court, the master is entitled to a writ of execution.

(B) Reference: A reference to a master shall be the exception. In an action tried by jury, a reference shall be made only when the issues are complicated; in actions without a jury, a reference shall be made only upon a showing of exceptional condition.

(C) Powers: The order of reference may specify or limit powers and direct a report upon particular issues or perform particular acts or to receive and report evidence and may fix the time and place for beginning and closing hearings and for the filing of the master's report. Subject to limitations stated the master shall exercise the power to regulate all proceedings and do all acts

and measures necessary for performance of his duties. When a party requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations.

(D) Proceedings:

- (1) Meetings:** The clerk shall furnish the master with the order. Upon receipt, the master shall set a time and place for the meeting of parties to be held within twenty (20) days after the date of the order with notification. The master shall proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply for Court order requiring the master to speed the proceedings and to make a report. If a party fails to appear the master may proceed ex parte, or, adjourn the proceedings to a future day, giving notice to the absent party.
- (2) Witnesses:** The parties may procure the attendance of witnesses by the issuance and service of subpoenas. If a witness fails to appear or give evidence, he may be punished for contempt and be subjected to consequences, penalties, and remedies.
- (3) Statement of Accounts:** When matters of accounting are in issue, they may prescribe the form accounts shall be submitted and may require or receive in evidence a statement by a certified public accountant called as a witness. Upon objection to any of the items submitted or upon a showing that the form is insufficient, the master may require a different form of statement, or accounts or items be proved by oral examination or upon written interrogatories or in other manner.

(E) Report:

- (1) Content and Filing:** The master shall prepare a report and file a transcript of the proceedings and evidence and original exhibits. The clerk shall mail notice of the filing.
- (2) In Non-Jury Actions:** The Court shall accept the master's findings of fact unless clearly erroneous. Within ten (10) days after being served with notice of the report any party may serve written objections. Application to the Court for action upon the report is upon notice. The Court after a

hearing may adopt the report or modify it or receive further evidence or recommit it with instructions.

- (3) In Jury Actions:** The master shall not be directed to report the evidence. His findings are admissible and may be read to the jury, subject to the ruling of the Court upon any objections in point of law.
- (4) Stipulation as to Findings:** The effect of a master's report is the same whether or not parties have consented to the reference; but, when the parties stipulate findings of fact shall be final, only questions of law shall be considered.
- (5) Draft Report:** Before filing a master may submit a draft to all parties to receive suggestions.

Section 9-7-316 through 9-7-220 Reserved

**SECTION FOUR
VERDICT**

Section 9-7-401 Findings by the Court

- (A) Effect:** In all actions tried without a jury, the Court shall find the facts and state its conclusions of law and judgment shall be entered in granting or refusing interlocutory injunctions the Court shall set forth findings of fact and conclusions of law which constitute the grounds. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous. The adopted findings of a master shall be considered the findings of the Court. If an opinion or memorandum of decision is filed, it will be sufficient if findings of fact and conclusions of law appear. Findings of fact and conclusions of law are unnecessary on decisions of motions.
- (B) Amendment:** Upon motion of a party made not later than ten (10) days after entry of judgment the Court may amend its findings or make additional findings and may amend the judgment. The motion may be made with a motion for a new trial. When findings of fact are made in actions without a jury, the question of the sufficiency of the evidence to support the findings may be raised whether or not an objection or motion was made to amend them or a motion for judgment.

Section 9-7-402 Delivery of Verdict

The jury verdict will be rendered in open Court by the foreman. The verdict shall be written, signed by the foreman, read by the clerk and inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out. If there is no disagreement and neither party requires the jury to be polled, the verdict is complete and the jury discharged from the case. If, the verdict is defective in form it may be corrected by the Court with assent of the jury.

Section 9-7-403 Special Verdict and Interrogatories

(A) Special Verdicts: The Court may require a jury to return a special verdict in the form of a finding upon each issue of fact. The Court may submit written questions requiring categorical or brief answers or may submit written forms of several special findings which might be made under the pleadings and evidence; or it may use other methods. The Court shall explain and instruction upon each issue. If the Court omits any issue of fact raised by the pleadings or by evidence, each party waived his right to a trial by jury unless before the jury retires he demands its submission on an issue omitted without demand, the Court may make a finding; or, if not it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(B) General Verdict Accompanied by Answer to Interrogatories: The Court may submit, with appropriate forms for a general verdict, written interrogatories upon issues of fact the decision of which is necessary to a verdict. The Court shall explain and give to answer and render a general verdict, and the Court shall direct the jury to make written answers and render a general verdict. When the general verdict and the answers are consistent judgment shall be entered but, when the answers are inconsistent with the general verdict, judgment may be entered in accordance with the answers, notwithstanding the general verdict, or the Court may return the jury for further consideration or order a new trial. When the answers are inconsistent with each other and inconsistent with the general verdict, judgment shall not be entered, the Court shall return the jury for further consideration or shall order a new trial.

Section 9-7-404 Jury Must Assess Amount of Recovery

When either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

Section 9-7-405 Motion for a Directed Verdict and for Judgment Notwithstanding the Verdict

(A) Motion for Directed Verdict: When Made: Effect: A party who moves for a directed verdict may offer evidence if the motion is not granted, without having reserved the right. A motion for directed verdict shall state the specific grounds. The order of the Court granting a motion for a directed verdict is effective without jury assent.

(B) Motion for Judgment Notwithstanding the Verdict: When a motion for a directed verdict is denied, the Court is deemed to have submitted the action to the jury subject to legal questions raised by the motion. Within ten (10) days after entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, may move for judgment in accordance with their motion for a directed verdict. A motion for a new trial may be joined. If a verdict was returned, the Court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of the judgment as if the requested verdict has been directed. If no verdict was returned the Court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

(C) Same: Conditional Rulings on Grant of Motion:

(1) If the motion for judgment notwithstanding the verdict is granted, the Court shall also rule on the motion for a new trial, and shall specify the grounds for granting or denying the motion. If the motion for a new trial is conditionally granted, the order does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless otherwise ordered. In case the motion for

a new trial has been conditionally denied, the appellee on appeal may assert error; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the Supreme Court.

- (2) The party whose verdict has been set aside may serve a motion for a new trial not later than ten (10) days after entry of the judgment notwithstanding the verdict.

(D) Denial of Motion: If the motion for judgment notwithstanding the verdict is denied, the party who prevailed may, on appeal, assert grounds entitling him to a new trial if the Supreme Court concludes the trial court erred in denying the motion for judgment notwithstanding the verdict. If the Supreme Court reverses the judgment, it may determine the appellee is entitled to a new trial, or direct the trial court to determine whether a new trial shall be granted.

Section 9-7-406 through 9-7-420 Reserved

**SECTION FIVE
MISCELLANEOUS TRIAL PROVISIONS**

Section 9-7-501 Provisions Applicable to Trials by Court

The provisions respecting trials by jury apply, to trials by the Court.

Section 9-7-502 Trial Docket

A trial docket may be made by the Clerk at least fifteen days before the first day of each jury or non-jury docket and the actions shall be set for particular days. The trial docket shall be mailed by the Clerk to each party or attorney of record.

Section 9-7-503 Trial Docket for Bar

The Clerk may make out a copy of the trial docket for the use of the bar, before the first day of the docket and will be available to the public.

Section 9-7-504 Order of Trial of Cases Docketed

The trial shall be in the order on the trial docket, unless by order of the Court, they are continued, placed at the heel of the docket, or otherwise directed. The Court may, hear at any time and may by rule prescribe the time for hearing motions.

Section 9-7-505 Time of Trial

- (A) Actions may be triable at the first trial docket, after or during which the issues are or shall have

been made up and discovery completed. When the issues are made up and discovery completed, or when the defendant has failed to plead within the time fixed, the cause shall be placed on the trial docket, and shall stand for trial at such term twenty (20) days after the issues are made up and discovery completed, and shall, in case of default, stand for trial.

- (B) The Court shall arrange its business so that two non-jury trial dockets and two jury trial dockets are completed during each calendar year, the Court by order determine that additional trial dockets are necessary.

Section 9-7-506 Continuances

The trial shall not be continued upon the stipulation of the parties alone, but may be continued upon order of the Court.

Section 9-7-507 Bifurcated Jury Trials

- (A) The District Court may provide for the bifurcation of any jury trial in a tort civil action so the jury shall first hear evidence and render its verdict upon the issue of liability, and thereafter hear evidence and render its verdict upon the issue of the amount of damages.
- (B) In such bifurcated trials, evidence of insurance coverage or similar agreements by third parties to pay any party or a judgment, and the nature and extent of such coverage or agreement shall be admissible and relevant to the issue of damages
- (C) In any case not provided for by Court rule, the case may be determined in bifurcated proceedings by stipulation.

CHAPTER EIGHT

SECTION ONE

**PROVISIONAL AND FINAL REMEDIES AND
SPECIAL PROCEEDINGS**

Section 9-8-101 Seizure of Person or Property

At commencement and during the course of an action, all remedies providing for seizure of a person or property for the purpose of securing satisfaction of the judgment to be entered are available under the circumstances and in the manner provided by the law of the Tribe.

Section 9-8-102 Receivers Appointed by Tribal Courts

An action where a receiver has been appointed shall

not be dismissed except by Court order. The practice in the administration of estates by receivers or by other similar officers appointed shall be in accordance with Tribal probate law, or, if none, the practice followed in the courts of the United States or as provided in rules promulgated by the District Court. In all other respects the action in which the appointment of a receiver is sought or which is brought by or against a receiver is governed by this Act.

Section 9-8-103 Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or any other thing capable of delivery, a party, upon notice and by leave of Court, may deposit with the Court all or any part of such sum or thing. Money paid into Court shall be deposited and withdrawn in accordance with Tribal law procedures.

Section 9-8-104 Process in Behalf of and Against Persons not Parties

When an order is made in favor of a person not a party, he may enforce obedience by the same process as if he were a party; and when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process as if he were a party.

Section 9-8-105 Security – Proceedings Against Sureties

Whenever Tribal law requires or permits the giving of security and security is given by bond or stipulation or other undertaking each surety submits them to the jurisdiction of the Court and irrevocable appoints the Clerk of the Court as their agent upon whom any papers affecting their liability on the bond or undertaking may be served. Their liability may be enforced on motion without an independent action. The motion and such notice may be served on the Clerk of the Court, who shall mail copies to the sureties.

Section 9-8-106 Execution

(A) In General: The Process to enforce a money judgment shall be by writ of execution, unless the Court directs otherwise. In aid of the judgment or execution, the judgment creditor or his successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor.

(B) Against Certain Public Officers: When a judgment has been entered against an officer, or employee, or agency of the Tribe in their of-

ficial capacity; or against an individual in his personal capacity who purported to act as an officer or employee of the Tribe, and the Court determines that the individual had probable cause to believe that their action was authorized execution shall not issue against the officer or his property but the final judgment may be provided by legislative appropriation. This section shall not be construed as a waiver of sovereign immunity.

Section 9-8-107 through 9-8-110 Reserved

SECTION TWO INJUNCTIONS

Section 9-8-201 Injunction Defined

The injunction provided may be the final judgment or may be allowed as a provisional remedy, by Court order.

Section 9-8-202 Cause for Injunction – Temporary Restraining Order

When it appears, by verified complaint or affidavit the plaintiff is entitled to relief which consists of restraining the commission or continuance of some act, the commission or continuance of which, would produce injury to the plaintiff; or when, it appears the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights and tending to render judgment ineffectual, a temporary restraining order and preliminary injunction may be granted when, during an action, it shall appear, by affidavit or proof, the defendant threatens or is about to remove or dispose property with intent to defraud or render the judgment ineffectual, a temporary restraining order and preliminary injunction may be granted.

Section 9-8-203 Temporary Restraining Order: Notice: Hearing: Duration

A temporary restraining order may be granted after commencement without written or oral notice to the adverse party only if:

(A) It clearly appears from specific facts shown by affidavit or by verified complaint immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard; and

(B) The applicant's attorney certifies to the Court the efforts, to give notice and reasons notice should not be required.

Temporary restraining orders should not be granted except when urgent. Every temporary restraining order granted without notice shall be indorsed with the date and hour of issuance; be filed in the Clerk's office and entered of record; define the injury and state why it is irreparable and why the order was granted without notice; and shall expire after entry, not to exceed ten (10) days, unless the time for good cause shown, is extended or unless the adverse party consents it. The reasons for extension shall be of record. In case a temporary restraining order is granted without notice, the motion for preliminary injunction shall be set down at the earliest possible time and at the hearing the party who obtained the temporary restraining order shall proceed with the application for preliminary injunction and, if not the Court shall dissolve the temporary restraining order. On notice, as the Court may prescribe, to the party who obtained the temporary restraining order without notice, the adverse party may appear and move its dissolution or modification. The Court shall proceed to hear such motion expeditiously.

Section 9-8-204 Temporary Restraining Order - Service

Temporary restraining orders shall be served in the same manner as for service of summons and complaint.

Section 9-8-205 Preliminary Injunction

(A) **Notice:** No preliminary injunction shall be issued without notice to the adverse party. Notice may be an order to appear at a designated time and place and show cause why a proposed preliminary injunction should not be issued, or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

(B) **Consolidation of Hearing With Trial on Merits:** Before or after the commencement of the hearing for a preliminary injunction, the court may order the trial on the merits to be advanced and consolidated with the hearing of the application. When this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon the trial on the merits becomes part of the record on the trial and need not be repeated.

Section 9-8-206 Preliminary Injunction - Criteria

- (A) There is a substantial likelihood that the moving party will prevail on the merits of their claim for a permanent injunction or other relief, and
- (B) The moving party will suffer irreparable injury

unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and

- (C) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party, and
- (D) The preliminary injunction, if issued, would not be adverse to the public interest, and would not violate the public policy of the Tribe.

Section 9-8-207 Form and Scope of Injunction or Restraining Order

Every order granting an injunction and every restraining order shall: set forth the reasons for its issuance; describe in detail, the act or acts sought to be restrained; and is binding only upon the parties, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice.

Section 9-8-208 Employer and Employee; Interpleader; Constitutional Cases

This section does not modify any statute relating to temporary restraining orders and preliminary injunctions in actions affecting employer and employee; or relating to preliminary injunctions in actions of interpleader or in the nature of interpleader; or any other case where temporary restraining orders or preliminary injunctions are expressly authorized or prohibited upon certain express terms or conditions.

Section 9-8-209 Security

- (A) No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, as the Court deems proper, for the payment of costs, damages, and a reasonable attorney fee as may be incurred or suffered by any part who is found to have been wrongfully enjoined or restrained. Security may be waived by the Court. No security shall be required of the Tribe or officer or agency thereof.
- (B) A party enjoined by a preliminary injunction may, at any time before final judgment, upon reasonable notice to the other party move the Court for additional security, and if it appear the surety has been removed from Tribal jurisdiction, or is insufficient, the Court may vacate the preliminary injunction unless sufficient surety be given.

Section 9-8-210 Use of Affidavits

On the hearing for a restraining order or preliminary injunction, each party may submit affidavits which shall be filed.

Section 9-8-211 Injunction by Defendant

A defendant may obtain a temporary restraining order or preliminary injunction upon filing his answer containing an appropriate counterclaim. He shall proceed in the prescribed manner.

Section 9-8-212 Injunction is Equitable

Relief by way of a restraining order, preliminary, or permanent injunction is equitable and shall be issued or refused in the discretion of the Court. No injunction shall issue to control the discretion or action of a Governmental officer or employee when delegated the authority to act.

Section 9-8-213 Modification of Preliminary Injunction

If the preliminary injunction is granted, the defendant, before trial, may apply, upon notice, to the Court to vacate or modify. The application may be made upon the complaint and affidavits upon which the injunction is granted, or upon affidavits or the party enjoined, with or without answer. The order of the judge, allowing, dissolving or modifying an injunction, shall be returned to the office of the clerk and recorded.

Section 9-8-214 Modification of Permanent Injunction

A final judgment containing a permanent injunction may be modified or dissolved by separate action upon a showing that the facts and circumstances have changed or the injunction is no longer needed.

Section 9-8-215 Injunctions Tried to the Court

All injunctive actions shall be tried to the Court and not to a jury.

Section 9-8-216 Enforcement of Restraining Orders and Injunctions

A restraining order or injunction granted may be enforced as the act of the Court. Disobedience may be punished as contempt. An attachment may be issued by affidavit or testimony, of the breach of the injunction, against the guilty party who may be required to make immediate restitution and give further security or, he may be committed to custody, until he shall fully comply with such requirements, or legally discharged, or be fined not exceeding two hundred dollars (\$200.00)

for each day or separate act of, contempt, to be paid to the Court, or by confinement in jail not longer than sixty (60) days.

Section 9-8-217 through 9-8-230 Reserved

**CHAPTER NINE
SECTION ONE
JUDGMENT**

Section 9-9-101 Judgments - Costs

- (A) **Definition; Form:** “Judgment” includes a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.
- (B) **Judgment Upon Multiple Claims or Involving Multiple Parties:** When more than one claim is presented, the Court may direct the entry of a final judgment to fewer than all claims or parties only upon an express determination there is no reason for delay. Upon an express direction, any order or other decision, which adjudicates fewer than all claims, rights and liabilities of fewer than all parties shall not terminate the action as to other claims or parties. The order or decision is subject to revision at anytime before the entry of judgment adjudicating all the claims, rights and liabilities.
- (C) **Demand for Judgment; Default:** A judgment by default shall not be different or exceed the demand amount for judgment. Except a party against whom a default judgment is entered, every final judgment shall grant relief to the prevailing party.
- (D) **Costs:** Costs may be allowed to the prevailing party including attorney fees and authorization for damages or requirement for bonds or undertakings, its officers, and agencies shall be imposed as specifically permitted. Costs may be taxed by the clerk on one day’s notice. On motion served within ten (10) days, the action of the clerk may be reviewed by the Court.
- (E) **Applied to Probate Proceedings:** A judgment shall be considered a lawful debt in all proceedings held by the Department of Interior or by the Tribal District Court in the distribution of decedent’s estates.

Section 9-9-102 Default

(A) Entry: When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend and that fact is made to appear by affidavit or otherwise, the clerk shall enter the default.

(B) Judgment: Judgment by default may be entered as follows:

(1) By the Clerk: When the plaintiff's claims against defendant is a sum certain or can be made certain, the clerk upon request of plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against defendant, if they have been defaulted for failure to appear and if they are not an infant or incompetent person.

(2) By the Court: In all other cases the party entitled to a judgment by default shall apply no judgment by default shall be entered against an infant or incompetent person unless represented by a general guardian, conservator, or other representative who has appeared. If the party has appeared; they or their representative shall be served with written notice of the application for judgment at least five (5) days prior to the hearing. If it is necessary to take an account or to determine amount of damages or to establish the truth of any statement by evidence or to make an investigation the Court may conduct hearings or order references.

(C) Setting Aside Default: For good cause shown the Court may set aside an entry of default and, if judgment by default has been entered, may set it aside.

(D) Plaintiff, Counterclaimants, Cross-Claimants: The provisions apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

(E) Judgment Against the Tribe: No judgment by default may be entered against the Tribe, its officers, or agencies unless sixty (60) days written notice has been served upon the Chief Executive Officer and the Tribal Legislative Authority. During such sixty (60) day period, if the Tribe is without counsel, no default may

be entered until thirty (30) days after approval of an attorney contract. During such period, the Tribe, its agencies, or officers shall be allowed to cure any default.

Section 9-9-103 Offer of Judgment

More than ten (10) days before trial, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for money or property or effect specified in his offer, with costs. If within ten (10) days after service of the offer the adverse party serves written notice that the offer is accepted, either party may file the offer and notice of acceptance together with proof of service and the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making the offer. The fact an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined but the amount or extent of the liability, remains to be determined, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer before trial if served not less than ten (10) days prior to the commencement of hearings to determine amount or extent of liability.

Section 9-9-104 Judgment for Specific Act – Vesting Title

If a judgment directs a party to execute a conveyance of land or deliver deeds or other documents or perform any other act and the party fails to comply, the Court may direct the act done at the cost of the disobedient party by Court appointment and the act becomes the party's act. On application the clerk shall issue a writ of attachment or sequestration against the property to compel obedience. The Court may also adjudge the party in contempt. If real or personal property is within Tribal jurisdiction, and the interest is not held in trust the Court in lieu of directing a conveyance of interest may enter a judgment divesting the interest from any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession the prevailing party is entitled to a writ of execution or assistance.

Section 9-9-105 Summary Judgment

(A) For Claimant: A party seeking to recover a

claim, counterclaim, or cross-claim or obtain a declaratory judgment may, after the expiration of twenty (20) days from the commencement or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment.

(B) For Defending Party: A party against whom a claim, counterclaim, or cross-claim is asserted or declaratory judgment is sought may, move with or without supporting affidavits for a summary judgment.

(C) Motion and Proceedings: The motion shall be served at least ten (10) days before the hearing. The adverse party prior to the hearing may serve opposing affidavits. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, with affidavits, show there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be entered on the issue of liability alone although there is a genuine issue of damages.

(D) Case Not Fully Adjudicated on Motion: If on motion judgment is not rendered upon the whole case or for all the relief and a trial is necessary, the Court at the motion hearing examining the pleadings, evidence and interrogating counsel, shall ascertain what material facts exist without substantial controversy and what are in good faith controverted. It shall make an order specifying the facts without substantial controversy, including the amount of damages or other relief not in controversy, and directing further proceedings. At trial the facts specified shall be deemed established.

(E) Form of Affidavits; Further Testimony; Defense Required: Supporting and opposing affidavits shall be made on personal knowledge, shall set forth facts admissible in evidence, and shall show affirmatively the affiant is competent to testify. Sworn or certified copies of all papers or parts referred to shall be attached or served. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. A motion for summary judgment by an adverse party may not rest upon the mere allegations or denial of his pleadings, but his response, by affidavits or

as otherwise provided must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment shall be entered.

(F) When Affidavits are Unavailable: When affidavits of a party opposing the motion stating they cannot present by affidavit facts essential to justify opposition, the Court may refuse the application for judgment or order a continuance to permit affidavits be obtained or depositions or discovery be had.

(G) Affidavits Made in Bad Faith: Should it appear any affidavits are presented in bad faith or solely for delay, the Court shall order the party to pay the other party reasonable expenses including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 9-9-106 Declaratory Judgments

The existence of another adequate remedy does not preclude judgment for declaratory relief. The Court may order a speedy hearing of a declaratory judgment and may advance it on the calendar.

Section 9-9-107 Entry of Judgment

(A) Subject to the Court shall approve the form of judgment, and the clerk shall enter it:

(1) Upon a Court decision a party shall recover only a sum certain, costs or all relief denied, the clerk, unless otherwise ordered shall prepare, sign, and enter the judgment without Court direction.

(2) Upon a Court decision granting other relief.

(B) Every judgment shall be set forth on a separate document. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon Court direction.

Section 9-9-108 New Trials – Amendments of Judgments

(A) Grounds: A new trial may be granted to any parties on the issues for the following reasons:

(1) Irregularity in the proceedings or prevailing party, or any order or abuse of discretion, which prevented a fair trial, or

(2) Misconduct of the jury or prevailing party, or

- (3) Accident or surprise, which ordinary prudence could not have guarded against, or
- (4) Excessive or inadequate damages, given under the influence of passion or prejudice, or
- (5) Error in assessment of amount of, or
- (6) The verdict, or decision is not sustained by sufficient evidence, or is contrary to law, or
- (7) Newly-discovered evidence, which could not, with reasonable diligence, have been discovered and produced at the trial, or
- (8) Error of law occurring at trial, and objected to by the party making the application, or
- (9) When, without fault of the complaining party, it becomes impossible to make a record sufficient for appeal.

On a motion for a new trial tried without a jury, the Court may open an entered judgment take additional testimony amend findings of fact and conclusions, and direct entry of a new judgment.

(B) Time for Motion: A new trial motion shall be served not later than ten (10) days after entry of judgment, except based upon newly discovered evidence within six (6) months of judgment.

(C) Time for Serving Affidavits: When a new trial motion is based upon affidavits they shall be served with the motion. Opposing party has ten (10) days after service to serve opposing affidavits, which may be extended not exceeding twenty (20) days by the Court or the parties stipulation. The Court may permit reply affidavits.

(D) On Initiative of Court: Not later than ten (10) days after entry of judgment the Court of its own initiative may order a new trial on motion of a party. After giving the parties notice and an opportunity to be heard the Court may grant a motion for new trial, for an unplead reason the Court shall specify the grounds.

(E) Motion to Alter or Amend and Judgment: A motion to alter or amend judgment shall be served not later than ten (10) days after entry of judgment.

Section 9-9-109 Relief From Judgment or Order

(A) Clerical Mistakes: Clerical mistakes record and errors arising from oversight or omission may be corrected by the Court on its own initiative or on motion of any party and after notice,

if the Court orders. During the pendency of an appeal, mistakes may be corrected before the appeal is docketed and thereafter may be corrected with leave of the Supreme Court.

(B) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.: On motion the Court may relieve a party or legal representative from a final judgment, order, or proceeding for:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence which due diligence could not have discovered in time to move for a new trial;
- (3) Fraud misrepresentation, or misconduct of an adverse party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable; or
- (6) Any reason justifying relief from operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order, or proceeding was entered. A motion does not affect the finality of a judgment or suspend its operation. This section does not limit the Court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified or to set aside a judgment for fraud upon the Court. All previous procedural writs to correct errors or obtain relief from a judgment are abolished. The procedure for obtaining judgment relief shall be by motion or by an independent action.

Section 9-9-110 Harmless Error

No error in either the admission or exclusion of evidence and no error or defect in any ruling or order or anything done or omitted by the Court or by any of the parties is ground for granting a new trial or setting aside a verdict or vacating, modifying or otherwise disturbing a judgment or order unless the action appears inconsistent with substantial justice. The Court at every stage must disregard any error or defect which does not affect substantial rights of the parties.

Section 9-9-111 Stay of Proceedings to Enforce a Judgment

- (A) **Automatic Stay; Exceptions-Injunctions, Receiverships, and Patent Accountings:** No execution shall issue upon a judgment or proceedings for its enforcement until expiration of ten (10) days after entry. Unless ordered an interlocutory or final judgment for injunction or receivership or judgment or order directing an accounting, shall not be stayed after entry until an appeal or during the pendency of an appeal.
- (B) **Stay on Motion for New Trial or for Judgment:** In its discretion and for security of the adverse party the Court may stay execution of or proceedings to enforce a judgment pending a new trial motion or any motion to alter or amend a judgment.
- (C) **Injunction Pending Appeal:** When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court may suspend, modify, restore, or grant an injunction during the pendency upon, conditions as to provide security for the adverse party.
- (D) **Stay Upon Appeal:** The appellant by giving a bond may obtain a stay. The bond may be given at or after filing notice of appeal or the order allowing the appeal. The stay is effective when the supersedeas bond is approved by the Court.
- (E) **Stay in Favor of the Tribe or Agency Thereof:** When an appeal is taken by the Tribe or an officer or agency or by direction of the Government, the operation or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.
- (F) **Power of the Supreme Court Not Limited:** This Section does not limit any power of the Supreme Court or of a judge or justice to stay proceedings, or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or effectiveness of the judgment to be entered.
- (G) **Stay of Judgment as to Multiple Claims or Multiple Parties:** When the Court has ordered a final judgment the Court may stay enforcement until the entering of a subsequent judgment or judgments and may prescribe conditions as are

necessary to secure the benefit to the prevailing party.

Section 9-9-112 Disability of a Judge

If a Trial judge is unable to perform duties after a verdict or findings are filed, then any other judge may perform those duties.

Section 9-9-113 Reserved

Section 9-9-114 Judgment Against Infant

It shall not be necessary to reserve the right of a minor to show cause against a judgment, after attaining full age; the minor, within two (2) years after the age of eighteen (18) may show cause against such order or judgment.

Section 9-9-115 Judgments as Liens

Judgments of the Tribal Court and the Courts of the United States shall be liens on real estate within Tribal jurisdiction from the time a certified copy of such judgment has been filed. A fifty dollar (\$50.00) fee shall be collected for each filing. No judgment shall be a lien until it has been filed. Execution shall be issued only by the Tribal Court.

Section 9-9-116 Discharge of Money Judgment Liens

An appeal from a money judgment, lien and any lien of an attachment issued and levied, shall cease upon the debtor or depositing, with the Court Clerk cash to cover the whole amount including interest, costs and attorney fees, with cost and interest on the appeal, accompanied by a written statement, the deposit is made to discharge the lien and any lien of an attachment issued and levied. The Court Clerk, upon receipt of a cash deposit and written statement, shall enter it upon the civil appearance docket, the judgment docket. The Court Clerk shall deposit it in a proper account pending final determination and, upon final determination will pay, or apply the same upon any judgment against the depositors, and refund any balance to the depositors, or, refund the whole amount.

Section 9-9-117 Additional Case Deposits

A judgment creditor may, upon reasonable notice to judgment debtors, move for the deposit of additional cash; and if it appears the deposit is insufficient including interest, costs and attorney fees, with costs and interest on appeal, the Court shall order the deposit of additional cash. If the additional cash is not deposited within a reasonable time, set by the Court, the judgment shall be revived and attachment may be issued.

Section 9-9-118 Reversal By Supreme Court

In the event of a reversal by the Supreme Court, no money deposited to discharge the lien of such judgment shall be refunded until final disposition.

Section 9-9-119 Interest on Money Judgments

All money judgments of the District Court shall bear interest at the rate of ten percent (10%) simple interest per annum, except authorized judgments against the Tribe, its political subdivisions, and agents which judgments shall not bear interest unless specifically provided when a rate of interest is specified in a contract, the rate therein shall apply to the judgment and be specified in the judgment if the rate does not exceed the lesser of any limitation imposed by Tribal law, or the law of the jurisdiction in which the contract was made, upon the amount of interest which may be charged.

Section 9-9-120 Exempt Property

The following property shall be exempt, except enforcement of contractual liens or mortgages, from garnishment, attachment, execution and sale, and other process for the payment of principal and interest, costs, and attorney fees upon judgment.

- (A) Three-fourths (3/4) of net wages earned per week or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be provided for child support payments.
- (B) One automobile of fair market value not exceeding Three Thousand Dollars (\$3,000.00).
- (C) Tools, equipment, utensils, or books necessary to conduct the persons business but not including stock or inventory.
- (D) Actual trust or restricted title to any lands held in trust or subject to restrictions against alienation but not including leasehold and other possessory interests in such property.
- (E) Any dwelling used as the actual residence including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased.
- (F) Household good, furniture, wearing apparel, personal effects, but not including televisions, radios, sound systems, recorders, or portable home computers, (not otherwise exempt) more than two (2) firearms, works of art, and other recreational or luxury items.

(G) One horse, one bridle, and one saddle.

(H) All implements of husbandry used upon the homestead, not more than eight cows with their immature offspring, four hogs with their immature offspring, twenty chickens, and feed suitable and sufficient to maintain said livestock and fowls for a period of one year.

(I) All ceremonial family Indian heirlooms or religious items.

Section 9-9-120.1 Payment of Judgments From Individual Indian Moneys

Whenever the court shall have ordered payment of money damages and the debtor refuses or neglects to make payment within the time set or when an execution is returned showing no property found, and when the debtor has sufficient funds to his credit at any Agency Office the Clerk upon request of the judgment creditor, shall certify the record to the superintendent and if directed the disbursing agent shall pay to the judgment creditor the amount of the judgment, or lessor amount as may be specified.

**SECTION TWO
FOREIGN JUDGMENTS**

Section 9-9-201 Definition

“Foreign judgment” means any judgment, decree, or order of a Court of the United States, Indian Tribe, or of any other Court which is entitled to comity or full faith and credit in the Tribal Court. Such comity or full faith and credit shall be granted to a judgment, decree or order of a state court that recognizes the judgments, decrees and orders of this court.

Section 9-9-202 Filing and Status of Foreign Judgments

A copy of any foreign judgment authenticated may be filed. The Clerk shall treat the foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed has the same effect and is subject to the same procedures and proceedings for reopening, vacating, or staying a judgment of Tribal District Court and may be enforced or satisfied in like manner.

Section 9-9-203 Grounds for Non-Recognition

- (A) A foreign judgment is not conclusive if:
 - (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

- (2) The foreign court did not have jurisdiction over the defendant; or
 - (3) The foreign court did not have jurisdiction over the subject matter.
- (B) A foreign judgment need not be recognized if;
- (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
 - (2) The judgment was obtained by fraud;
 - (3) The cause of action on which the judgment is based is repugnant to the public policy of the Tribe;
 - (4) The judgment conflicts with another final and conclusive judgment;
 - (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled; or
 - (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of action.

Section 9-9-204 Grounds for Non-Refusal

- (A) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if:
- (1) The defendant was served personally in the foreign jurisdiction;
 - (2) The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;
 - (3) The defendant prior to the commencement of the proceeding had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
 - (4) The defendant was domiciled in the foreign jurisdiction when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign jurisdiction;
 - (5) The defendant had a business office in the foreign jurisdiction and the proceedings in

the foreign court involved a cause of action arising out of business done by defendant through that office, the foreign jurisdiction; or

- (6) The defendant operated a motor vehicle or airplane in the foreign jurisdiction and the proceedings involved a cause of action arising out of such operation.

- (B) The Tribal District Court may recognize other bases of jurisdiction.

Section 9-9-205 Notice of Filing

- (A) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of the Court an affidavit setting forth the name and last known post-office address of the judgment debtor, and of the judgment creditor.
- (B) Promptly upon filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.
- (C) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until twenty (20) days after the date the judgment is filed with the Tribal District Court.

Section 9-9-206 Stay of Execution of Foreign Judgment

- (A) If judgment debtor shows the Tribal District Court that an appeal from the foreign judgment is pending or will be taken, or a stay of execution has been granted, the Court shall stay enforcement until the appeal is concluded, or until the time for appeal expires, or until the stay of execution expires or is vacated, upon proof the judgment debtor has furnished security for satisfaction of the judgment required by the law of the jurisdiction in which the judgment was rendered.

- (B) If the judgment debtor shows the Tribal District Court any ground upon which enforcement of a judgment of the Tribal District Court would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring security for satisfaction of the judgment which is required in the Tribal jurisdiction.

Section 9-9-207 Fees

Any person filing a foreign judgment shall pay to the Court Clerk those fees now and hereafter prescribed by statute or authorized by Court rule for the filing of an action in the Court. Fees for docketing, transcription, or other enforcement proceedings shall be the same as provided for judgments of the Tribal District Court.

Section 9-9-208 Optional Procedure

The right of a judgment creditor to bring an action to enforce his judgment in Tribal District Court instead of proceedings under this subchapter remains unimpaired in Tribal District Court.

SECTION THREE CONTRIBUTION

Section 9-9-301 Joint Debtors or Sureties

When property, liable to an execution against several persons, is sold and more than a due proportion is laid upon the property of one or one pays, more than his proportion, he may compel contribution from the others; and when a judgment is against several, and is upon an obligation of one, as security, and the surety pays the amount, he may compel repayment from the principal; the person paying or contributing, is entitled to the benefit of the judgment, to enforce contribution or repayment, if within ten days after his payment he file notice of his payment and claim.

Section 9-9-302 Joint Tort-Feasors – Contribution – Indemnity – Exemptions – Release. Covenant Not to Sue. Etc.

- (A) When two or more persons become jointly or severally liable in tort for the same injury to person or property for the same wrongful death, there is a right of contribution though judgment has not been recovered against any.
- (B) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount in excess of his

pro rata share. No tort-feasor is compelled to make contribution beyond his pro rata share of the entire liability.

- (C) There is no right of contribution in favor of any tort-feasor who has intentionally caused or contributed to the injury or wrongful death.
- (D) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by settlement or any amount paid which is unreasonably excessive.
- (E) A liability insurer which has discharged, the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent it has paid in excess of the tort-feasor's pro rata share. This provision does not limit or impair any right of subrogation arising from any other relationship.
- (F) This act does not impair any right of indemnity under existing law. When a tort-feasor is entitled to indemnity the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.
- (G) This subchapter shall not apply to breaches of trust or of other fiduciary obligation.
- (H) When a release, not to sue or a similar agreement is given in good faith to persons liable in tort for the same injury or same wrongful death:
- (1) It does not discharge any of the other tort-feasors from liability unless its terms provide; but it reduces the claim against others of any amount stipulated by the release or the covenant, or in the amount of the consideration whichever is greater; and
 - (2) It discharges the tort-feasor from all liability for contribution to any other tort-feasor.

Section 9-9-303 through 9-9-310 Reserved

SECTION FOUR COSTS

Section 9-9-401 Affidavit in Forma Pauperis

Any person who cannot afford to pay costs of an action

may be allowed to proceed without paying costs upon the filing of an affidavit in forma pauperis. In the following form and attached to the petition, viz.:

[Name] in the District Court of [The Citizen Potawatomi] I do solemnly swear that the cause of action set forth in the petition is just, and I (or we) do further swear that by reason of my (or our) poverty, I am unable to give security for costs.

Section 9-9-402 False Swearing in Such Case

Any person willfully swearing falsely in making the affidavit shall, on conviction, be adjudged guilty of perjury,

Section 9-9-403 Costs Where Defendant Disclaims

Where defendants disclaim having any title or interest in land or other property, the subject matter of action, they shall recover their costs, unless for special reasons the Court decides otherwise.

Section 9-9-404 Certain Costs Taxed at Discretion of Court

Unless otherwise provided the costs of motions, continuances, amendments, shall be taxed and paid as the Court, directs.

Section 9-9-405 Costs to Successful Party as Matter of Course

Where it is not otherwise provided costs shall be allowed to the prevailing party, in actions for recovery of money only, or for the recovery of specific, real or personal property.

Section 9-9-406 Costs in Other Cases

In other actions, the Court may award and tax costs, and apportions the same between the parties on the same or adverse sides.

Section 9-9-407 Several Actions on Joint Instrument

Where several actions are brought based on one instrument against several parties who have been joined as defendants no costs shall be recovered by the plaintiff in more than one action if the parties were, at the commencement of the previous action, openly within the Tribal jurisdiction or subject to suit and service of process in the Tribal District Court and the whereabouts of such persons were known or could have been ascertained with reasonable diligence.

Section 9-9-408 Clerk to Tax Costs

The Clerks shall tax the costs and insert the same in

their respective judgments, subject to re-taxation by the Court, on motion of any person interested.

Section 9-9-409 Cost of Notice or Other Legal Publication

Whenever any notice, or other legal publication is required the costs of such publication shall be taxes or costs.

Section 9-9-410 Attorney Fees Taxable as Costs

- (A) In any civil action to recover on any account, note, bill, negotiable instrument, or contract relating to purchase or sale or for labor or services, the prevailing party shall be allowed a reasonable attorney fee to be taxed and collected as costs.
- (B) In any civil action to enforce payment or collect upon any instrument drawn on a bank, the party prevailing shall be awarded reasonable attorney's fee.
- (C) In any civil action or proceeding to recover for the overpayment of any charge for water, sanitary sewer, garbage, electric or natural gas service from any person, firm or corporation, or to determine the right of any person, firm or corporation to receive any such service, the prevailing party shall be allowed a reasonable attorney fee.
- (D) In any civil action brought to recover damages for breach or enforce terms of an express warranty against seller, retailer, manufacturer, manufacturer's representative or distributor, the prevailing party shall be allowed a reasonable attorney fee.
- (E) In any civil action to recover damages for the negligent or willful injury to property and any other incidental costs the prevailing party shall be allowed attorney's fees, Court costs and interest and collected as costs.

Section 9-9-411 Costs Defined

Costs include, in addition to expense specifically recoverable fees required for filing, expense for service of process, costs of transcripts, Tribal Police Fees and mileage, costs of publication printing of brief's or documents required by the Court and items made recoverable as costs by Court rule.

Section 9-9-412 Authority of Court to Fix Cost Rates

The Court Chief District Judge as the Court Administrator shall set the fees and costs of any service performed by the Court Clerk. The fees and costs are not to exceed the fees and costs of similar services provided by State or Federal Court.

**CHAPTER TEN
LIMITATIONS APPLICABLE**

Section 9-10-101 Limitations Applicable

Civil actions can only be commenced within the periods prescribed after the cause of action accrued. There shall be no statute of limitations applicable against civil actions brought by the Tribe.

Section 9-10-102 Limitation of Real Actions

Actions for the recovery of real property or for the determination of any adverse right or interest can only be brought within the periods prescribed;

- (A) An action for recovery of real property partitioned, sold, or conveyed pursuant to partition proceedings, or judicial sale, distributed in administration or probate proceedings, when brought by or on behalf of any person claiming by title acquired after the date of the judgment or claiming to be an heir or devisee or as successor in interest, within five (5) years after the recording of the deed or within five (5) years after the final judgment of partition where no sale is had or within five (5) years after the recording of the decree of distribution in an administration or probate proceedings;
- (B) An action for the recovery of real property sold by any person upon an order or judgment brought by the heirs or devisees or ward of his, or any person claiming as a successor by title after judgment or order, within five (5) years.
- (C) An action for the recovery of real property sold for taxes, within five (5) years after the date of the recording.
- (D) An action for the recovery of real property not provided for above, within ten (10) years.
- (E) An action for the forcible entry and detention or forcible detention only of real property, within three (3) years.
- (F) Paragraphs (A, B, and C) shall be fully opera-

tive whether the deed, judgment precedent action or proceeding is void or voidable in whole or part.

- (G) Nothing should be construed to impose any statute of limitation upon the enforcement of a right to possession of real property held by the United States in trust or restricted conforming to Federal laws.

Section 9-10-103 Persons Under Disability – In Real Property Actions

Any person entitled who may be under legal disability when the cause of action accrues, may bring action within two (2) years after the disability is removed.

Section 9-10-104 Limitation of Other Actions

Civil actions other than recovery of real property can be brought after accrued;

- (A) Within five (5) years: Upon any contract, agreement or promise in writing.
- (B) Within five (5) years: Upon a contract express or implied not in writing; a liability created by statute including forfeiture or penalty and an action on a foreign judgment.
- (C) Within three (3) years: For trespass, for taking, detaining, or injuring personal property, specific recovery of personal property; for injury to the rights of another, not by contract except provided in building construction tort claims, an action for relief on the ground of fraud – the cause shall not be deemed to have accrued until discovery of the fraud.
- (D) Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.
- (E) An action upon the official bond or undertaking of an executor, administrator, guardian, Police Officer, or officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case required by statute, can only be brought within three (3) years.
- (F) An action for relief, not provided, can only be brought within five (5) years after accrued.

Section 9-10-105 Persons Under Disability in Actions Other Than Real Property Action

If a person is, at the time accrued, under any legal disability, they shall be entitled to bring action within one (1) year after the disability is removed.

Section 9-10-106 Absence or Flight of Defendant

When a cause of action accrues and that person is out of Tribal jurisdiction or has concealed himself, the period limited for commencement shall not run until he comes into Tribal jurisdiction, or while concealed. If, after a cause of action accrues and that person leaves the Tribal jurisdiction or conceals himself, the time of his absence or concealment shall not be computed provided if any statute extends the exercise of personal jurisdiction over a person or corporation based upon service outside Tribal jurisdiction, state, or nation, or based upon service by publication permits the Court to acquire personal jurisdiction the period of his absence or concealment shall be computed.

Section 9-10-107 Limitation of New Action After Failure

If any action is commenced within time, and judgment for plaintiff is reversed, or if the plaintiff fail other than upon the merits, the plaintiff, may commence a new action within two (2) years after reversal or failure although the time limit is expired. An appeal of any judgment or order against plaintiff other than on the merits shall toll the two (2) year period during the pendency.

Section 9-10-108 Extension of Limitation

In any case founded on contract, when any part of principal or interest has paid, or an acknowledgment of existing liability, debt or claim, or any promise to pay was made, an action may be brought within the period prescribed after such payment acknowledgment or promise; but must be in writing, signed by the party.

Section 9-10-109 Statutory Bar Absolute

When a right of action is barred by statute, it shall be unavailable as a cause of action or defense, except as provided for counterclaim, setoff, or cross-claim.

Section 9-10-110 Law Governing Foreign Claims

The period of limitation accruing outside of Tribal jurisdiction shall be prescribed either by law where the claim accrued or Tribe whichever last bars the claim.

Section 9-10-111 Limitation of Building Construction Tort Claims

No action in tort to recover damages;

- (A) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

(B) For injury to property, real or personal, arising out of any such deficiency, or

(C) For injury to the person or for wrongful death arising out of any such deficiency,

Shall be brought against any person owning, leasing, in possession of or performing or furnishing the design, planning, supervision or observation of construction of such an improvement more than ten (10) years after substantial completion.

CHAPTER ELEVEN HABEAS CORPUS

Section 9-11-101 Persons Who May Prosecute Writ

Every person restrained of his liberty, under any pretense may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be released when the restraint is illegal.

Section 9-11-102 Application for Writ

Application for the writ shall be made by petition, signed and verified by plaintiff or in his behalf, and shall specify:

- (A) The person restrained, and the place where restrained, naming all known parties, or describing them;
- (B) The cause or pretense of the restraint, according to the best of knowledge and belief;
- (C) If the restraint is alleged illegal, what is the illegality.

Section 9-11-103 Writ Granted

Writs of habeas corpus may be granted without delay by any judge or justice at any time.

Section 9-11-104 Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding them to have person before the Court, at such time and place as the Court shall direct, to show cause they have for the restraint.

Section 9-11-105 Delivery to Tribal Police Chief

If directed to the Police Chief, it shall be delivered by the Clerk without delay.

Section 9-11-106 Service on Party Other Than Tribal Police Chief

If directed to any other person, it shall be delivered to the Police Chief and shall be served upon the person without delay.

Section 9-11-107 Service When Person Not Found

If the person cannot be found, or refuse admittance it may be served by leaving it at the residence by affixing it at some conspicuous place, of house or where the party is confined under restraint.

Section 9-11-108 Return and Enforcement of Writ

The Police Chief or person shall make immediate return. If they neglect or refuse, to make return, or to produce the party and no sufficient excuse is shown, the Court shall enforce obedience.

Section 9-11-109 Manner of Return

The return must be signed and verified by the person making it, who shall state:

- (A) The authority or cause of restraint of the party in their custody;
- (B) If the authority is written, they shall return a copy and produce the original at the hearing;
- (C) If they had the party in custody or under restraint, and have transferred them, they shall state to whom, the time, place and cause of the transfer.

Section 9-11-110 Proceedings in Case of Sickness or Infirmary

The Court, if satisfied with the truth of the allegation of good cause for not producing the person, may proceed to decide on the return, or adjourn until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or allege any new matter the new matter shall be verified, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

Section 9-11-111 Hearings and Discharge

The Judge shall proceed in a summary way to hear and determine the cause, and if no legal cause is shown shall discharge the party.

Section 9-11-112 Reserved

Section 9-11-113 Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment for lack of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged lack of probable cause. In such cases, the court shall summon the prosecutor and inquire into the charge and discharge, let to bail or recommit the prisoner.

Section 9-11-114 Writ May Issue to Admit to Bail

The writ may be for the purpose of setting a prisoner bail in civil and criminal actions.

Section 9-11-115 Notice to Interested Persons

When any person has an interest in the detention, the prisoner shall not be discharged until that person is notified.

Section 9-11-116 Powers of Court

The judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary.

Section 9-11-117 Officers Not Liable for Obeying Orders

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement.

Section 9-11-118 Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held in, and there is good reason to believe such person will be carried out of the jurisdiction or will suffer some irreparable injury, the Court, may cause a Warrant to be issued, reciting the facts, and directing to the Police Chief to take the person held in custody and bring him before the Court.

Section 9-11-119 Arrest of Party Causing Restraint

The judge may insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Section 9-11-120 Execution of Warrant of Attachment

The officer shall execute the Warrant by bringing the person before the Court and the like return and proceedings shall be required as in writs of habeas corpus.

Section 9-11-121 Temporary Orders

The Court may make any temporary orders that justice may require. The custody of any person restrained may be changed from one person to another, by Court order.

Section 9-11-122 Issuance and Service on Sunday

Any writ, warrant, or process authorized may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.

Section 9-11-123 Issue of Process

All writs and process, may be issued by the Clerk upon Court direction, and except summons, sealed and shall be served and returned unless the Court shall specify a particular time. No writ or process shall be disregarded for any defect if enough is shown to notify the officer or person of the process. Amendments and temporary commitments may be allowed.

Section 9-11-124 Protection of Infants and Insane Persons

Writ of habeas corpus will be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and protection of infants and insane persons.

Section 9-11-125 Security for Costs Not Required

No deposit or security for costs shall be required for a writ of habeas corpus.

CHAPTER TWELVE MANDAMUS

Section 9-12-101 Functions of Mandamus

A writ of mandamus may be issued to any entity or person, to compel the performance of any act which law specifically as a duty, resulting from an office, trust or station. It cannot control discretion.

Section 9-12-102 Writ Not Issued Where Remedy at Law

This writ may not be issued where a plain and adequate legal remedy exists.

Section 9-12-103 Forms and Contents of Writs

The writ is alternative or peremptory. The alternative writ must state, the obligation of defendant to perform the act, omission to perform and command upon receipt or specified time, to do the act required or show cause at a specified time and place, why they refuse. The peremptory writ must be in a similar form, except the show cause is omitted.

Section 9-12-104 When Peremptory Writ of Issue

When the right to require performance of the act is clear and it is apparent no valid excuse can be given for not performing, a peremptory mandamus may be issued.

Section 9-12-105 Petition Upon Affidavit

The petition must be made upon affidavit, and the Court may require a notice be given to the adverse party, or grant an order to show cause why it should not be allowed, or grant the writ without notice.

Section 9-12-106 Allowance and Service of Writ

The writ must be signed by the Court, and served personally upon defendant; if defendant, duly served, neglects to return he shall be proceeded against for contempt.

Section 9-12-107 Answer

On the alternative writ's return day the served party may show cause, by answer made as a civil action answer.

Section 9-12-108 Failure to Answer

If no answer is made, a peremptory mandamus is allowed; if answer is made containing new matter, the plaintiff may make objections to its sufficiency or oppose it.

Section 9-12-109 Similarity to Civil Action

No other pleading or written allegation is allowed other than the writ and answer. They may be amended; and the issues tried as in a civil action.

Section 9-12-110 Recovery by Plaintiff

If judgment is given for plaintiff, plaintiff shall recover damages as civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

Section 9-12-111 Damages Bar Further Actions

Recovery of damages, against a party who made a return to a writ of mandamus, is a bar to any other action against the same party.

Section 9-12-112 Penalty for Refusal or Neglect to Perform

- (A) Whenever a peremptory mandamus is directed to any public officer, body or board, if the officer or member, refuses or neglects to perform the duty, the Court may impose a fine, not exceeding One Thousand Dollars (\$1,000.00).
- (B) When the peremptory writ of mandamus is directed to any private person who refused or neglected to perform, the Court may impose a civil fine, not exceeding Five Hundred Dollars (\$500.00), and commit him for a term of sixty (60) days or until he shall perform or agree to perform or purge his contempt. The Court may, order the Police Chief to perform the act required which shall have the same effect as if performed by the person.

CHAPTER THIRTEEN QUO WARRANTO

Section 9-13-101 Quo Warranto – Relief Obtainable by Civil Action

The writ of quo warranto, and proceedings by information in the nature of quo warranto, are abolished and the remedies may be obtained by civil action; the action may be instituted and filed by the contestant for office after the issuance of the certification of the election, and before thirty (30) days after induction. This Chapter shall not apply to any primary election.

Section 9-13-102 Grounds for Action

Action may be brought in the District Court, in the following cases:

- (A) When any person shall usurp, intrude or unlawfully hold or exercise any public office, or shall claim any franchise within Tribal jurisdiction or any office in any corporation created by Tribal authority;
- (B) Whenever any public officer shall have done or suffered any act which, by law, would be a forfeiture of office;
- (C) When any association or persons shall act within Tribal jurisdiction as a corporation without being legally incorporated or domesticated;
- (D) When any corporation does or admits acts which are a surrender or forfeiture of rights and privileges as a corporation, or any corporation abuses its power or intentionally exercises powers not conferred by law;
- (E) For any cause for which a remedy might have been obtained by writ of quo warranto, or information in the nature of quo warranto.

Section 9-13-103 Persons Who May Bring Action

When action is brought by the Tribal attorney general it shall be prosecuted in the name of the Tribe, but when brought by a person, it shall be prosecuted in name, direction, and expense of the person. When the action is brought against a person for usurping an office by the Tribal attorney general, he shall set forth the person rightfully entitled to office and his right or title, when the action is brought by the person claiming title, he may claim and recover any damage.

Section 9-13-104 Reserved

Section 9-13-105 Judgment for Plaintiff

If the plaintiff or person entitled prevails, he shall be installed in office. The Court shall order defendant to deliver all books and papers in their custody or within their power, belonging to the office.

Section 9-13-106 Enforcement of Judgment

If defendant refuse or neglect to deliver books and papers, the Court, shall enforce the order by attachment or imprisonment, or both.

Section 9-13-107 Separate Action for Damages

When the plaintiff prevails they may, if they have not claimed damages have a separate action for damages within one year. The Court may give judgment of ouster, franchise or corporate rights; and give judgment dissolving a corporation.

Section 9-13-108 Corporations

If judgment is rendered against any corporation, or persons claiming to be a corporation, the Court may order costs to be collected, and may restrain any disposition of the effects of the corporation, appoint a receiver, take an account, and make a distribution among the creditors and person entitled.

CHAPTER FOURTEEN SMALL CLAIMS PROCEDURE

Section 9-14-101 Small Claims

The following may be brought under the small claims procedure:

- (A) Actions for recovery of money based on contract or tort, including subrogation claims, where the amount sought exclusive of attorney's fees and other court costs, does not exceed Two Thousand Five Hundred Dollars (\$2,500.00). Libel or slander actions may not be brought in the small claims court.
- (B) Actions to replevy personal property where the value of personal property sought does not exceed two thousand five hundred dollars (\$2,500.00); where the claims for possession of personal property and to recover money are pleaded in the alternative, the joinder of claims is permissible if neither the value of the property nor the total amount of money sought exclusive of attorney's fees and other costs, exceed Two Thousand Five Hundred Dollars (\$2,500.00);

No action may be brought under small claims procedure by any collection agency, collection agent or any

Actions under the small claims procedure shall be initiated by plaintiff or attorney filing an affidavit in substantially the following form:

ORDER

The people of Citizen Potawatomi Nation to:

You are directed to appear and answer the foregoing claim and to have with you all books, papers and witnesses needed to establish your defense to said claim.

This matter shall be heard at
_____ (name and address of building), in
_____ (complete address of court house), at the hour of
_____ o'clock of the _____ day of _____, 20_____, or you are further notified in case you
do not appear judgment may be given against you as follows:

For the amount of claim as stated in the affidavit, for possession of the personal property described in the affidavit.

And, in addition, costs of the action (including attorney fees), including costs of service of this order.

Date this _____ day of _____, 20_____.

Clerk of the Court

Section 9-14-103 Preparation of Affidavit

The claimant shall prepare an affidavit. The affidavit may be presented in person or by mail. Upon receipt of affidavit, the Clerk shall file and make a true and correct copy and the clerk shall fill in the blanks in the order printed and sign the order.

Section 9-14-104 Service of Affidavit

Unless the Police Chief or authorized person is requested, the defendant shall be served by mail. The Clerk shall enclose a copy of the affidavit and order addressed to defendant, and mail by certified mail and request a return receipt. The Clerk shall attach to the original affidavit the receipt for the certified letter and return card or other evidence of service. If returned undelivered the clerk shall deliver a copy to the Police Chief who shall serve the defendant.

Section 9-14-105 Date for Appearance

The date for the appearance of defendant shall not be more than forty-five (45) days nor less than ten (10) days from the order's date. The order shall be served upon defendant at least seven (7) days prior to the date specified for the defendant's appearance. If it is not served the plaintiff must apply to the Clerk for a new order setting, a new day which shall not be more than forty-five (45) days nor less than ten (10) days from issuance of the new order.

Section 9-14-106 Transfer of Actions

No formal pleading, other than the claim and notice, shall be necessary, and no requirement to assert counterclaim or cross-claim, but if defendant wishes to state a counterclaim or a setoff, he shall file a verified answer, delivered to plaintiff or attorney in person, and filed not later than forty-eight (48) hours prior to the appearance of defendant. Answer shall be made in substantially the following form:

In the District Court
Citizen Potawatomi Nation
Small Claims Division

Citizen Potawatomi Nation)) SS
Shawnee, OK)

Subscribed and sworn to before me this _____ day of _____, 20____.

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Section 9-14-108 Actions for Amounts Exceeding in Excess of Two Thousand Dollars

If a claim, a counterclaim, or a setoff is filed exceeding Two Thousand Five Hundred Dollars (\$2,500.00) the action shall be transferred to the general civil docket unless both parties agree. If no agreement a judgment in excess of two thousand five hundred dollars (\$2,500.00) may not be enforced for the part that exceeds Two Thousand Five Hundred Dollars (\$2,500.00). Plaintiff shall deposit with the Clerk cost charged in other cases, less sums already paid or their claim shall be dismissed and remaining claims, shall proceed under the small claims procedure.

Section 9-14-109 Attachment or Garnishment, Other Matters

No attachment or prejudgment garnishment shall issue under the small claims procedure. Proceedings to enforce or collect a judgment under the small claims procedure shall be in all respects as other cases. No depositions, interrogatories or discovery proceeding shall be used under small claims procedure except in aid of execution. No new parties shall be brought in and no party shall be allowed to intervene.

Section 9-14-110 Trial by Court

Actions shall be tried to the Court. If either party wishes a reporter, he must notify the Clerk in writing at least forty-eight (48) hours before defendant's appearance and must pay the entire costs. Plaintiff and defendant have the right to witnesses and the judge may call witnesses and order production of documents. The hearing and disposition shall be informal with the object of dispensing speedy justice.

Section 9-14-111 Payment of Judgment

If judgment is against either party, the party shall pay immediately. The judge may order time of payment.

Section 9-14-112 Appeals

Appeals may be taken to the Supreme Court in the same manner as civil actions.

Section 9-14-113 Fees

A fee shall be charged and collected for the filing of the affidavit counterclaim or setoff, mailing of the affidavit determined by the Court Administrator. If served by Tribal Police, the Clerk shall collect the usual police service fee. After judgment, the clerk shall issue such process and shall collect fees and charges allowed.

Section 9-14-114 Costs

The prevailing party is entitled to costs, including the costs of service and enforcing any judgment.

Section 9-14-115 Judgments Rendered Under Small Claims Procedure

- (A) Judgments shall not be entered upon the judgment docket. Such judgment shall not become a lien upon real property unless entered upon the judgment docket.
- (B) Judgment, satisfied by payment other than through the Clerk or may be released upon application by judgment debtor and proof of notice mailed by the Clerk to judgment creditor at last-known address at least ten (10) days prior to the hearing of the application. Payment of all costs shall be paid by judgment debtor.

Section 9-14-116 Fee for Docketing Judgments

The Clerk shall, upon fee payment enter the judgment. Fees collected shall become part of the cost.

Section 9-14-117 Other Actions In Small Claims Court

With Court permission and consent of all parties, other actions not provided or exceeding the maximum amount allowed except actions for liable and slander, may be tried under the small claims procedure. The motion for leave to file shall contain the consent of the defendant or such consent shall be promptly filed.

CITIZEN POTAWATOMI NATION
COLLECTION, REPOSSESSION AND CIVIL FORFEITURE
TITLE 10

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CHAPTER ONE

FORCIBLE ENTRY AND DETAINER

Section 10-1-101 Forcible Entry and Detention

The District Court shall have jurisdiction for forcible entry and detainer, or detainer only, of real property. Claims for the collection of rent or damages may be included but other claims may not. A judgment under this act shall be conclusive as to issues adjudicated but it shall not bar other action.

Section 10-1-102 Powers of Court

The Court shall have power to inquire. If an unlawful and forcible entry has been made, or the lands and tenements are held unlawfully. The court shall grant plaintiff restitution upon a finding.

Section 10-1-103 Extent of Jurisdiction

Actions may be filed against tenants holding over their terms and in real estate sales on judicial process, when the judgment debtor was in possession at judgment or decree; in sales by executors, administrators, guardians and on partition, where parties to the partition were in possession at commencement after sales, on execution or otherwise, shall have been adjudged valid; and where defendant is a occupier of lands and tenements without color of title. This section is not to be construed as limiting the provisions of the preceding section.

Section 10-1-104 Issuance and Return of Summons

The summons shall be issued and returned as in other cases, except shall command the Police Chief or server, to summon the defendant to appear for trial at the time and place specified which shall be not less than ten (10) nor more than twenty (20) days from when the summons is issued. The summons shall apprise the defendant of the nature of the claim and the relief sought and the amount of judgment if defendant fails to appear. Pleadings may be amended to conform to the evidence.

Section 10-1-105 Service of Summons

The summons may be served as in other cases except service shall be at least ten (10) days before trial, and the return shall not be later than the day of trial, and also by leaving a copy with some person over fifteen (15) years residing on the premises, at least ten (10) days before trial; or, if service cannot be made by the exercise of reasonable diligence it may be served by registered mail with return receipt postmarked at least ten (10) days before trial.

Section 10-1-106 Constructive Service of Summons

If, with reasonable diligence, service cannot be made then service may be obtained for the sole purpose of restitution by the Tribal Police's posting summons conspicuously on the building on premises, and, if no building then by posting at some conspicuous place on the premises at least fifteen (15) days prior to trial, and by claimant's mailing a copy of summons to defendant at last-known address by registered or certified mail at least ten (10) days prior to trial. Service shall not render judgment for payment of money nor any relief other than the restoration of possession. Service shall not be ineffectual by the failure of defendant to actually receive or sign a return receipt.

Section 10-1-107 Answer or Affidavit by Defendant

(A) When defendant asserts title or boundaries are in dispute, they shall file a verified answer or affidavit which contains a full and specific statement of their defense. If defendant files an affidavit he shall file an answer within ten (10) days after the affidavit.

(B) No answer by defendant shall be required before the trial.

Section 10-1-108 Trial by Court

All cases for forcible entry and detainer or detainer shall only be tried by the Court.

Section 10-1-109 Reserved

Section 10-1-110 Attorney Fee

A reasonable attorney fee shall be allowed to the prevailing party.

Section 10-1-111 Writ of Execution – Form – New Trial

If judgment be for plaintiff, the Court shall, issue a writ of execution which shall be substantially the following:

The Potawatomi Nation. The Potawatomi Nation to the Police Chief:

Whereas, in an action for the forcible entry and detention of the following described premises, _____ tried before me, wherein, _____ was plaintiff, and _____ was defendant, judgment was rendered on the _____ day of _____, 20_____, that plaintiff have restitution of the premises; and recover rent, attorney fees and costs in the sum of _____; you, therefore, are commanded to cause the defendant to be removed from the premises and plaintiff to have possession; also that you levy on the goods and chattels of defendant, and make the costs of this writ, make legal service and due return.

Witness my hand this _____ day of _____, 20_____

District Judge

A motion for new trial may be filed within three (3) days of judgment but shall not stay execution.

Section 10-1-112 Stay of Execution

The defendant shall have three (3) days after judgment to post an appeal bond. This time limit may be enlarged by order not more than ten (10) days after judgment. Bond shall not relieve defendant of paying current rent while the appeal is pending. The rent shall be paid to the Court Clerk's office. An amount of rent shall be determined by order. Withdrawal by plaintiff of rent deposited pending appeal shall not stop right to possession. Failure to pay current rentals while the appeal is pending is abandonment of the appeal.

Section 10-1-113 Reserved

Section 10-1-114 Affidavit Form

The actions for unlawful entry and detainer alone or when joined with a claim for collection of rent or damages shall be commenced by filing an affidavit in the following form:

In the District Court, Citizen Potawatomi Nation Tribe,

Plaintiff

vs.

Defendant

AFFIDAVIT

_____, being duly sworn, deposes and says:

The defendant resides at _____,
and defendant's mailing address is _____

The defendant is indebted to the plaintiff in the sum of \$_____ for rent and for the further sum of \$_____ for damages to the premises rented by the defendant; the plaintiff has demanded payment of said sum(s) but the defendant refused to pay and no part of the amount sued for has been paid,

and/or

The defendant is wrongfully in possession of certain real property within Tribal jurisdiction described as _____; the plaintiff is entitled to possession and has made demand on the defendant to vacate the premises, but defendant refused to do so.

Subscribed and sworn to before me this

_____ day of _____, 20_____.

Notary Public (Clerk)

Section 10-1-115 Summons - Forms

The summons to be issued for forcible entry and detainer shall be in the following form:

SUMMONS

The Citizen Potawatomi Nation to _____ defendant:

You are directed to relinquish immediately to plaintiff total possession of the real property described as _____ or to appear and show cause why you should be permitted to retain control and possession.

This matter shall be heard at
 _____ [Name or address of building], in _____, [Town],
 _____ at the hour of _____ o'clock of _____ day of month, 20____, or you are
 further notified if you do not appear on the date shown, judgment will be given against you as follows:

For the amount of the claim for deficient rent and/or damages to the premises, as stated in the affidavit of plaintiff and for possession of the real property, whereupon a writ of assistance shall issue directing the Tribal Police to remove you from said premises and take possession.

A judgment for costs, including attorney's fees and other costs, may also be given.

Dated this _____ day of _____, 20_____

 Clerk of the Court

 Plaintiff or Attorney

 Address

 Telephone Number

CHAPTER TWO REPLEVIN

Section 10-2-101 Order of Delivery - Procedure

(A) The plaintiff in an action to recover possession of specific personal property may claim the delivery at the commencement provided.

(1) The complaint must allege

- (a) A description of the property
- (b) Plaintiff is the owner or has special ownership or interest and he is entitled to immediate possession
- (c) The property is wrongfully detained by defendant
- (d) The actual property value when articles are claimed, the value of each as practicable
- (e) The property was not taken in execution on order or judgment against plaintiff, or other process or if taken in execution it is exempt by law and

(2) The above allegations are verified by the party or, his agent or attorney

(3) A notice shall be issued and served on defendant with summons which shall notify an order of delivery is sought and the defendant may object by written objection filed with the Clerk and delivered or mailed to plaintiff's attorney within five (5) days of the service. If no written objection is filed, no hearing is necessary and the Court Clerk shall issue the order of delivery. If a written objection is filed the Court shall set the matter for hearing. No order of delivery may be issued until sureties have been executed.

(B) Where required notice cannot be served but the Judge finds a reasonable effort to serve was made and the plaintiff has shown the probable truth of the allegations the Court may issue an order for prejudgment delivery. Without actual notice, the defendant may move to have said order dissolved and for return of the property. Notice of the right to move for return of property shall be served upon the defendant or in a conspicuous place where the property was seized, and the Police Chief shall hold said property for

three (3) working days prior to delivery to plaintiff. Notice of said motion with the hearing date shall be served upon the plaintiff attorney. The motion shall be heard within ten (10) days after the date filed. The Court must grant the motion unless, the plaintiff proves the probable truth of the complaint's allegations. If said motion is filed before the Police Chief turns the property over the Chief shall retain control pending the hearing.

(C) The Court may, order the defendant not to conceal, damage or destroy and not remove the property from Tribal jurisdiction pending the hearing on plaintiff's request for prejudgment delivery and the order may be served with the summons.

Section 10-2-102 Penalty for Damage of Property Subject to Order of Delivery

Any person who willfully and knowingly damages property which there exists right to issuance of an order of delivery, or on which an order has been sought, or who conceals it, or removes it from the jurisdiction with intention of defeating enforcement of an order of delivery, or willfully refuses to disclose its location, or, if such property is in his possession, willfully interferes with the officer charged with executing such writ, may be held in civil contempt and shall be guilty of an offense, and if convicted shall be subject to a fine not more than one thousand dollars (\$1000.00) and imprisonment not more than six (6) months, or both; and, in addition shall be liable for double the amount of damage to the property together with a reasonable attorney's fee, which damages and fee shall be deemed basis for a tort claim.

Section 10-2-103 Undertaking in Replevin

The order shall not be issued until plaintiff has executed sufficient sureties approved by the Court, not less than double the value of the property to the effect the plaintiff shall duly prosecute and pay all costs and damages awarded against him, including attorney's fees and, if the property be delivered he will return it to defendant if so adjudged. Where the Tribe or its agents or subdivisions is party plaintiff, an undertaking in replevin shall not be required but a writ shall issue upon complaint. The Court for good cause shown may set a different amount.

Section 10-2-104 Replevin Bond - Value

On application of either party made at the time of

executing the replevin bond or re-delivery bond, or later with notice to the adverse party, the Court may hold a hearing to determine the value of the property. If the value determined is different from the complaint, the value determined shall control.

Section 10-2-105 Order of Delivery

The order for delivery of property to plaintiffs shall be addressed and delivered to the Police Chief. It shall state the names of the parties, the Court in which the action is brought, and command the Police Chief to take the property, and deliver it to plaintiff and to make return of the order.

Section 10-2-106 Order Returnable

The return day of the order of delivery, when issued at commencement shall be the same as the summons; when issued afterwards, it shall be ten days after it is issued.

Section 10-2-107 Execution of Order

The Police Chief shall execute the order. He shall deliver a copy of the order to the person charged with unlawful detainer or leave such copy at his usual place of residence, or place such property was seized.

Section 10-2-108 Re-delivery on Bond

If, within three working days after service of the order, there is executed sufficient sureties of the defendant, approved by the Court the defendant will deliver the property to plaintiff, if adjudged, and will pay all costs and damages awarded against him, the Police Chief shall return the property to defendant. If not given within three working days after service, the Police Chief shall deliver the property to the plaintiff.

Section 10-2-109 Exception to Sureties

Any party may except to the sufficiency of the sureties. Such exception shall be in writing and filed. Upon hearing, the Court shall make such order to safeguard the rights of the parties.

Section 10-2-110 Proceedings on Failure to Prosecute Action

If the property has been delivered to the plaintiff, and judgment rendered against him, or his action dismissed, or if he fail to prosecute to final judgment, the Court shall, on application of defendant inquire into the right of property, and right of possession of defendant.

Section 10-2-111 Judgment – Damages – Attorney Fees

Judgment for the plaintiff may be for possession, or

for recovery value when delivery cannot be had, and damages. If the property has been delivered to plaintiff, the defendant may claim a return or value of the property, when a return cannot be had, and damages. The judgment rendered in favor of the prevailing party may include a reasonable attorney fee.

Section 10-2-112 Officer May Break Into Buildings

The Police Chief or other enforcement officer, in execution delivery order may break open any building or enclosure in which property claimed, or is concealed upon probable cause but not until refused entrance and delivery after having made a demand, from the person having charge.

Section 10-2-113 Compelling Delivery by Attachment

The Court may for good cause shown, compel the delivery of property to the officer or party entitled thereto by attachment, and may examine either party as to the possession or control. Such authority shall only be exercised in aid of the foregoing provisions.

Section 10-2-114 Improper Issue of Order of Delivery

Any order for the delivery of property issued without the affidavit and undertaking required, shall be set aside and plaintiff shall be liable in damages to the party injured.

Section 10-2-115 Joinder of Cause of Action for Debt – Stay of Judgment

In any action for replevin the plaintiff may join with the claim a claim founded on debt owing to plaintiff if the debt is secured by a lien upon the property sought to be recovered. The execution of the judgment shall be stayed pending sale of the property and determination of the amount of debt remaining unpaid after the application of the proceeds.

CHAPTER THREE ATTACHMENT

Section 10-3-101 Grounds for Attachment

The plaintiff in a civil action for recovery of money may, at or after commencement have an attachment against the property of the defendant, upon proof of any following grounds:

- (A) When the defendant, or one of several defendants, is a foreign corporation, or a nonresident of Tribal jurisdiction (no order will be issued for

any claim other than a debt or demand arising upon contract, judgment or decree, unless the claim arose wholly within Tribal jurisdiction), or

- (B) When defendant has absconded with intention to defraud creditors, or
- (C) Has left Tribal jurisdiction to avoid service of summons, or
- (D) Conceals himself that a summons cannot be served, or
- (E) Is about to remove property, out of the jurisdiction with the intent to defraud creditors, or
- (F) Is about to convert property into money, for the purpose of placing it beyond the reach of creditors, or
- (G) Has property or rights in action, which they conceal, or
- (H) Has assigned, removed or disposed of, or about to dispose of property, with intent to defraud, hinder or delay creditors, or
- (I) Fraudulently contracted the debt, or fraudulently incurred the liability or obligations for which the suit has been brought, or
- (J) Where damages are for injuries arising from the commission of a criminal offense, or
- (K) When the debtor has failed to pay for any thing delivered, which they were bound to pay upon delivery, or
- (L) When the action is brought by the Tribe, or officers, agents, or political agencies for collection of any Tribal tax, levy, charge, fee, assessment, rental, or debt arising in contract or by statute and owed to the Tribe.

Section 10-3-102 Attachment Affidavit

An order of attachment may be issued when:

- (A) A civil complaint is filed for an order of attachment which states:
 - (1) The nature of plaintiff's claim
 - (2) That it is just
 - (3) The amount which plaintiff ought to recover, and,
 - (4) The grounds for an attachment.
- (B) The application must be verified by plaintiff, or, agent or attorney.

(C) The defendant has been served with notice and they may object within five (5) days. Plaintiff's application shall be attached and served with the notice, and the notice and application may be served with the summons.

(D) If no objection is filed within five (5) days, no hearing is necessary and the clerk may issue the order. If an objection is filed, the Court shall set the matter with notice to the adverse party. Before an order is issued, the Plaintiff must execute an undertaking. The Tribe and its agents shall not be required to execute an undertaking.

(E) If the Court finds the defendant cannot be given notice although a reasonable effort was made, the Court may issue the order. The defendant may subsequently move to have the attachment vacated.

Section 10-3-103 Attachment Bonds

The attachment bond shall be in such form and amount, as the Court directs, and shall guarantee payment of all damages, costs, and attorney fee's which result from a wrongful attachment. No bond shall be required of the Tribe.

Section 10-3-104 Order of Attachment

The order shall be directed and delivered to the Police Chief. It shall require them to attach lands, tenements, goods, chattels, stocks, rights, credits, moneys and effects of defendant within the Tribal jurisdiction not exempt by law stated in the order.

Section 10-3-105 When Returnable

The return day of the order when issued at commencement shall be the same as that of the summons, and otherwise within twenty days of issuance.

Section 10-3-106 Order of Execution

Where there are several orders of attachment against the defendant, they shall be executed in the order in which they are received.

Section 10-3-107 Execution of Attachment Order

The order of attachment shall be executed without delay. The Police Chief shall go to the place where defendant's property may be found, and attach said property and the officer shall make an inventory and appraisal of all property attached which shall be signed and returned with the order, leaving a copy with the person or in the place where the property was seized.

Section 10-3-108 Service of Order

- (A) When the property attached is real property, the officer shall leave a copy with the occupant, or, shall be posted in a conspicuous place. Where it is personal property, he shall take such into his custody.
- (B) When the property attached is real property, third parties shall not be affected until a copy of the attachment order and the legal description of the real property shall be filed in the land tract book maintained by the Court Clerk.

Section 10-3-109 Re-delivery on Bond

The Police Chief shall re-deliver the property upon the execution by the Defendant of an undertaking to the plaintiff, with sufficient sureties, to answer the judgment of the Court.

Section 10-3-110 through 10-3-140 Reserved

**CHAPTER FOUR
GARNISHMENT**

RESERVED FOR FUTURE PROVISIONS
RELATING TO GARNISHMENT

**CHAPTER FIVE
PROVISIONS RELATING TO ATTACHMENT
AND GARNISHMENT**

RESERVED FOR FUTURE PROVISIONS
RELATING TO BOTH ATTACHMENT AND
GARNISHMENT

**CHAPTER SIX
RECEIVERS**

Section 10-6-101 Appointment of Receiver

A receiver may be appointed by any Judge or Justice:

- (A) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property to his claim, or between partners or others jointly owning or interest in any property or fund, on application of the plaintiff, or of any party whose right or interest in the property or fund, or the proceeds, is probable, and where it is shown the property or fund is in danger of being lost, removed or materially injured.
- (B) In an action by a mortgage for the foreclosure and sale of the mortgaged property, where it appears the mortgage property is in danger of

being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

- (C) After judgment, to carry the judgment into effect.
- (D) After judgment, to dispose of the property accordingly or preserve it during an appeal, or in proceeding in aid of execution, when an execution has been returned unsatisfied, or when judgment debtor refuses to apply his property in satisfaction of the judgment.
- (E) In cases provided and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.
- (F) In all cases where receivers should be appointed to protect the property and rights of the parties in dispute.

Section 10-6-102 Person Ineligible

No party, or attorney, or person interested in an action, shall be appointed except by consent of all parties.

Section 10-6-103 Oath and Bond

The receiver must be sworn to perform duties faithfully, and with sureties, approved by the Court, execute an undertaking to such person and in such sum as the Court shall direct, they will faithfully discharge the duties of receiver and obey Court orders.

Section 10-6-104 Powers of Receiver

The receiver has under Court control power to bring and defend actions in their own name, as receiver; to take and keep possession of the property, to receive rents, to collect debts, to compound for and compromise the same, to make transfers, and to act as the Courts authorize.

Section 10-6-105 Investment of Funds

A receiver may invest funds by Court order when the principal and interest are guaranteed Federally and may be withdrawn within a reasonable time.

Section 10-6-106 Disposition of Property Litigated

- (A) When, a person, admits they possess or control any non-exempt money or thing capable of delivery, which, is held as trustee or which belongs or is due to a party, the Court may order it deposited or delivered to the party, with or without security, as the court directs.

- (B) Any person paying or delivering money or property into the Court, shall not be liable for collection or return of the property or money.
- (C) The party may be ordered to deposit or make payment into Court, which may be enforced by contempt, or upon application, may order the person holding property to be served with summons as a special defendant determine the nature and amount of property in their possession subject to payment into Court and ordering said person to pay or deliver the property. After payment has been made, the person shall be dismissed.
- (D) Where judgment has been obtained it is not necessary to formally appoint a receiver the Court Clerk shall act as receiver and shall pay money or deliver property to the person entitled.

Section 10-6-107 Punishment for Disobedience of Court

Whenever, the Court shall have ordered the deposit or delivery of money or thing, and the order is disobeyed, the Court, besides punishing for contempt, may order the Police Chief to take the money, or thing, and deposit or deliver it.

Section 10-6-108 Vacation of Appointment by Supreme Court

In appealed cases in which a receiver has been appointed, or refused, by any Justice, the party aggrieved may, within ten (10) days file a motion to vacate the order and for a hearing before a quorum at a time and place as the Justices determine. Pending final determination, if the order was one of appointment, the moving party shall give bond with sufficient sureties, in an amount fixed by the Court and the authority of such receiver shall be suspended and if such receiver shall have taken possession of any property it shall be surrendered to the owner.

**CHAPTER SEVEN
EXECUTION**

Section 10-7-101 Executions - Defined

Executions shall be deemed process of the Court, and shall be issued by the clerk, and directed to the Police Chief.

Section 10-7-102 Kinds of Executions

Executions are of three kinds:

- (A) Against the property of the judgment debtor.
- (B) For the delivery of possession of real or personal property, with damages for withholding the same, and cost.
- (C) Executions in special cases.

Section 10-7-103 Property Subject to Levy

Lands, tenements, goods and chattels, not exempt by law shall be subject to the payment of debts, and shall be liable to be taken on execution and sold.

Section 10-7-104 Property Bound After Seizure

All real estate not bound by the lien of the judgment, as well as goods and chattels of the debtor, shall be bound from the time they are seized.

Section 10-7-105 Execution Must Be Issued Within Three Years

If execution is not issued and filed within three (3) years after any judgment in Tribal Court or if three (3) years have intervened between the date the last execution on such judgment was filed and the date writ of execution was filed the judgment shall become unenforceable, and shall cease to operate as a lien. This section shall not apply to judgments in favor of the Tribe its subdivisions or agents.

Section 10-7-106 Priority Among Property

The writ of execution against the property of the judgment debtor, shall command the officer that the goods and chattels of debtor be made money specified in the writ; and if no goods and chattels, they cause the same non-trust interest in lands and tenements of the debtor; and the amount of the debt, damages and costs, for which the judgment is entered.

Section 10-7-107 Priority Among Executions

When two or more writs of execution against the same debtor shall be delivered to the officer prior to the date of sale no preference shall be given to either. If insufficient money is made, the amount made shall be distributed to the several creditors in proportion to the amount of their respective demands, provided nothing shall be construed to affect any preferable lien.

Section 10-7-108 Levy By Priority

The officer shall proceed to levy upon the goods and chattels of the debtor; if no goods and chattels can be found, the officer shall endorse on the writ "no goods," and levy the writ of execution upon any interests in lands and tenements of the debtor, and if any of the interests in lands and tenements shall be encumbered

by mortgage or liens, such lands and tenements may be levied upon appraised and sold, subject to such liens, which shall be stated in the appraisalment.

Section 10-7-109 Who Makes Levy

It shall be unlawful for anyone to levy an attachment or execution within Tribal jurisdiction who is not a bona fide Tribal officer.

Section 10-7-110 When Levy Void

Any attachment or execution issued to, or levied by anyone other than a Tribal Police officer shall be void and of no effect and the Clerk or other person issuing same, or officer or other person levying same, together with their bondsmen shall be liable for any damage.

Section 10-7-111 Penalty for Unlawful Levy

Anyone violating Section 940 shall be punished by a fine not to exceed five hundred dollars (\$500.00) or confinement in jail not to exceed thirty (30) days or both.

Section 10-7-112 Levy on Property Claimed by Third Person

If the officer shall levy on any goods and chattels claimed by any person other than the defendant, or be requested by plaintiff to do so, the officer may require the plaintiff to give him securities to pay all costs and damages they may sustain by reason of the detention or sale, and until securities are be given, the officer may refuse to proceed.

Section 10-7-113 Re-Delivery to Defendant

In cases where any officer shall, by an execution, levy upon any goods and chattels in their possession which remain unsold, for reasonable cause, the officer may, for own security, take the defendant's security, that the property shall be delivered to the officer holding an execution for sale at the time and place appointed either by notice, to defendant or by publication in a legal newspaper, naming the day and place of sale. If defendant fails to deliver or to pay to the officer the full value of goods and chattels, or amount of debt and costs, the undertaking, given may be proceeded on as in other cases.

Section 10-7-114 Notice of Sale of Chattels

The officer sale shall give public notice of the time and place of sale, at least ten days prior. The notice shall be given by publication in some newspaper or advertisements in five public places in the jurisdiction. Two advertisements shall be put up in the township

where the sale is to be held. Where goods and chattels cannot be sold for want of bidders, the officer making return shall attach an inventory of such goods and chattels, and the plaintiff may obtain another writ of execution, directing the sale but such goods and chattels shall not be sold, unless the time and place of sale be advertised.

Section 10-7-115 Further Levy When Property Taken Insufficient

When any writ directing the sale of property previously taken the officer issuing shall, at the request of the plaintiff add a command if the property remaining not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon lands and tenements, goods and chattels, or either, as the law permit, being the property of the judgment debtor, sufficient to satisfy the debt.

Section 10-7-116 Filing and Indexing of Execution

- (A) When a general execution is issued and given to the Police Chief for levy, a certified copy of such execution shall be filed and shall be indexed the same as judgments.
- (B) If a general or special execution is levied upon an interest in lands and tenements, the Police Chief shall endorse on the face of the writ the legal description and shall have three disinterested persons who have taken an oath to impartially appraise the property and their signed estimate of the real value of said property.
- (C) To extend a judgment lien beyond the initial or any subsequent statutory period, prior to expiration, a certified copy of a general execution shall be filed and indexed the same as judgments.

Section 10-7-117 Waiver of Appraisalment

It is against the public policy of the Tribe to allow enforcement of execution upon realty without appraisal, and the words "appraisalment waived" or other words of similar import, inserted in any deed, mortgages, bonds, notes, bill or written contract. They shall be of no effect whatsoever and an appraisal shall be ordered.

Section 10-7-118 Return of Appraisalment

The officer receiving the return of appraisalment shall deposit a copy with the Clerk, advertise and sell such property.

Section 10-7-119 When Lien Restricted

If, upon return, two thirds of the appraised value of

non-trust interest in lands and tenements, is sufficient to satisfy the execution, with costs, the judgment shall not operate as a lien on the residue of the debtor's estate, to the prejudice of any other judgment creditor; but no property shall be sold for less than two-thirds (2/3) of the value. Nothing shall extend to affect the sale of lands by the Tribe but all lands, the corporation or associations indebted to the Tribe for any debt or taxes, or in any other manner, shall be sold without valuation for the discharge of such debt or taxes.

Section 10-7-120 Notice of Sale of Realty

Any non-trust interest in lands and tenements taken shall not be sold until the officer causes public notice of the time and place of sale given by publication for two (2) successive weeks in a legal newspaper and by putting an advertisement upon the Court house door or other public bulletin board within a common area of the Court house and in five (5) other public places in the jurisdiction, two (2) of which shall be in the township where such lands and tenements lie. Such sale shall not be held less than thirty (30) days after the date of the first publication of the notice.

All sales made without such advertisement shall be set aside on motion by the Court.

Section 10-7-121 Confirmation of Sale

The Court, upon return of any writ of execution, shall, determine if the sale has been made in conformity with law. The Court shall direct the clerk to make a journal entry, the Court is satisfied and an order the officer make the purchaser a deed for such interest in lands and tenements; and the officer, shall deposit the purchase money with the clerk. The clerk shall pay the person entitled.

Section 10-7-122 Police Chief's Deed

The Police Chief or other officer upon writs of execution shall sell the lands and tenements, shall make to the purchaser as good and sufficient deed of conveyance as the person against whom such writs of execution were issued could have made at or after they became liable to the judgment. The deed shall be sufficient evidence of the legality of such sale, and shall vest in the purchaser as good and as perfect an estate as was vested in the party at, or after, such lands and tenements became liable to the satisfaction of the judgment; and such deed of conveyance, shall recite the execution or the substance, parties, the amount and date of each judgment. The conveyance shall be acknowledged and recorded as is provided by law, to perfect the conveyance of such interests in real estate.

Section 10-7-123 Advance of Printer's Fees

The officer is charged with the duty of selling may refuse to publish a notice of sale until the benefiting party shall pay the printer.

Section 10-7-124 Demand for Printing Fees

Before any officer shall be excused from giving the notification he shall demand the printer fees.

Section 10-7-125 Place of Sale

All sales of interests in lands or tenements under execution shall be held at the Tribal Court house unless some other place within the Tribe is designated. No Tribal Policeman or other officer making the sale of property, nor any appraiser shall either directly or indirectly purchase property and every purchase so made shall be considered fraudulent and void.

Section 10-7-126 Other Executions of Realty Not Sold

If lands or tenements, levied on are not sold upon one execution, other executions may be issued.

Section 10-7-127 Levy on Realty Under Several Execution

In all cases where two or more executions are delivered necessary to levy on real estate and the judgment creditors require a levy on separate parcels of the real property of the judgment debtor, the officer will levy on separate parcels when, in the opinion of the appraisers, the property will not be sufficient, at two-thirds (2/3) of its appraised value, to satisfy all the executions. Each part shall be levied on, to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due to the execution bears to the amount of all the executions chargeable, as near as may be according to the appraised value of each separate parcel.

Section 10-7-128 Deed by Successor of Officer Making Sale

If the Tribal Police Chief or other officer is unable to make a deed of conveyance any succeeding Tribal Police Chief or officer, on receiving a certificate from the Court issued for the sale of non-trust interest in lands and tenements, signed by the clerk, may execute a deed of conveyance. Such deed shall be as good and valid in law and have the same effect as if the Tribal Police Chief or other officer who made the sale had executed the same.

Section 10-7-129 Payment to Defendant of Overplus After Sale

If there is money leftover after satisfaction of writs of execution, with interest and costs, the Tribal Police Chief or other officer shall, on demand, pay the balance to the defendant.

Section 10-7-130 Reversal of Judgment After Sale of Interest in Land

If any judgments, in which any non-trust interests in land or tenements are sold, is reversed, reversal shall not defeat or affect the title of the purchaser or purchasers; but, restitution shall be made by judgment creditors.

Section 10-7-131 Execution on Judgment in Favor of Tribe

In all civil actions where the Tribe recovers judgment, and an execution has issued, the Tribe may bid on, and buy the property. When bought by the Tribe, the property may be sold for the Tribe. At such execution sale the Tribal attorney may bid for the Tribe.

In disposing of personal property, the officer may sell the property by executing a good and sufficient Bill of Sale, attested by the Secretary of the Tribe. In disposing of any non-trust interest in real property, the officer may execute in the name of the Tribe a good and sufficient deed, attested by the Secretary of the Tribe. Provided, in no event shall any sale be valid for any amount less than the amount for which said property was originally bid in by the Tribe. The funds obtained shall be placed in the fund for which the judgment was obtained, or in the Tribal land purchases fund.

Section 10-7-132 Reappraisal Where Realty Twice Advertised for Sale

Where a non-trust interest in real estate has been taken on execution, appraised twice, advertised and offered for sale, and is unsold, the Court on motion of plaintiff, may order a new appraisal or order a new execution to issue.

Section 10-7-133 Return of Execution

The Police Chief or officer, to whom any writ of execution shall be directed, shall return such writ to the Court within ninety (90) days.

Section 10-7-134 Principal and Surety

Where judgment is rendered in which persons are jointly and severally bound, and it is shown, one or more signed as surety or bail, the clerk shall certify which of the defendants is the principal debtor, and which

are sureties or bail. The clerk shall issue execution to cause the sale of the property of the principal debtor. If insufficient, they cause the sale of the property of the surety or bail. The property, both personal and real, of the principal debtor, within the jurisdiction shall be exhausted before any property of the surety or bail shall be taken.

Section 10-7-135 Hearing on Assets

The Court, upon motion of the judgment creditor, may order the judgment debtor to appear and answer concerning his property subject to execution to satisfy judgment. The order to appear shall be served as a summons and may contain an order prohibiting the conveyance of any non-exempt property, and may order the production of any books, records, documents, or papers relating to the judgment creditors property. Such order may be enforced by contempt proceedings.

Section 10-7-136 through 10-7-140 Reserved

**CHAPTER EIGHT
CIVIL REMEDIAL FORFEITURE CODE**

SECTION ONE

Section 10-8-101 Purpose and Authority

This Chapter is enacted under the authority of the Tribal Constitution, Article VII, Section 1 (d), (g) and (k), in order to provide for the civil remedial forfeitures of money penalties and property for violation of tribal civil regulatory or criminal Tribal Code provisions. The remedial measures of this Chapter are designed and intended to encourage compliance with tribal law and to compensate the Tribe for damage to the peace, security, welfare, or resources of the Tribe.

Section 10-8-102 Definitions

As used in this Chapter:

- (A) "Crime" (or "criminal") means (or refers to) an act or omission forbidden by a Tribal Code provision which is punishable upon conviction by imprisonment, fine not designated as a civil fine or civil remedial forfeiture, or other penal discipline.
- (B) "Enforcing officer" means federal enforcement agents, Tribal law enforcement officers, and other persons specifically authorized by Tribal law or a cross-deputization or mutual aid agreement with the Tribe to enforce Tribal law.
- (C) "Indian" means any person of Native American

ancestry who is subject to federal criminal jurisdiction under the Major Crimes Act, 18 U.S.C. 1153.

(D) “Non-Indian” means any person who is not an Indian as defined in sub. 3.

(E) “Tribal Jurisdiction” means all of Indian Country as defined in 18 U.S.C. § 1151, whether within or without the Tribal boundaries that are subject to the jurisdiction of the Tribe.

The Tribal Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Tribe, the Indian Civil Rights act of 1968, as amended, and any specific restrictions or prohibitions contained in Federal law.

(F) “Tribe” (or “Tribal”) means (or refers to) Citizen Potawatomi Nation.

(G) “Tribal Court” means the Citizen Potawatomi Nation, as established by Tribal Constitution and Code.

Section 10-8-103 Tribal Ordinances Affected

(A) Whenever any Tribal Code provision is covered by a civil fine or civil remedial money penalty or the civil remedial forfeiture of any property for its breach, the Tribe shall proceed against such person or property as provided in this Chapter, unless a different procedure is specified for that provision.

(B) The general provisions of other chapters of the Tribal Code, or of any rules of court promulgated by the Tribal Court to govern general procedures in Tribal Court, shall apply to proceedings instituted under this Chapter, to the extent such provisions are not inconsistent with the provisions of this Chapter.

Section 10-8-104 Application to Non-Indians

Any act or omission which constitutes a crime if committed by an Indian shall constitute a civil infraction subject to a civil remedial money penalty under this Chapter if committed by a non-Indian or any other person over whom the Tribe is not permitted by federal law to exercise criminal jurisdiction.

Section 10-8-105 Property Used in Commission of Crime

Any property used in the commission of any act which constitutes a crime if committed by an Indian shall be

subject to civil remedial forfeiture of property under Subchapter III regardless of whether such property is owned by or was used by a non-Indian.

Section 10-8-106 Parties to a Violation

Any person who is concerned in the commission of a violation remediable under this Chapter is a principal and may be adjudged to have committed the violation although such person did not directly commit it and although the person who did directly do so has not been subjected to a criminal prosecution or the remedial provisions of this Chapter. A person is concerned in the commission of a violation if such person:

(A) Directly commits the violation; or

(B) Aids and abets the commission of a violation; or

(C) Is party to a conspiracy with one or more others to commit the violation or advises, hires, counsels, or otherwise procures another to commit the violation.

Section 10-8-107 Jurisdiction

The Tribal Court shall have jurisdiction over proceedings instituted under this Chapter.

Section 10-8-108 Party Plaintiff

Any proceeding instituted under this Chapter shall be brought in the name of the Tribe, as plaintiff.

Section 10-8-109 Effective Date

This Chapter shall take effect immediately upon its enactment.

Section 10-8-110 Implied Consent

Entry into the Tribal jurisdiction without the permission of the Tribe is prohibited. Such permission when given is expressly conditioned upon the consent of the person entering the jurisdiction of the Tribe for purposes of enforcing this Chapter and any other Tribal Code provision enforced by means of this Chapter. Entry into the Tribal jurisdiction made in any manner other than in conformity with this Chapter or any Tribal Code provision enforced by means of this Chapter is made without consent. Any person who enters into the Tribal jurisdiction shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this Chapter.

Section 10-8-111 Severability

If any section, provision or portion of this Chapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected.

Section 10-8-112 Additional Remedies

The civil remedial forfeiture remedies provided for in this Chapter are not mutually exclusive remedies of the Tribe for violation of its Tribal law. Nothing in this Chapter shall restrict or curtail the right of the Tribe to prosecute or seek the criminal prosecution of any defendant or owner or to institute a civil action for damages in any court against a defendant or owner. In addition to the civil remedies provided in this Chapter, the Tribal Court may order a defendant or owner to perform or refrain from performing such acts as may be necessary fully to protect the Tribe, its members, its property, or its natural resources. The Tribal Court may order abatement of a nuisance, restoration of a natural resource, or other appropriate action designed to eliminate or minimize damage caused by a defendant or owner.

SECTION TWO

CIVIL REMEDIAL MONEY PENALTIES

Section 10-8-201 Institution of Proceedings;

Citation

Proceedings for the recovery of a civil remedial money penalty shall be instituted by the issuance of a citation by an enforcing officer. Whenever an officer has reason to believe that a person subject to tribal authority has committed a breach of a Tribal Code provision that is subject to a civil remedial money penalty, the officer shall issue a citation to that person and file a copy with the Tribal Court. A citation may be served personally or by ordinary mail.

Section 10-8-202 Notice to Alleged Violator;

Jurisdiction

The issuance of a citation by an enforcing officer is sufficient notice to the alleged violator that he is charged with a civil infraction subject to a civil remedial money penalty, and is adequate process to give the Tribal Court jurisdiction over the person allegedly committing the violation upon the filing of the citation with the Tribal Court.

Section 10-8-203 Citation Contents

(A) It must appear on the face of the citation that there is a reasonable basis to believe that a breach of a Tribal Code provision has been committed and that the defendant charged has committed the breach.

(B) The citation form shall contain the following:

- (1) The name of the person to whom the citation was issued, together with the person's age and address, if available;
- (2) The Tribal permit or license number of the defendant, if applicable;
- (3) The name of the issuing officer;
- (4) The breach alleged, the time and place of occurrence, a statement that the defendant committed the breach, the Tribal Code provision charged, and a description of the breach in language which can be easily understood;
- (5) The maximum civil remedial money penalty for which the defendant might be found liable;
- (6) A date, time and place for a Tribal Court appearance, and a notice to appear;
- (7) Provision for a deposit and stipulation of default in lieu of court Appearance;
- (8) Notice that if the defendant fails to appear at the time fixed in the citation, he will be defaulted and judgment entered in an amount up to the maximum penalty;
- (9) Notice that if the defendant makes a deposit and stipulation of default, judgment will be entered in the amount of the deposit; and
- (10) Any other pertinent information.

Section 10-8-204 Stipulation of Default; Deposit

- (A) A defendant to whom a citation is issued may make a deposit and stipulation of default in lieu of a court appearance at any time prior to the date set for appearance before the Tribal Court.
- (B) The amount of the deposit shall be determined by an enforcing officer at the time of issuance of the citation, but shall not exceed the maximum penalty established in the Tribal code provision charged or by this Chapter or set forth in a deposit schedule adopted by the Tribal Court under its rulemaking authority.
- (C) By signing the stipulation of default, the defendant consents to the entry of judgment against him or her for a penalty not to exceed the amount of the deposit.
- (D) The Clerk of Tribal Court or the enforcing officer issuing the citation shall accept the deposit

and stipulation of default and shall prepare a receipt showing the purpose for which the deposit was made, which shall be transmitted to the defendant. In the event that acceptance of the deposit and stipulation is made by an enforcing officer, the officer shall file the stipulation of default and a copy of the receipt with the Clerk of Tribal Court.

Section 10-8-205 Burden of Proof

In all actions under this Subchapter, the Tribe shall have the burden of showing by a preponderance of the evidence that the defendant breached the Tribal code provision charged in the citation. The Tribe shall not, however, be required to show that the defendant intended to breach the Tribal code provision charged.

Section 10-8-206 Default

Upon failure of the defendant to appear on the date indicated on the citation, an entry of default shall be made by the Clerk of Tribal Court and the Tribal Court may proceed with the hearing and enter judgment under this Subchapter. If the citation was served by ordinary mail, proof of receipt by the defendant shall be required before default may be entered.

Section 10-8-207 Judgment

If upon default or after the presentation of all the evidence the defendant is found by a preponderance of the evidence to have breached the Tribal code provision charged, the Tribal Court shall enter judgment against the defendant and in favor of the Tribe for a monetary amount not to exceed the maximum civil remedial money penalty provided for the offense or, if a deposit has been made by the defendant, for an amount not to exceed the amount of the deposit.

Section 10-8-208 Amount of Penalty

The maximum civil remedial money penalty which may be imposed for a violation of a Tribal code provision under this Subchapter shall be the lesser of:

- (A) Five Thousand Dollars (\$5,000.00); or
- (B) The maximum amount provided in the Tribal Code provision violated, if an amount is specified; or
- (C) In the case of a civil infraction by a non-Indian subject to 84.104, the maximum criminal fine imposed by the Tribal Code provision violated, if such an amount is specified.

Section 10-8-209 Enforcement of Judgment

All civil remedies are available to enforce the judgment of the Tribal Court, including the power of civil contempt. A judgment shall be a lien upon any available property of the defendant which is located within the jurisdiction of the Tribal Court. When necessary, the Tribe may bring suit in any court on the judgment against the defendant or his property located beyond the jurisdiction of the Tribal Court.

Section 10-8-210 Monies Tendered to the Tribal Court

Deposits and money paid on judgments rendered under this Subchapter shall be tendered to the Clerk of Tribal Court. The Clerk shall tender such sums to the Tribal accounting department for deposit in the general fund of the Tribe or for such other disposition as may be directed by a provision of the Tribal Code.

**SECTION THREE
CIVIL REMEDIAL FORFEITURE OF
PROPERTY**

Section 10-8-301 Institution of Proceedings; Complaint

Proceedings for the civil remedial forfeiture of property shall be instituted by the filing of a complaint in rem against the property in Tribal Court by an enforcing officer. A complaint shall be filed whenever such officer has a reasonable basis to believe that a Tribal Code provision has been breached and that the property is forfeitable under Tribal law.

Section 10-8-302 Contents of Complaint

- (A) It must appear on the face of the complaint that there is a reasonable basis to believe that a Tribal Code provision has been breached and that the property is forfeitable under that provision or under another provision of the Tribal Code.
- (B) The complaint shall contain the following:
 - (1) A description of the property against which proceedings are instituted;
 - (2) The Tribal Code provision allegedly breached;
 - (3) A description of the breach in language which can be easily understood;
 - (4) The name, address, and other pertinent information about the owner of the property, if known, or a statement that the owner of the property is unknown;

- (5) A request for an order from the Tribal Court to seize the property; and
- (6) The name and signature of the complaining enforcing officer.

Section 10-8-303 Service of Complaint

- (A) If the owner of the property is identified in the complaint, the complaint and a notice to appear at a hearing on an order to seize shall be served on the owner as provided for service of civil complaints.
- (B) If the owner of the property is not identified in the complaint or his present whereabouts is unknown and so recited in the complaint, service shall be made by posting the complaint and notice to appear at the Tribal Court, the central tribal office and by publication once in a newspaper of general circulation on the Tribe. An affidavit of publication and posting shall be filed with the Tribal Court.

Section 10-8-304 Seizure of Property Without Order

- (A) Property may be seized by an enforcing officer prior to the filing of a complaint and issuance of an order to seize if one or more of the following circumstances exist:
 - (1) A Tribal Code provision authorizes the immediate seizure of the property;
 - (2) The property seized presents a danger to persons, property, or a natural resource of the Tribe;
 - (3) The enforcing officer has a reasonable basis to believe that without immediate seizure, the property will be removed from the jurisdiction of the Tribal Court; or
 - (4) The enforcing officer has a reasonable basis to believe that the property was used in the commission of an act which, if committed by an Indian, would constitute a crime within the jurisdiction of the Tribe.
- (B) A receipt describing the property seized shall be issued to the person in possession of the property at the time of the seizure, if such person is present.

Section 10-8-305 Seizure of Property With Order

Any property alleged to be subject to civil remedial forfeiture may be seized under an order to seize issued

by the Tribal Court. Any and all property so seized or seized without order as provided, shall be held by the Tribal Court pending disposition of the complaint or until a bond has been posted with the Tribal Court as provided.

Section 10-8-306 Bond for Property Seized

The Tribal Court may release property seized to the owner upon the posting of bond with the Tribal Court in an amount and under the conditions with the trial judge determines are necessary to protect the interests of the Tribe. In no event shall the amount of the bond exceed the fair market value of the property seized. Upon the posting of a proper bond, the bond shall be available to be levied against if the owner does not return the property to the custody of the Tribal Court in proper condition upon a determination of the Tribal Court that the property is forfeited.

Section 10-8-307 Hearing; Time

When property has been seized prior to the issuance of an order to seize, a hearing on the order to seize shall be held within five (5) working days after the seizure. If the hearing is not held within that time, the property seized shall be immediately returned to the owner, if the owner is known. The hearing on the order to seize requested in the complaint filed with the Tribal Court shall be held within thirty (30) days of the filing of the complaint.

Section 10-8-308 Hearing Procedure

- (A) At the hearing on the order to seize, the Tribe shall have the burden of showing that there is a reasonable basis to believe that:
 - (1) The property is subject to civil remedial forfeiture; and
 - (2) The property is within the jurisdiction of the Tribal Court.
- (B) The parties may present evidence through the testimony of witnesses. Affidavits will be accepted in lieu of testimony if, in the trial judge's discretion, it is determined that the interest of justice would be best served by doing so.

Section 10-8-309 Order to Seize

- (A) If, after the hearing, the trial judge finds that there is a reasonable basis to believe that the property is subject to civil remedial forfeiture under the Tribal Code provision alleged in the complaint, and that the property is within the

jurisdiction of the Tribal Court, the trial judge shall issue an order to seize, directing an enforcing officer to seize the property and hold it pending disposition of the complaint.

- (B) If, after hearing, the trial judge finds that there is not a reasonable basis to believe that the property is subject to civil remedial forfeiture under the Tribal Code provision alleged, or that the property is within the jurisdiction of the Tribal Court, the trial judge shall dismiss the complaint and, if property was seized prior to the hearing, order the property immediately released.

Section 10-8-310 Contents of an Order to Seize

An order to seize shall contain the following:

- (A) A description of the property subject to the order;
- (B) The date of filing of the complaint for forfeiture, and the name and department of the complaining officer;
- (C) A finding that the property is within the jurisdiction of the Tribal Court;
- (D) A finding that there is a reasonable basis to believe that the property is subject to a civil remedial forfeiture, a brief factual narration of the grounds for the finding, and citation to the Tribal Code provision allegedly breached;
- (E) Notice of the date, time and place of trial; and
- (F) Notice that the property may be released by the posting of a proper bond. The order to seize shall be served as provided in 303.

Section 10-8-311 Existence of Security Interest in Seized Property

The enforcing officer shall make a reasonable effort prior to the hearing on the order to seize to ascertain whether a perfected security interest exists in the property and, if one does exist, shall give notice to the secured party of any hearing in the case, and shall also give the secured party a minimum of fifteen (15) days notice of the time and place of any sale conducted under § 10-7-113.

Section 10-8-312 Trial

At trial, the Tribe shall have the burden of showing by a preponderance of the evidence that the property is forfeitable under the ordinance Tribal Code provision charged or a provision of this Chapter. If the Tribe fails to meet this burden, the Tribal Court shall dissolve

the order to seize, enter judgment awarding title to the property to the owner, and order immediate release of the property or discharge of the bond, whichever is appropriate. If the Tribe meets its burden, the Tribal Court shall dissolve the order to seize, enter judgment awarding title to the property to the Tribe, and place the property in the hands of the Tribe for disposition or, if bond was posted, order the bond forfeited to the Tribe.

Section 10-8-313 Property Subject of Forfeiture

All items forfeited in this section shall be forfeited under the procedures established by this code. Whenever any item is forfeited pursuant to this section, the District Court shall order that such item, money, or monies derived from the sale of such item, be deposited by the Citizen Potawatomi Nation Court Administrator in a revolving fund, with said funds of any forfeiture of items seized to be used for law enforcement and prosecutorial purposes as approved by the Court Administrator.

Section 10-8-314 Sale of Perishable Property

Any perishable property seized under this Subchapter may be sold by an enforcing officer at the highest available price, and the proceeds of such sale shall be tendered to the Tribal Court to await such disposition of the proceeds as the Tribal Court shall direct.

Section 10-8-315 Effect on Seizure of Evidence

Nothing in this Chapter shall affect or limit the power of enforcing officers to execute search warrants or seize and hold property which constitutes evidence in any criminal case. Such property shall not be forfeited, however, except in compliance with this chapter.

CITIZEN POTAWATOMI NATION
CRIMINAL PROCEDURE
TITLE 11

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CRIMINAL PROCEDURE

PREFACE

Section 11-0-001 Scope, Purpose and Construction

- (A) This Act governs the procedure in all criminal proceedings in the Tribal District Court and all preliminary or Supplementary procedures as specified herein.
- (B) This Act shall be construed to secure simplicity in procedure, fairness and the elimination of unjustifiable expense and delay.
- (C) Where no particular procedure is provided, resort shall be had to the Civil Procedure Act or other applicable tribal law. If no procedure is provided in this Act, Civil Procedure or Tribal law, the Court may proceed in any lawful fashion while protecting the rights of the defendant.
- (D) The Citizen Potawatomi Nation maintains civil and criminal jurisdiction over its members and others who enter into a voluntary relationship with the Nation.
- (E) Citizenship or membership in the citizen Potawatomi Nation is voluntary. Anyone who chooses to disassociate himself or herself from the Nation may do so by withdrawing from the tribal rolls. Therefore, those individuals who maintain membership in the citizen Potawatomi Nation do so knowing that they voluntarily "assume tribal relations" with the Nation.
- (F) Individuals who voluntarily "assume tribal relations" with the Citizen Potawatomi Nation through voluntary tribal membership, intermarriage, Residence, or other substantial activities are subject to the criminal and civil jurisdiction of the citizen Potawatomi Nation. Criminal and civil jurisdiction over tribal members shall not be dependent upon the location of jurisdiction of their residence.

CHAPTER ONE

PRELIMINARY PROVISIONS

Section 11-1-101 Prosecution of Offenses

- (A) No person shall be punished for an offense except upon a legal conviction, including a plea or admission of guilt or nolo contendere; no incarceration or other disposition prior to trial shall be deemed punishment.

(B) All Criminal proceedings shall be prosecuted in the name of the Tribe.

(C) The case number assigned to criminal actions shall clearly distinguish them.

Section 11-1-102 Rights of Defendant

In all criminal proceedings, the Defendant shall have the following rights:

- (A) To appear and defend in person or by counsel. To designate a spokesperson with Court permission or advocate admitted to practice. The privilege to have counsel appointed may be granted by the Court or Tribal Chairman.
- (B) To be informed of the charges and to have a written copy.
- (C) To testify in their own behalf, or refuse to testify. Once a defendant testifies on any matter relevant to the proceeding against them, they shall be deemed to have waived all right to refuse to testify.
- (D) To confront and cross examine all witness against them.
- (E) To compel by subpoena the attendance of witnesses on their behalf.
- (F) To have a speedy public trial by impartial judge or jury.
- (G) To appeal in all cases.
- (H) Not to be twice put in jeopardy by the Tribe for the same offense.

Section 11-1-103 Limitation of Prosecution

- (A) Every criminal proceeding, except an offense where banishment is possible, shall be commenced within five (5) years of commission, or prosecution shall be forever barred. Every criminal offense, for which banishment is a possible punishment, shall be commenced within seven (7) years of commission, or prosecution for that offense shall be forever barred.
- (B) If an offense is committed by actions occurring on two (2) or more separate days, the offense will be deemed to have been committed on the final day.
- (C) Time spent outside the jurisdiction of the Tribe for the purpose of avoiding prosecution shall not be counted toward the limitation period.
- (D) If the crime is committed against a juvenile the

limitation does not begin to run until the victim reaches the age of majority.

- (E) The filing of criminal charges stays the running of the limitation.

Section 11-1-104 Reserved

**CHAPTER TWO
PROCEEDINGS BEFORE TRIAL**

Section 11-2-101 The Complaint

- (A) **Complaint:** Every criminal proceeding shall be commenced by the filing of a criminal complaint.

(B) **Contents of Complaint:**

- (1) The name and address of the court:
- (2) The name of the defendant; or some other name if not known plus whatever description of the defendant is known.
- (3) The signature of the Prosecutor; and his typewritten name.
- (4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated.
- (5) The person against whom or against whose property the offense was committed and the names of the witnesses if known, otherwise no statement need be made.
- (6) The general name and Tribal code title and section number of the alleged offense.
- (7) If the offense(s) is punishable by banishment, the Prosecutor may state in the complaint or an amendment that banishment will be recommended. If such statement is not made banishment may not be imposed.

- (C) **Error:** No minor omission or error in the complaint shall be grounds for dismissal unless some significant prejudice against the defendant can be shown.

- (D) **Time of filing complaint:** A complaint may be filed at any time within the period prescribed by Section 103, if an accused has been arrested without a warrant the complaint shall be filed no later than the time of arraignment.

Section 11-2-102 Arrest Warrant or Summons to Appear

- (A) If a complaint has been filed, a judge shall issue a summons to the defendant. An arrest warrant shall issue only upon a complaint supported by testimony or affidavit, which the judge can determine probable cause exists to believe an offense has been committed and the defendant committed it.

- (B) **Issuance of Arrest Warrants or Summons:** Unless the Tribal Judge has reasonable grounds to believe the person will not appear on a summons, a summons shall be issued instead of an arrest warrant.

- (C) **Contents of Arrest Warrants:** The warrant shall be signed by the Judge and shall contain the name and address of the Court; the name of the defendant, or any alias and, a description of the offense with a reference to of the Tribal Code. It shall order and command the defendant be arrested and brought before a Judge to enter a plea. When there are multiple charges only one warrant is necessary.

- (D) **Contents of Summons:** A criminal summons shall contain the same information as an arrest warrant except, it shall order the defendant to appear and to enter a plea, and notice upon failure to appear an arrest warrant may issue and the defendant may be further charged.

(E) **Service of Arrest Warrants and Summons:**

- (1) Warrants for Arrest and Criminal Summons may be served by any law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made in accordance with Tribal Law.
- (2) Before service of foreign arrest warrants and summons, all law enforcement officers and process servers will be accompanied by the Tribal police with proper court authorization.
- (3) A good faith attempt will be made to serve Warrants of Arrest and Summons at a person's home between the hours of 7:00 a.m. and 9:00 p.m.
- (4) The date, time, and place of service or arrest shall be written on the warrant or summons with the servers signature, and the warrant

returned to the Court. A copy shall be given to the person served or arrested at the time of arrest or as soon thereafter as is reasonably possible.

- (5) An officer need not have the warrant in his possession at the time of arrest. If not, they shall inform the defendant of the charge, that a warrant has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

Section 11-2-103 Criminal Citations

(A) Whenever a law enforcement officer makes an arrest without a warrant but has reasonable grounds to believe an immediate arrest is not necessary, he may issue the defendant a citation. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in lieu of a formal complaint.

(B) Contents of Citation:

- (1) The name and address of the Court, the name or alias and description of the defendant, a description of the offense and the signature of the law enforcement officer.
- (2) The signature of the defendant is an agreement by the defendant to appear before a Tribal Judge to answer the charge.,
- (3) A notice upon defendant's failure to appear, an arrest warrant shall issue and the defendant may be further charged with disobeying a lawful order of the court.
- (4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the court clerk.

Section 11-2-104 Arraignment

(A) **Arraignment:** Arraignment shall be held in open court upon the appearance of an accused, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(B) Procedure:

- (1) Upon request of the defendant, the prosecutor will read the charges.
- (2) A copy of the complaint shall be delivered to the defendant unless he has previously received a copy.

- (3) The Judge should determine if the accused understands the charge and read the following rights:

(i) The right to remain silent.

(ii) To be tried by a jury upon request when facing a possible jail sentence.

- (4) The Judge shall ask the defendant if he wishes to obtain counsel and he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel or a public defender is available, counsel may be appointed, upon request of the Tribal Chairman or Judge. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea and a plea of not guilty shall be entered.
- (5) The Judge should ask what they wishes to plea.

(C) Receipt of Plea:

- (1) If defendant refuses to plead, the Judge shall enter a plea of "not guilty". The Judge shall set a trial date and conditions for bail.
- (2) If defendant pleads "nolo contendere" or "guilty", the Judge may refuse to accept the plea. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

Section 11-2-105 Commitments

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment order has been issued.

(A) A temporary commitment shall be issued pending charges or trial.

(B) A final commitment shall be issued as a result of a judgment and sentence.

Section 11-2-106 Reserved

Section 11-2-107 Reserved

Section 11-2-108 Withdrawing Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed or deferred, except the Court may correct a manifest injustice.

Section 11-2-109 Plea Bargaining

When the defendant pleads guilty as a result of a plea arrangement the full terms shall be disclosed. The

Judge is not required to honor such agreement. If the Judge decides not to honor such agreement, he should offer the defendant an opportunity to withdraw his plea.

Section 11-2-110 Pleading and Motions Before Trial: Defenses and Objections

Motions raising defenses and objections:

- (A) Any defenses or objections may be raised before trial by motion.
- (B) Defenses and objections based on defects of the complaint other than jurisdiction or charge, may be raised on motion only before trial or shall be deemed waived.
- (C) Such motions shall be in writing and filed at least five (5) business days before the day set for trial. Motions will be argued on the date of trial.
- (D) If a motion concerning jurisdiction is denied or granted an interlocutory appeal may be taken.

Section 11-2-111 Concurrent Trial of Defendants or Charges

- (A) The Court may order two or more defendants to be tried together, or may order a single defendant tried on more than one complaint.
- (B) If a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants the court may order separate trials.

Section 11-2-112 Discovery and Inspection

- (A) The police, or prosecutor shall permit the defendant or his attorney to inspect and copy any statements or confessions, all copies of reports, tests or examinations made by defendant if within the possession or control of or reasonably obtainable by the police or prosecution.
- (B) The defendant or his attorney shall file a written notice to the Court and the Prosecutor at least twenty (20) working days before trial the names and addresses of any defense witnesses to provide an alibi or insanity defense. Failure to provide notice will prevent the use of such witnesses unless prior notice was impossible or no prejudice to the prosecution has resulted. The Judge may order the trial delayed or make other orders to assure a just determination.

Section 11-2-113 Subpoena

- (A) The defendant and the Prosecutor shall have the right to subpoena any witnesses including

subpoenas issued in blank. Subpoenas shall be issued, served and returned as in civil cases.

- (B) A subpoena may be served any place within the jurisdiction of the Court, and as provided for service in civil cases.
- (C) Failure to obey a properly served subpoena may be deemed contempt and may be prosecuted. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.

**CHAPTER THREE
TRIAL**

Section 11-3-101 Trial By Jury or By the Court

- (A) All trials shall be by the Court without a jury unless the defendant files a request for jury trial and a Two Hundred Dollar (\$200.00) jury fee not less than forty-five (45) days prior to the date set for trial. A Judge may in his discretion waive the jury fee.
- (B) Juries shall be composed of six (6) members with at least one alternate.
- (C) A jury trial is a right pursuant to Article 16, Section 1, (J) of the Constitution.

Section 11-3-102 Trial Jurors

- (A) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedures.
- (B) The Court shall permit examination of the jurors.
- (C) Challenges regarding jury members may be taken as follow:
 - (1) Each side shall be entitled to three (3) preemptory challenges.
 - (2) Either side may challenge for cause;
 - (3) An alternate juror shall be treated as a regular juror for purpose of challenges.
- (D) The alternate juror shall be dismissed prior to the jury's deliberation.
- (E) Jurors shall be subject to all civil jury rules.

Section 11-3-103 Order of Trial

- (A) The Court shall call the case name and number and ask if the parties are ready to proceed. If not ready, the Court may continue or direct the case to proceed.

- (B) If the parties are ready and if tried by jury, the Judge shall swear the jurors to decide the case in a fair and impartial manner.
- (C) If a jury trial, the Court shall select a potential jury panel.
- (D) When the Court is satisfied no juror should be dismissed for cause, the prosecution and then the defendant shall be allowed to question the prospective jurors.
- (E) If a prospective juror is related to a party or is biased, or if the outcome would significantly affect the property, family, or other interest of the prospective juror, the court may dismiss him for cause.
- (F) The prosecutor and the defendant may request the Court to dismiss any juror by preemptory challenge and the Court may not refuse. The final jury panel should then be sworn.
- (G) The Court should inform the jury the complaint is not evidence, but is read for the purpose of informing the defendant and the jury of the offense charged and the statements of counsel are not evidence but are presented so the jury will hear what counsel for each party expects the evidence to show.
- (H) The prosecutor should then read the complaint and briefly present the facts which he intends to prove. No argument of the facts or law shall be allowed. No reference to any recommendation for banishment may be made.
- (I) The defense may then make an opening statement or may reserve their opening statement until the beginning of the defense.
- (J) The prosecutor shall then present his evidence followed by the defendant. The prosecutor may present evidence in rebuttal.
- (K) The prosecutor shall present closing argument, the defendant closing argument, and the prosecutor shall be allowed to present a rebuttal.
- (L) If a jury trial, the Judge should give instructions and they shall retire. If a bench trial, the Judge shall make his decision or set the time for announcement.
- (M) If the verdict is “guilty”, the Judge may impose sentence immediately or decide later. In a jury trial, the Court, after a verdict of “guilty”,

shall inform the jury if banishment has been recommended. The prosecution and defense shall present any additional evidence on the issue of banishment and the prosecution shall be given the final rebuttal. The jury will consider whether banishment should be imposed and the term. No banishment shall be imposed in excess of the term recommended by a jury’s unanimous vote; a banishment recommendation is not binding on the Judge.

- (N) If an appeal is filed, a hearing to determine bond may be held.

Section 11-3-104 Reserved

Section 11-3-105 Judge Disability

- (A) If by reason of death, sickness or other disability, the Judge in a jury trial is unable to proceed any other Tribal Judge may, upon certifying he has familiarized himself with the record proceed.
- (B) If by reason, of death, sickness or other disability, the Judge is unable to perform after the verdict or finding of guilt, any other Tribal Judge may perform those duties. A new trial shall not be granted if all that remains is the sentencing of a defendant.

Section 11-3-106 Expert Witnesses and Interpreters

- (A) Either party may call expert witnesses and bear the cost.
- (B) The Court may appoint an interpreter and each party may provide their own interpreters. An interpreter shall be put under oath to faithfully and accurately translate and communicate.

Section 11-3-107 Motion for Judgment of Acquittal

The Court on motion from defendant or its own shall order the entry of a judgment of acquittal if the evidence is insufficient as a matter of law. A motion for acquittal by the defendant does not affect the right to present evidence.

Section 11-3-108 Instructions

At the time set by the Court, any party may file written jury instruction requests. Copies of such requests shall be furnished to adverse parties. The Court shall inform counsels of its adopted jury instructions prior to the arguments of counsel, but the Court shall instruct the jury after argument. No party may assign as error

any portion of the charge or omission unless he objects before the jury retires, stating distinctly the matter to which he objects and the grounds, argument shall be heard out of the presence of the jury.

Section 11-3-109 Verdict

- (A) The verdict of a jury shall be unanimous. It shall be returned in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried again.
- (B) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendant or charge and continue to deliberate.
- (C) The defendant may be found guilty of a lesser included offense or attempt to commit the crime charged of a lesser included offense without having been formally charged with the lesser included offense or attempt.
- (D) Upon return of the verdict, the jury may be polled at the request of either party. If there is not unanimous concurrence, the jury may be directed to further deliberate or be discharged.

CHAPTER FOUR JUDGMENT AND SENTENCE

Section 11-4-101 Judgment

A judgment of conviction shall set forth the charge, plea, verdict or findings, and the sentence imposed. An acquittal Judgment shall be entered. The judgment shall be signed by the Judge and entered by the Clerk.

Section 11-4-102 Sentence

- (A) Sentence shall be imposed without unreasonable delay. Pending sentence the Court may commit the defendant to jail, continue or alter bail. Before imposing sentence, the Court shall allow counsel an opportunity to speak on behalf of the defendant and ask defendant if he wishes to make a statement and to present any information in mitigation.
- (B) After imposing sentence, the Court shall inform the defendant of his right to appeal. After a notice of appeal is filed, the defendant may file a motion to set bail pending appeal.
- (C) Time served in jail prior to the judgment and sentence while awaiting or during trial may be allowed as a credit toward any sentence.

Section 11-4-103 General Sentencing Provisions

Statement of Policy: The sentencing policy of the Tribe in criminal cases is restitution and reconciliation of the offender, victim and Tribe. One goal is to impress upon the wrongdoer the wrong committed. The paramount goal is to restore the victim and Tribe to their prior position, and to restore the offender to harmony with the community by requiring him to right his wrongdoing. With consideration of these goals, the provisions of this Chapter shall govern Tribal sentencing.

- (A) Unless the Court determines justice will not be served or a civil action is more appropriate in addition to any sentence, the Court shall:
 - (1) Order the offender to pay restitution to the victim in money, property, or services; and /or
 - (2) Order the offender to pay restitution to the Tribe in money, property, or services.
- (B) If the offender recognizes the wrong he has committed, the Court, paying attention to prior offenses, may:
 - (1) Allow such offender to exchange work performed for the Tribe in lieu of a fine or imprisonment, at the rate set by the Court; or
 - (2) Place the offender on probation under conditions for a period not exceeding three (3) times the amount of the maximum sentence; or
 - (3) Defer entering judgment and sentence for a period not exceeding five (5) years on condition that if the defendant violated no law and satisfies such other conditions such as restitution, the plea or verdict guilty will be withdrawn and charges dismissed.
 - (4) Allow the offender to pay a fine in goods or commodities at the fair market value, provided, the Tribe shall not reimburse the offender for any excess value of the property.

Section 11-4-104 Sentence of Banishment

- (A) **Banishment Defined:** The traditional and customary sentence imposed for offenders who have been convicted of offenses which violate the basic rights to life, liberty, and property of the community and whose violation is a gross violation of the peace and safety of the Tribe requiring the person to be totally expelled for

the protection of the community. During the banishment, a person banished from the territory and association of the Tribe shall:

- (1) Be considered legally dead a nonentity with no civil rights to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction, provided, that the banished person retains all rights of a criminal defendant during the banishment, and while attending or going directly to or from any Court, or a proceeding involving a criminal action which he is a party including the appeal.
- (2) Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason.
- (3) Forfeit all positions or offices of honor or profit with the Tribe.
- (4) Be absolutely ineligible for any service, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe.
- (5) Be absolutely ineligible to vote in any election conducted by or hold any office in the Tribe.
- (6) Be grounds for any debtor to apply for an order attaching the banished person's personal property within this jurisdiction and bringing execution thereon.

(B) Violation of Banishment:

- (1) If the person banished is found within the jurisdiction of the Tribe, such act shall be considered criminal contempt and may be punished.
- (2) A banished person found within the jurisdiction of the Tribe shall, upon conviction, in addition to any other punishment, forfeit all personal property brought by him into the jurisdiction of the Tribe or in his immediate control whether ownership of said property is in the banished person or another, as civil damages for breach of the peace and safety of the Tribe.

(C) Expiration of Banishment Term: Upon expiration and satisfaction of any other terms imposed, the banished person shall be restored to all rights forfeited and shall thereafter be treated as if banishment had never been imposed.

Section 11-4-105 New Trial

The Court, on motion of a defendant, may grant a new trial if required by justice. If a non-jury trial, the Court, may vacate the judgment, take additional testimony, and direct the entry of a new judgment. A motion based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand. A motion based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within further time the Court may allow.

Section 11-4-106 Arrest of Judgment

The Court, on motion of a defendant, shall dismiss if the complaint does not charge an offense or if the Court was without jurisdiction. The motion in arrest of judgment shall be made within seven (7) days after verdict or finding of guilty or plea of guilty, or further time as the Court may allow.

Section 11-4-107 Correction or Reduction of Sentence

The Court may correct a sentence within thirty days after the sentence is imposed, or within thirty days after receipt of a mandate issued upon affirmance or dismissal of the appeal.

Section 11-4-108 Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the Court after notice, if any, as the Court orders.

CHAPTER FIVE APPEAL

Section 11-5-101 Right of Appeal: How Taken

(A) A defendant has the right to appeal:

- (1) A final judgment of conviction; and sentence.
- (2) An order made, after judgment and sentence, affecting their substantial rights.

(B) The Tribe has the right to appeal:

- (1) A judgment of dismissal, based on any procedural irregularity occurring before trial, or an order excluding evidence in favor of the defendant prior to trial.
- (2) An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered.

- (3) An order directing the jury to find for the defendant.
- (4) An order made after judgment and sentence affecting the substantial rights of the Tribe.
- (C) A notice of appeal must be filed within 10 days of the entry of final judgment and sentence or other appealable order and must be served on all parties.
- (D) Such appeals shall be had in accordance with the Appellate Procedure Act.

Section 11-5-102 Stay of Judgment and Relief Pending Review

- (A) A sentence of imprisonment or banishment may be stayed if appealed and the defendant may be given the opportunity to make bail. Any defendant not making bail or otherwise obtaining release, pending appeal, may be given credit for time served.
- (B) A sentence to pay a fine or a fine and costs, may be stayed upon motion of the defendant, but the court may require the defendant to pay such money subject to return.
- (C) An order placing the defendant on probation may be stayed on motion of the defendant.

CHAPTER SIX OTHER PROVISIONS

Section 11-6-101 Search and Seizure

- (A) **Search Warrants:** An order directed to any Tribal or Federal law enforcement officer directing him to search a particular place for described persons or property and if found to seize them.
- (B) A warrant shall issue only on a sworn affidavit establishing grounds for issuing the warrant. If the Judge is satisfied grounds exist or there is probable cause to believe they exist, he shall issue a warrant. The finding of probable cause may be based on hearsay evidence either in whole or in part. Before ruling on a request, the judge may require the affiant to appear and be examined under oath.
- (C) **Contents of Search Warrants:** Every search warrant shall contain the name and address of the Court, the signature of the Judge and date. It shall specifically describe the place to be

searched and the items to be searched for and seized. The warrant shall be directed to any Tribal or Federal police or law enforcement officer or official and shall command them to search, within a specified period of time not to exceed 10 days, the person or place named for the property or persons specified.

(D) Service of Search Warrants: Search warrants shall be served as soon as possible. A copy of the warrant shall be left with an occupant or owner over sixteen (16) years of age. If the place is not occupied, a copy of the warrant shall be left in some conspicuous place on the premises. If after notice of authority and purpose, they are denied or refused admittance, an officer may then break open any outer or inner door or window of a place to be searched, or any part of any place to be searched, or anything thereon to execute a search warrant.

(E) Inventory: The officer shall make a signed inventory of all property seized and attach such inventory to the warrant. A copy of the inventory and search warrant shall be left with an occupant or owner over sixteen (16) or left in a conspicuous place.

(F) Return of Search Warrants:

- (1) The officer shall endorse the date, time, and place of service and signature of the officer.
- (2) When served the warrant shall be returned to the Court with an inventory within twenty-four (24) hours of service, Saturdays, Sundays, and Tribal legal holidays excluded.
- (3) When unserved, the warrant shall be returned within ten (10) days of the date of issuance, if return is due on a Saturday, Sunday, or legal holiday, return shall be made on the next business day.

(G) Property Subject To Seizure: Property which there is probable cause to believe such property is:

- (1) Stolen, embezzled, contraband, or criminal-ly possessed; or
- (2) Which is or has been used to commit a criminal offense; or
- (3) Evidence of the commission of a criminal offense.

(H) Warrantless Searches: A law enforcement officer may conduct a search without a warrant only:

- (1) Incident to a lawful arrest; or
- (2) With the consent of the person to be searched; or
- (3) When he has probable cause to believe that an offense has been committed in his presence; or
- (4) When he has probable cause to believe the person has committed an offense, not in his presence, and there is reasonable cause for believing that such person before a warrant can be obtained may:
 - (i) Flee the jurisdiction or conceal himself to avoid arrest; or
 - (ii) Destroy or conceal evidence of the commission of an offense; or
 - (iii) Injure or annoy another person or damage property belonging to another person.

Section 11-6-102 Arrests

- (A) A private person may arrest another, for prompt delivery to a law enforcement officer.
 - (1) When an offense is committed or attempted in his presence.
 - (2) When an arrest warrant for that person is in fact outstanding.
- (B) Any person making an arrest may orally summon as many persons as he deems necessary to help him.
- (C) If the offense charged is an offense punishable by banishment or a federal major crime, the arrest may be made at their residence at any time of the day or night. For a non-banishment crime, arrest pursuant to a warrant should be made at a residence only between 7:00 a.m. and 9:00 p.m. unless arrest at night at the residence is supported by reasonable cause. Arrest at other places may be made at any time.
- (D) Any person, making an arrest:
 - (1) Must inform the person of their intention to arrest, the reasons and their authority, except when the person is engaged in the commission of or an attempt to, commit an

offense, or is pursued immediately after its commission or an escape.

- (2) Must show the warrant of arrest as soon as is practicable, if such exists and is demanded.
- (3) A law enforcement officer, may use reasonable force and all necessary means to effect the arrest. If the person either flees or forcibly resists, deadly force may be used only as provided by law.
- (4) A law enforcement officer, may break open a door or window in which the person to be arrested is, or is reasonable believed to be, after demanding admittance and explaining the purpose of which admittance is desired.
- (5) May search the person arrested, take and put into evidence all weapons and relevant items he may find.

Section 11-6-103 Arrest in Hot Pursuit

- (A) Any law enforcement officer empowered to arrest a person may continuously pursue from a point of initial contact within the jurisdiction to any point of arrest within or without the Tribe's jurisdiction. Such arrest shall be valid, provided, such officer shall respect and comply with the outside jurisdiction extradition requirements.
- (B) Any law enforcement officer when in hot and continuous pursuit of a felony from another jurisdiction may validly arrest such person within the Tribe's jurisdiction.

Section 11-6-104 Limitation on Arrests in the Home

A person may be arrested in his own home only:

- (A) By a law enforcement officer pursuant to an arrest warrant.
- (B) By a law enforcement officer for an offense committed in the presence of the officer.
- (C) By a law enforcement officer in continuous pursuit of a person who flees to his home.

Section 11-6-105 Notification of Rights

- (A) Upon arrest, the defendant shall be notified that he has the following rights:
 - (1) The right to remain silent and that any statements made by him may be used against him in Court.

- (2) That he has the right to obtain an attorney at his own expense and to have an attorney present at any questioning.
- (3) That if he wishes to answer the questions of the police he may stop or request time to speak with his attorney at any point in the questioning.

(B) Prior to conducting a consensual warrantless search, the officer shall specifically inform the person or the person in charge of the property to be searched that:

- (1) The search will be conducted only with the person's consent.
- (2) The person is under no obligation or requirement to consent and may request the advice of an attorney at their own expense.
- (3) If the person refuses, the officer will not search the person or property without obtaining a warrant.

(C) When possible, the officer should obtain a written statement the person knew these rights, understands, and waives them prior to taking a voluntary statement from a defendant or conducting a warrantless consensual search. The absence of a written statement does not preclude the admission of the statement or other evidence if the Court determines the statement or consent was voluntary.

Section 11-6-106 Execution Order for Relief From Judgment

- (A) The Chief Executive Officer of the Tribe shall have authority to pardon, or commute any judgment and sentence for any criminal offense upon determination that a pardon or commutation of sentence promotes justice.
- (B) A pardon or commutation will be entered by filing the proposed action with the Court Clerk. The action shall be submitted (with proof of service) for approval to each Justice of the Supreme Court and to each member of the Tribal Legislative Body for a period of sixty (60) days. If any Justice or Legislator disapproves, a written dissent shall be delivered to the Chief Executive Officer and filed with the Court, such proposed action will then not be approved. Upon expiration of the sixty (60) day period without objection, the pardon or commutation may be issued by the Chief Executive officer of the Tribe.

(C) Upon for disapproval by any Justice or Legislator, the Chief Executive Officer may order the proposed pardon or commutation to be placed on the ballot for the next regularly scheduled election, by referendum vote of the Tribe. The vote of the people shall be conclusive.

Section 11-6-107 Grant of Immunity to Witnesses

Whenever a witness during or before any civil or criminal proceeding refuses, on the basis of privilege against self-incrimination, to testify or to provide other information, the Judge shall delay testimony and confer with the prosecuting attorney. If the prosecutor concurs, the Judge shall issue an order of immunity. The witness may not refuse to comply with the order. No testimony or other information compelled under the order or any information directly or indirectly derived may be used against the witness in any criminal case except a prosecution for perjury, giving false statement, or failing to comply with the order.

CHAPTER SEVEN BAIL

Section 11-7-101 Release in Nonbanishment Cases Prior to Trial

- (A) Any person charged, with other than a banishment offense, shall be ordered released pending trial on his personal recognizance or execution of cash appearance bond. Such person shall not attempt to influence, injury, tamper with or retaliate against any officer, juror, witness, informant, or victim or violate any other law.
- (B) The Judge may determine a release will not reasonably assure the appearance of the person. The Judge shall, impose one or any combination of the following conditions:
 - (1) Place the person in the custody of a designated person or organization agreeing to supervise him.
 - (2) Place restrictions on the travel, association, or place of abode.
 - (3) Require the execution of an appearance bond in a specified amount.
 - (4) Require a bail bond with sufficient sureties, or the deposit of cash; or
 - (5) Impose any other condition deemed reasonably necessary to assure appearance.

- (C) In determining which conditions to impose, the Judge shall, take into account the nature and circumstances of the offense, the weight of the resources, character and mental condition, the length of his residence in the community, record of convictions, and record of Court appearance.
- (D) A Judge authorizing release shall issue an appropriate order containing a statement of the conditions imposed, shall inform such person of the penalties applicable to violations of the conditions and shall advise him a warrant will be issued immediately upon any violation.
- (E) A person for whom conditions of release are imposed and who continues detained, shall, upon application, have the conditions reviewed. If the Judge who imposed conditions is not available, any other Judge may review such conditions.
- (F) A Judge ordering release on any condition may at any time amend his order.
- (G) Information used in consideration of conditions need not conform to the admissibility of evidence rules.

Section 11-7-102 Appeal From Conditions of Release

If a person is detained after conditions of release have been imposed by a Judge, an appeal may be taken to the Supreme Court. The Supreme Court may remand the case, with or without additional evidence, order the person released upon conditions. This appeal shall be determined promptly.

Section 11-7-103 Release In Banishment Cases Or After Conviction

A person charged with a banishment offense or convicted and awaiting sentence or has appealed shall be treated in accordance with Section 701 unless the Court has reason to believe no conditions of release will reasonably assure the person will not flee or pose a danger.

Section 11-7-104 Penalties for Failure to Appear

Whoever is released and willfully fails to appear shall forfeit any security and shall, if released be subject to a fine of One Thousand dollars (\$1,000.00) and imprisonment for a term of one (1) year.

Section 11-7-105 Persons or Classes Prohibited as Bondsmen

The following shall not be bail bondsmen and shall not directly or indirectly receive any benefits of any bail bond; jailer, police officers, judges, court clerks and any person having the power to arrest or control of Tribal prisoners.

Section 11-7-106 Authority to Act as Bail Bondsmen

Any person authorized to act as bail bondsmen or runners in federal or state courts shall be qualified to act in the Tribal Court, and shall be liable to the same obligations as in their licensing jurisdiction and comply with all orders and rules of the Supreme and District Court.

**CHAPTER EIGHT
HABEAS CORPUS**

Section 11-8-101 Persons Who May Prosecute Writ

Every person restrained of his liberty, under any pretense may prosecute, a writ of habeas corpus to inquire into the cause of the restraint, and shall be released when the restraint is illegal.

Section 11-8-102 Application for Writ

Application for the writ shall be made by petition, signed and verified by plaintiff or in his behalf, and shall specify:

- (A) The person restrained, and the place where restrained, naming all known parties, or describing them;
- (B) The cause or pretense of the restraint, according to the best of knowledge and belief;
- (C) If the restraint is alleged illegal, what is the illegality.

Section 11-8-103 Writ Granted

Writs of habeas corpus may be granted without delay by any judge or justice at any time.

Section 11-8-104 Direction and Command of Writ

The writ shall be directed to the officer or party having the person under restraint, commanding them to have person before the Court, at such time and place as the Court shall direct, to show cause they have for the restraint.

Section 11-8-105 Delivery to Tribal Police Chief

If directed to the Police Chief, it shall be delivered by the Clerk without delay.

Section 11-8-106 Service on Party Other Than Tribal Police Chief

If directed to any other person, it shall be delivered to the Police Chief and shall be served upon the person without delay.

Section 11-8-107 Service When Person Not Found

If the person cannot be found, or refuse admittance it may be served by leaving it at the residence by affixing it at some conspicuous place, or where the party is confined under restraint.

Section 11-8-108 Return and Enforcement of Writ

The Police Chief or person shall make immediate return. If they neglect or refuse, to make return, or to produce the party and no sufficient excuse is shown, the Court shall enforce obedience.

Section 11-8-109 Manner of Return

The return must be signed and verified by the person making it, who shall state:

- (A) The authority or cause of restraint of the party in their custody;
- (B) If the authority is written, they shall return a copy and produce the original at the hearing;
- (C) If they had the party in custody or under restraint, and have transferred them, they shall state to whom, the time, place and cause of the transfer.

Section 11-8-110 Proceedings in Case of Sickness or Infirmary

The Court, if satisfied with the truth of the good cause for not producing the person, may proceed to decide on the return, or adjourn until the party can be produced. The plaintiff may except to the sufficiency of, or controvert the return or allege any new matter, except in cases of commitment on a criminal charge; the return and pleadings may be amended without causing any delay.

Section 11-8-111 Hearings and Discharge

The Judge shall proceed in a summary way to hear and determine the cause, and if no legal cause is shown shall discharge the party.

Section 11-8-112 Reserved

Section 11-8-113 Writ Upon Temporary Commitment

No person shall be discharged from an order of temporary commitment for lack of bail, or in cases not bailable, on account of any defect in the charge or process, or for alleged lack of probable cause. In such cases, the court shall summon the prosecutor and inquire into the charge and discharge, let to bail or recommit the prisoner.

Section 11-8-114 Writ May Issue to Admit to Bail

The writ may be for the purpose of setting a prisoner bail in civil and criminal actions.

Section 11-8-115 Notice to Interested Persons

When any person has an interest in the detention, the prisoner shall not be discharged until that person is notified.

Section 11-8-116 Powers of Court

The judge shall have power to require and compel the attendance of witnesses and to do all other acts necessary.

Section 11-8-117 Officers Not Liable for Obeying Orders

No Tribal policeman or other officer shall be liable to a civil action for obeying any writ of habeas corpus or order of discharge or enforcement.

Section 11-8-118 Issuance of Warrant of Attachment

Whenever it shall appear by affidavit that anyone is illegally held, and there is good reason to believe such person will be carried out of the jurisdiction or will suffer some irreparable injury, the Court, may cause a Warrant to be issued, reciting the facts, and directing to the Police Chief to take the person held in custody and bring him before the Court.

Section 11-8-119 Arrest of Party Causing Restraint

The judge may insert in the warrant a command for the apprehension of the person charged with causing the illegal restraint.

Section 11-8-120 Execution of Warrant of Attachment

The officer shall execute the Warrant by bringing the person before the Court and the like return and proceedings shall be required as in writs of habeas corpus.

Section 11-8-121 Temporary Orders

The Court may make any temporary orders that justice may require. The custody of any person restrained may be changed from one person to another, by Court order.

Section 11-8-122 Issuance and Service on Sunday

Any writ, warrant, or process authorized may be issued and served, in case of emergency on any day including Saturdays, Sundays, and holidays.

Section 11-8-123 Issue of Process

All writs and process, may be issued by the Clerk upon Court direction, and except summons, sealed and shall be served and returned unless the Court shall specify a particular time. No writ or process shall be disregarded for any defect if enough is shown to notify the officer or person of the process. Amendments and temporary commitments may be allowed.

Section 11-8-124 Protection of Infants and Insane Persons

Writ of habeas corpus will be granted in favor of parents, guardians, masters, husbands and wives; and to enforce the rights and protection of infants and insane persons.

Section 11-8-125 Security for Costs Not Required

No deposit or security for costs shall be required for a writ of habeas corpus.

CITIZEN POTAWATOMI NATION
CRIMINAL OFFENSES
TITLE 12

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PREFACE

Section 12-0-001 Short Title

This Ordinance may be cited as the Tribal Criminal Code.

Section 12-0-002 Application

- (A) The Tribal Criminal Code shall apply to all Indian persons violating its provisions within the jurisdiction of the Tribe.
- (B) This Tribal Criminal Code shall apply to all members of the Tribe, wherever such violation shall occur.
- (C) This Tribal Criminal Code shall apply to all Indian residents of the jurisdiction of the Tribe wherever such violation may occur.
- (D) This ordinance shall apply to non-Indians to the extent not inconsistent with federal law and to the extent that any person found to have violated any provision of this act may be banished from the jurisdiction of the Tribe for a period of not more than ten years, or for such longer term as may be imposed by the Section violated, in a civil proceeding brought by the prosecutor. The non-Indian in such cases shall have all the procedural rights of a criminal defendant, and such cases shall be tried by the rules of criminal procedure.

Section 12-0-003 Sentencing

- (A) All the range of punishments, in Title 12 Criminal Offenses, are amended to add an Enhanced Sentence category providing up to a maximum 3 year sentence and/or a \$15,000 fine.
- (B) The current maximum sentences of 1 year and/or a \$5,000 fine remain in place and shall be routinely applied unless the Enhanced Sentence is invoked by the Prosecutor's Office.
- (C) To invoke the Enhanced Sentence, the Prosecutor's Office shall, at the time of Arraignment, designate upon the Criminal Complaint and announce to the Court on the record that the Prosecutor will seek enhanced sentencing on the charge up to 3 years and/or \$15,000 fine maximum.
- (D) Upon the Prosecutor's announcement that an Enhanced Sentence is being sought, the Court will appoint a Public Defender in compliance with the enhanced sentencing provisions of the Tribal Law & Order Act.

(E) The Designation to seek an Enhanced Sentence will automatically have the effect of the alleged offense being considered a Tribal Felony under this Code.

(F) All Defendants convicted under Enhanced Sentencing will have their convictions reported to all other jurisdictions' databases, with the designation as a Convicted Tribal Felon.

(G) All provisions of any/all other Titles, Chapters and Sections of the Citizen Potawatomi Tribal Code not consistent with this Section will be interpreted in a reasonable manner to bring them into conformity with this Title, Chapter and Section by the District Court.

Ordinance #13-01 enacted by the Citizen Potawatomi Legislature on November 29, 2012.

CHAPTER ONE CRIMES AGAINST PROPERTY

Section 12-1-101 Arson In The First Degree

- (A) It is unlawful to knowingly and willfully start a fire or cause an explosion with the purpose of:
 - (1) Destroying or damaging any building, dwelling, structure or other property of another exceeding One Thousand Dollars (\$1,000.00) in value; or
 - (2) Destroying or damaging any property, by whoever owned, to collect insurance.
- (B) Section 12-1-101 is punishable by fine more than Five Hundred Dollars (\$500.00) less than One Thousand Dollars (\$1,000.00); or imprisonment more than six (6) months but less than one (1) year; or banishment more than five years but less than ten years; or any above combination.
- (C) Should the commission result in the death of or serious injury to any person, banishment may additionally be imposed up to life.

Section 12-1-102 Arson In The Second Degree

- (A) It is unlawful to knowingly or recklessly, carelessly, or negligently, start a fire or cause an explosion which:
 - (1) Endangers human life or safety, or
 - (2) Damages or destroys the property of another.
- (B) Section 12-1-102 is punishable by fine up to

One Thousand Dollars (\$1,000.00); or imprisonment up to One (1) year, or both. Banishment not exceeding Ten (10) years may additionally be imposed.

Section 12-1-103 Arson In The Third Degree

(A) It is unlawful after having started any fire, even though started safely to fail to either:

- (1) Take reasonable measures to put out or control the fire, or
- (2) To give prompt alarm, if the fire is spreading in such manner it may endanger the life or property of another.

(B) Section 12-1-103 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-1-104 Criminal Mischief

(A) It is unlawful to willfully, intentionally, recklessly or knowingly:

- (1) Damage or destroy any property with the intent to defraud an insurer, or;
- (2) Tamper with the property of another so as to carelessly endanger the safety of another, or carelessly cause any damage to any property or utility service, or;
- (3) Damage, destroy, maim, or deface any domestic animal, or;
- (4) Purposely, willfully, intentionally or recklessly throw, drop, shoot or otherwise propel a missile or other object at, upon or against a motor vehicle, airplanes, boat, locomotive or train while in operation.
- (5) Deface, damage or tamper with property of another, whether public or private.

(B) Section 12-1-104 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both.

(C) If the Property value exceeds One Thousand Dollars (\$1,000.00), banishment up to Ten (10) years may be additionally imposed.

Amended by Ordinance #13-05, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-1-105 Computer Hacking, Fraud and Abuse

(A) It shall be unlawful to:

- (1) Knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property.
- (2) Knowingly and without authorization, gain or attempt to gain access to a computer, computer system, computer network or any other property.
- (3) Knowingly and without authorization disrupt or cause the disruption of computer services or deny or cause the denial of access or other computer services to an authorized user of a computer, computer system or computer network.
- (4) Knowingly or recklessly cause the transmission of a program, information, code or command, and as a result of such conduct, intentionally cause damage without authorization, to a protected computer.
- (5) Knowingly exceed the limits of authorization and damage, modify, alter, destroy, copy, delete, disclose or take possession of a computer, computer system, computer network or any other property.

(B) Violation of this Section is punishable by a fine of up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both

(C) Any person, Tribal entity or corporation who suffers damage or loss by reason of a violation of this section of the Tribal Code, may maintain a civil action against the violator(s) to obtain compensatory damages and injunctive relief or other equitable relief in accordance with the Tribal Code's rules of Civil Procedure.

Enacted by Ordinance #13-05 by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-1-106 through 12-1-109 Reserved

Section 12-1-110 Burglary

(A) It is unlawful to break into by any force and enter in any manner any part of a dwelling, building, structure, office, room, vehicle or carrier of any type, or any similar enclosed structure of another without consent with the intent to steal or commit any offense punishable by imprisonment.

- (B) Any force is defined as the minimal force necessary to unlawfully enter.
- (C) Section 12-1-110 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Ten (10) years may additionally be imposed.

Section 12-1-111 Breaking And Entering

- (A) It is unlawful to break into by any force and enter in any manner any part of a dwelling, building, structure, office, vehicle or carrier or any type, room, trunk, drawer, box, coin operated machine, or similar structure, object, or device of another without consent with intent to:
- (1) Cause annoyance or injury to any person therein, or;
 - (2) Cause damage to any property therein, or;
 - (3) Commit any offense therein, or;
 - (4) Steal, or;
 - (5) Cause, or does actually cause, whether intentionally or recklessly, fear for the safety of another.
- (B) Section 12-1-111 is punishable by fine not less than One Thousand Dollars (\$1,000.00) and up to Five Thousand Dollars (\$5,000.00), or imprisonment up to Three (3) months, or both.

Section 12-1-112 Criminal Trespass

- (A) It is unlawful to enter onto, or remain upon property of another if notice against entry or to leave has been given by:
- (1) Personal communication by the owner or someone having authority to act, or;
 - (2) Fencing, other than barbed wire or similar field fences except as provided, or enclosure designed to exclude intruders, or;
 - (3) Posting of signs reasonably designed to draw attention.
- (B) Section 12-1-112 is punishable by fine up to One Thousand Dollars (\$1,000.00) or imprisonment up to Six (6) months, or both.
- (C) It is an affirmative defense that:
- (1) The property was open upon entry and when ordered, the person left without delay, or;
 - (2) When closed to the public, the person did

not substantially interfere with the use of the property or cause damage and when ordered to leave, did so without undue delay.

- (D) On rural lands fenced with barbed wire or domestic animals fencing signs prohibiting entry or use at least six inches by eight inches in plain sight not more than one hundred fifty feet apart shall create a rebuttal presumption that reasonable notice has been given.

Section 12-1-113 through 12-1-119 Reserved

Section 12-1-120 Theft

- (A) It is unlawful to take or carry away any tangible or intangible personal property by fraud or steal with the intent to deprive the owners thereof.
- (B) If any person comes into the possession as bailor of a Citizen Potawatomi Nation Tribal tag issued by the Citizen Potawatomi Nation Tag Agency (bailor), and fails to return said Citizen Potawatomi Nation Tribal tag to the Citizen Potawatomi Nation Tag Agency, in accordance with the bailment agreement, they shall be deemed guilty of theft of a Citizen Potawatomi Nation Tribal tag.
- (C) Section 12-1-120 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.
- (D) If the property value exceeds One Thousand Dollars, (\$1,000.00), banishment up to Ten (10) years may additionally be imposed.

Amended by Ordinance #13-05, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-1-121 Shoplifting

- (A) It is unlawful for any person to wrongfully take merchandise any means, including, but not limited to, concealment or attempted concealment in any manner, either on or off the place of business of the merchant with a purpose to deprive the merchant of merchandise or to avoid payment of merchandise.
- (B) Wrongful taking of merchandise, as used in this section, is defined as the taking of merchandise that has not been purchased from a merchant's place of business without the permission of the merchant, employee(s) or agent(s).
- (C) A person who knowingly conceals un-purchased merchandise on his or her person, or concealed

in any manner, that is offered for sale by any store or business establishment, gives rise to a presumption that the person took the merchandise with the purpose of depriving the merchant or another individual having an interest in the merchandise.

- (D) A person engaging in conduct giving rise to a presumption under Section 12-1-121(C) of the Tribal Codes of the Citizen Potawatomi Nation may be detained in a reasonable manner for a reasonable length of time by a law enforcement officer, merchant or merchant's employee in order that recovery of merchandise may be effected.
- (E) The detention by law enforcement officer, merchant or merchant's employee does not render the law enforcement officer, merchant or merchant's employee criminally or civilly liable for false arrest, false imprisonment or unlawful detention.
- (F) Any detention under this provision shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances for the recovery of said merchandise.
- (G) This section shall be punishable by fine up to three thousand dollars (\$3,000), or imprisonment up to one (1) year. Or both.

Amended by Ordinance #14-02, enacted by the Citizen Potawatomi Legislature on May 22, 2014.

Section 12-1-122 Extortion

- (A) It is unlawful to take, receive, or control the use or disposition of property of another with the intent to deprive him of possession or use by threatening to:
 - (1) Cause bodily harm to any person, or;
 - (2) Commit any offense, or;
 - (3) Unlawfully injure or destroy any property, or;
 - (4) Expose any personal information or secret not public knowledge tending to expose any person to hatred, contempt, or ridicule, or to impair his business or reputation, except by institution of legal proceedings to recover the debt demanded or proper reports to bonafide credit agencies, or;

(5) Unlawfully take or withhold official action.

- (B) Section 12-1-122 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.
- (C) If the property value exceeds One Thousand Dollars (\$1,000.00), banishment up to Ten (10) years may be additionally imposed.

Section 12-1-123 False Pretenses

- (A) It is unlawful to obtain, take, or receive any property of another by means of a trick or deception, or false or fraudulent representation, statement, or pretense with the intent to deprive the owner.
- (B) Section 12-1-123 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to One (1) year, or both.
- (C) If the property value exceeds Five Thousand Dollars (\$5,000.00) banishment up to Ten (10) years may be additionally imposed.

Section 12-1-124 Embezzlement

- (A) It is unlawful to wrongfully or fraudulently appropriate for a person's own use or the use of another any property of another with which the person has been entrusted.
- (B) Section 12-1-124 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.
- (C) If the property value exceeds One Thousand Dollars (\$1,000.00) banishment up to Ten (10) years may be additionally imposed.

Section 12-1-125 Receiving Stolen Property

- (A) It is unlawful to possess, receive, buy, or conceal any personal property that has been stolen or otherwise obtained from its owner illegally with the intent to deprive the true owner.
- (B) Section 12-1-125 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.
- (C) If the property value exceeds One Thousand Dollars (\$1,000.00), banishment up to Ten (10) years may be additionally imposed.

Section 12-1-126 Theft Of Property Lost, Mislaid Or Delivered By Mistake

- (A) It shall be unlawful to not take reasonable measures to restore property within a reasonable

time, with intent to deprive the owner when known or reasonably suspected the property has been lost, mislaid, or delivered under a mistake as to the nature or amount or identity of the recipient.

(B) Section 12-1-126 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both.

(C) If the property value exceeds One Thousand Dollars (\$1,000.00), banishment up to Ten (10) years may be additionally imposed.

Section 12-1-127 Theft Of Services

(A) It is unlawful to obtain services known to be available only for compensation by deception, threat, force or any means with intent to avoid due payment.

(B) Section 12-1-127 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

(C) If the value exceeds One Thousand Dollars (\$1,000.00) banishment up to Ten (10) years may be additionally imposed.

Section 12-1-128 Unauthorized Use Of A Vehicle

(A) It is unlawful to take, drive, or operate another's vehicle, motorcycle, bicycle, or wheeled conveyance without owner consent with intent to temporarily deprive the owner of its use or possession.

(B) Section 12-1-128 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-1-129 through 12-1-135 Reserved

Section 12-1-136 Forgery

(A) It is unlawful to alter any writing without authority, or to make, complete, execute, authenticate, issue or transfer or transmit any writing so that it purports to be the act of another who did not authorize that act, with intent to defraud, or injure anyone or be detrimental to the Tribe or its enterprises.

(B) "Writing" includes printing or any other method of recording information, email, electronic data, and digital data, money, coins, tokens, stamps, seals, credit cards, badges, trademarks, money, and other symbols of value, right, privilege, or identification.

(C) Section 12-1-136 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. Upon subsequent conviction, banishment more than Five (5) years less, than Ten (10) years may be additionally imposed.

Section 12-1-137 Criminal Simulation

(A) It shall be unlawful to make, alter or utter or attempt to circulate or sell as genuine any object that appears to have value because of antiquity, rarity, source, or authorship with intent to defraud.

(B) Section 12-1-137 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-1-138 Fraudulent Handling Of Recordable Instruments

(A) It is unlawful to destroy, remove or conceal any will, deed, mortgage, security instrument, Tribal resolution, any Tribal record, for which the law provided public recording, or to knowingly record a false or forged instrument, with the intent to deceive, injure or conceal wrong doing.

(B) Section 12-1-138 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year. Banishment not exceeding Five (5) years may additionally be imposed. Upon a second conviction, banishment up to Ten (10) years may be additionally imposed.

Section 12-1-139 Tampering With Records

(A) It is unlawful to falsify, destroy, remove, or conceal any writing or record, with the intent to deceive, injure or conceal wrong doing.

(B) Section 12-1-139 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. Upon a second conviction, banishment up to Ten (10) years may be additionally imposed.

Section 12-1-140 Bad Checks

(A) It is unlawful to issue or pass a check or order for payment to obtain money, property, or thing of value or paying for services, rent, wages or salary, knowing or believing it will not be honored.

- (B) Section 12-1-140 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Restitution shall be required.

Section 12-1-141 Fraudulent Use Of A Credit Card

- (A) It is unlawful to use a credit card to obtain property or services with knowledge that:

- (1) The card was stolen; or
- (2) The card has been revoked or cancelled; or
- (3) For any reason use is unauthorized.

- (B) Section 12-1-141 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Restitution shall be required.

Section 12-1-142 through 12-1-146 Reserved

Section 12-1-147 Deceptive Business Practices

- (A) It is unlawful to, intentionally:

- (1) Use or possess a false weight or measure, or device for falsely determining or recording any quality or quantity; or
- (2) Sell, offer, or deliver less than the represented quality or quantity of any commodity or service; or
- (3) Take or attempt to take more than the represented quantity of any commodity or service when he furnishes the weight or measure; or
- (4) Sell, or offer adulterated or mislabeled commodities:

(a) "adulterated" varying from the standard composition or quality prescribed by law or commercial usage; or

(b) "mislabeled" varying from the standard of truth or disclosure prescribed by law or commercial usage; or

- (5) Make a substantial false or misleading statement in any advertisement to promote the purchase or sale of property or services; or
- (6) Make a false or misleading written statement to obtain property or credit; or
- (7) Make a false or misleading written statement to promote sales of securities, or omit required information in written documents relating to securities.

- (B) Section 12-1-147 is punishable by fine up to

One Thousand Dollars (\$1,000.00), or imprisonment up to Six (6) months, or both.

- (C) It is an affirmative defense the conduct was not knowingly or recklessly deceptive.

- (D) Upon subsequent offense, banishment up to ten years may additionally be imposed.

Section 12-1-148 Defrauding Creditors

- (A) It is unlawful to:

(1) Destroy, remove, conceal, encumber, transfer, or deal with property subject to a security interest intending to hinder enforcement of that interest; or

(2) Deal with property intending defeat or obstructing the operation of law relating to administration of property for the benefit of creditors; or knowingly falsify writing or record or knowingly misrepresent or refuse to disclose the existence, amount or location of property, or information which could be legally required to furnish.

- (B) Section 12-1-148 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Six (6) months, or both.

Section 12-1-149 Securing Execution Of Documents By Deception

- (A) It is unlawful to intentionally, by deception, cause another to execute any instrument affecting or likely to affect the pecuniary interest of any person.

- (B) Section 12-1-149 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Six (6) months, or both.

Section 12-1-150 Criminal Usury

- (A) It is unlawful to intentionally provide financing or make loans at a rate of interest higher than the following:

(1) If interest applies to less than One Hundred Dollars (\$100.00) or period is less than one year, or both, the rate of interest shall not exceed a 24% per annum simple.

(2) If interest applies to greater than One Hundred Dollars or period is greater than one year, or both, the rate of interest shall not exceed an 18% per annum simple.

- (B) Section 12-1-150 is punishable by fine up to One

Thousand Dollars (\$1,000.00), or imprisonment up to Six (6) months, or both. The victim shall receive restitution for double the amount of interest paid and cancellation of all future interest.

Section 12-1-151 Unlawful Dealing With Property By A Fiduciary

- (A) It is unlawful to knowingly deal with property entrusted in a fiduciary capacity, or Tribal property or financial institution, in a manner known to be a violation of fiduciary duty, or involves a substantial risk or loss.
- (B) "Fiduciary" includes a trustee, guardian, executor, administrator, receiver or person performing fiduciary functions on behalf of any entity which is a fiduciary.
- (C) Section 12-1-151 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-1-152 Making A False Credit Report

- (A) It is unlawful to knowingly make false or misleading statements to obtain property, credit or to prevent another from obtaining credit.
- (B) Section 12-1-152 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

**CHAPTER TWO
CRIMES AGAINST PERSONS**

Section 12-2-101 Assault In The First Degree

- (A) It is unlawful to wrongfully, purposely, knowingly, or recklessly with indifference to the value of human life, to:
 - (1) Attempt or cause serious injury; or
 - (2) Use a deadly weapon with intent to cause serious injury, or put in fear of imminent serious injury with the apparent ability.
- (B) Section 12-2-101 is punishable by fine up to Two Thousand Five Hundred Dollars (\$2,500.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Ten (10) years may additionally be imposed.

Section 12-2-102 Assault In The Second Degree

- (A) It is unlawful to wrongfully, purposely, knowingly or recklessly:
 - (1) Attempt or cause injury; or

- (2) Negligently cause injury with a weapon; or
- (3) Attempt by show of force or violence to put in fear of imminent injury whether or not harm actually occurs.
- (4) Commit any assault or battery upon the person of a sports official, referee, umpire, coach or any person having authority in connection with any amateur or professional athletic contest.
- (5) Cause unjustifiable harassment which disrupts the flow of an athletic contest upon a sports official, referee, umpire, coach or any person having authority in connection with any amateur or professional athletic contest.

- (B) Section 12-2-102 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to One (1) year, or both.

Amended by Ordinance #13-05, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-2-103 Mayhem

- (A) It is unlawful to wrongfully, purposely, or knowingly deprive a person of a body member or render it useless, or cut out or disable the tongue, put out an eye or slit the nose, ear or lip.
- (B) Section 12-2-103 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to Six (6) months, or both. Banishment not exceeding life may additionally be imposed.

Section 12-2-104 Verbal Or Written Assault

- (A) It is unlawful to threaten, verbally or in writing, to commit any offense with apparent ability
 - (1) With intent to terrorize or place another in fear of imminent serious injury or
 - (2) To cause, evacuation of a building, place of assembly, or facility of public transportation, or serious public inconvenience.
- (B) Section 12-2-104 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-2-105 through 12-2-110 Reserved

Section 12-2-111 Homicide In The First Degree

- (A) It is unlawful to:
 - (1) Purposely, knowingly and wrongfully with the malice aforethought cause death or

- (2) Cause death due to the commission or attempted commission of a felony or offense punishable by banishment.

(B) Section 12-2-111 is punishable by fine of Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment for life may additionally be imposed.

Section 12-2-112 Homicide In The Second Degree

(A) It is unlawful to:

- (1) Recklessly or negligently with disregard of consequence to cause death, or;
- (2) Cause death operating a motor vehicle in a reckless, negligent, or careless manner, or while under the influence of alcoholic beverage, intoxicating liquor, a controlled substance, or drug.
 - (a) A blood alcohol content more than .08 shall create a rebuttable presumption the person was under the influence of an alcoholic beverage.
 - (b) A motor vehicle is any self-propelled vehicle and includes, but not limited to, any automobile, truck, van, motorcycle, train, engine, watercraft, aircraft or snowmobile.
- (3) Cause death due to the commission of any criminal offense.

(B) Section 12-2-112 is punishable by fine of Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Twenty (20) years may additionally be imposed.

Section 12-2-113 Causing A Suicide

- (A) It is unlawful to intentionally cause a suicide by force, duress, or deception.
- (B) Section 12-2-113 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Twenty (20) years may additionally be imposed.

Section 12-2-114 Aiding Or Soliciting A Suicide

- (A) It is unlawful to intentionally aid or solicit to attempt or commit suicide.
- (B) Section 12-2-114 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to One (1) year, or both.

Section 12-2-115 through 12-2-120 Reserved

Section 12-2-121 Kidnapping

(A) It is unlawful to intentionally and wrongfully remove a person from place of residence, business, or vicinity or to unlawfully confine or conceal:

- (1) To hold for ransom, reward, or as a shield or hostage; or
- (2) To facilitate commission of any offense or flight; or
- (3) To inflict injury or terrorize; or
- (4) To interfere with the performance of any governmental or political function.

(B) A removal, restraint, or confinement is wrongful if accomplished by force, threat or deception, or, if a minor under fourteen or incompetent person if accomplished without consent of parent, guardian or other person responsible for their welfare.

(C) Section 12-2-121 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. If the kidnapping resulted in injury, banishment up to Ten (10) years may be imposed. If the kidnapping is a subsequent conviction or if death resulted, banishment up to life may be imposed.

Section 12-2-122 False Imprisonment

(A) It is unlawful to knowingly and wrongfully restrain or imprison so as to interfere with liberty.

(B) Section 12-2-122 is punishable by fine up to Two Thousand Five Hundred Dollars (\$2,500.00), or imprisonment up to Six (6) months, or both.

Section 12-2-123 Custodial Interference

(A) It is unlawful to wrongfully:

- (1) Take, entice, conceal, or detain a child under sixteen from his parent, guardian or lawful custodian, knowing they have no legal right and
 - (a) With intent to hold the child for a period substantially longer than any visitation or custody period awarded by a court; or
 - (b) With intent to deprive another their lawful visitation or custody right; or

- (2) Intentionally take, entice or detain an incompetent or person committed to the custody of another or institution from the other or institution, without good cause and with knowledge they have no legal right.

(B) Section 12-2-123 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months or both.

Section 12-2-124 Criminal Coercion

(A) It is unlawful to intentionally and wrongfully restrict freedom of action to their detriment, by threatening to:

- (1) Commit any criminal offense; or
- (2) Accuse wrongfully of a criminal offense; or
- (3) Expose any secret tending to subject any person to hatred, contempt or ridicule, or impair credit or business reputation; or
- (4) Unlawfully take or withhold action as an official, or cause an official to take or withhold action.

(B) It is an affirmative defense except for subsection (1) above, the actor believed the accusation or secret to be true or official action was justified and purpose was limited to compelling the other in a lawful manner to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure, or proposed official action; for example, by refraining from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(C) Section 12-2-124 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-2-125 Deviate Sexual Intercourse

(A) It shall be unlawful to engage in deviate sexual intercourse, defined as sexual intercourse, oral or anal between persons not husband and wife, or any form of sexual intercourse with an animal, and to cause another to engage in deviate sexual intercourse if:

- (1) That person is compelled by threat that would prevent resistance; or,
- (2) That person is compelled by force or threat of imminent death, serious injury, pain or kidnapping, to be inflicted on anyone; or,

- (3) The person's power to appraise or control his conduct has been substantially impaired by administration or employment of drugs or intoxicants; or,

- (4) The offender knows the person has a mental disease or defect or knows the person is unconscious or submits because he is unaware a sexual act is being committed.

(B) Section 12-2-125 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-2-126 Sexual Assault

(A) It shall be unlawful to intentionally, wrongfully, and without consent, subject another to sexual contact:

- (1) With knowledge that the conduct is offensive; or,
- (2) With knowledge that the person has a mental disease or defect; or,
- (3) With knowledge that the person is unaware a sexual act is being committed; or,
- (4) After having impaired the person's power to appraise or control conduct by administering or employing, without the other's knowledge, drugs, intoxicants, or other means; or,
- (5) If that person is less than fourteen years of age, regardless of consent; or,
- (6) If that person is less than sixteen years of age, and the actor is at least four years of age or older, regardless of consent; or,
- (7) If that person is less than twenty one years of age, and the actor is his parent, guardian or responsible for his welfare regardless of consent; or,
- (8) If that person is in custody or detained in a hospital or institution and the actor has supervisory or disciplinary authority over him regardless of consent.

(B) Sexual contact is any touching of the sexual or other intimate parts of another or taking indecent liberties arousing or gratifying sexual desires.

(C) Section 12-2-126 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) one year, or both.

Section 12-2-127 Stalking

(A) No person with intent to harass another person shall engage in a course of conduct over any period of time reasonably likely to cause a reasonable person to suffer substantial emotional distress and which does, in fact, seriously alarm the person toward whom the harassment is directed including, but not limited to, any combination of the following acts:

- (1) Communicating, anonymously or otherwise, or causing a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses;
- (2) Following a person, other than within the residence of the defendant;
- (3) Placing a person under surveillance by remaining present outside that person's school, place of employment, vehicle, other place occupied by the person, or residence other than the residence of the defendant; or
- (4) Otherwise engaging in a course of conduct evidencing a continuity of purpose that harasses another person.

(B) Section 12-2-127 is punishable by fine up to Two Thousand Five Hundred Dollars (\$2,500.00), or imprisonment up to Six (6) months, or both.

Section 12-2-128 through 12-2-133 Reserved

Section 12-2-134 Robbery

(A) It is unlawful to take anything of value from the immediate control of another by use or the threatened use of force or violence, with intent to permanently deprive.

(B) Section 12-2-134 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed.

Section 12-2-135 Child Abuse

(A) No person shall intentionally or recklessly inflict upon, cause, or place a person under the age of eighteen (18) years in imminent danger or substantial risk of harm in the form of:

- (1) Death or physical injury including, but not limited to, disfigurement, impairment of any bodily organ, skin bruising, bleeding, burns,

fracture of any bone, subdural hematoma, or substantial malnutrition;

(2) Mental injury in the form of impairment of intellectual capacity, psychological capacity, or emotional stability including, but not limited to, an observable or substantial impairment of the victim's ability to function within a normal range of performance and behavior;

(3) Sexual injury or harm including, but not limited to, injury to the genital organs of a child in attempt of carnal knowledge falling short of actual intercourse; or,

(4) The taking of immodest, immoral, or indecent liberties with a child including, but not limited to, fondling a child either by physical touching or through clothing, masturbating with a child, or encouraging a child to commit with him any immoral or indecent act.

(B) Imminent danger, as used in this Section, includes threatened harm by means of a statement, overt act, or condition which represents an immediate and substantial risk.

(C) Substantial risk, as used in this Section, means a strong possibility, as contrasted with a remote or insignificant possibility.

(D) Section 12-2-135 is punishable by a fine up to five thousand dollars (\$5,000), or imprisonment up to One (1) year, or both. Any person convicted of violating this section, or an attempted offense, involving abuse or neglect of a sexual nature, shall register as a sex offender with this Tribe and comply with all laws affecting sex offenders.

Section 12-2-136 Abandonment or Neglect

(A) Any parent of any child or children under the age of ten (10) years, and every person to whom such child or children have been confided for nurture or education, who deserts such child or children, or takes such child or children beyond the jurisdiction of this Nation, with the intent wholly to abandon it, shall be deemed guilty of Abandonment or Neglect.

(B) Section 12-2-136 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both.

Section 12-2-137 Omission to Provide for a Child

- (A) Any parent, guardian, or person having custody or control of a child who willfully omits, without lawful excuse, to furnish necessary food, clothing, shelter, monetary child support, medical attendance, payment of court-ordered day care or payment of court-ordered medical insurance costs for such child, shall be guilty of Omission to Provide for a Child.
- (B) Section 12-2-137 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both.
- (C) Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

Section 12-2-138 Child Endangerment by Permitting Child Abuse

- (A) A person who is the parent, guardian, or person having custody or control over a child commits child endangerment when the person knowingly permits physical or sexual abuse of a child or who knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured.
- (B) Section 12-2-138 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both.
- (C) Nothing contained in this section shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

Section 12-2-139 Child Pornography; Possession of Child Pornography

- (A) Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or manufactures, or causes to be sold or distributed any child pornography shall be guilty of violating this Section.
- (B) Section 12-2-139 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both. Any person

convicted of violating this section, or an attempted offense, shall register as a sex offender with this Tribe and comply with all laws affecting sex offenders.

- (C) The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

Section 12-2-140 Duty to Report Child Abuse and Obscene or Pornographic Material Depicting Minors

- (A) Any person who has knowledge of acts constituting child abuse, or observes any film, photograph, video tape, negative, or slide, or any computer file, recording, CD-Rom, magnetic disk memory, magnetic tape memory, picture, graphic or image that is intentionally saved, transmitted or organized on hardware or any other media including, but not limited to, CDs, DVDs and thumbdrives, or other means and whether directly viewable, compressed or encoded, depicting a child under the age of eighteen (18) years engaged in an act of sexual conduct, shall immediately or as soon as possible report such instance of suspected child abuse or child pornography to the Citizen Potawatomi Police Department. Any person who fails to report child abuse or child pornography shall be guilty of violating this Section.
- (B) Section 12-2-140 is punishable by a fine up to Three Thousand Dollars (\$3,000), or imprisonment up to One (1) year, or both.

Section 12-2-141 Indecent Exposure, Indecent Exhibitions

- (A) Every person who willfully and knowingly either:
- (1) Lewdly exposes his person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby;
 - (2) Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;
 - (3) Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves,

paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or,

- (4) Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography, shall be guilty of Indecent Exposure, Indecent Exhibitions.

(B) Section 12-2-141 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both. Any person who has been convicted of a violating this section, or an attempted offense, shall register as a sex offender with this Tribe and comply with all laws affecting sex offenders.

Section 12-2-142 Solicitation of Minors

- (A) It is unlawful to entice, advise, incite, order or encourage any minor under the age of eighteen (18) to commit any offense, with the intent that such person will commit an offense of the laws of this jurisdiction.
- (B) Section 12-2-142 is punishable by a fine up to Three Thousand Dollars (\$3,000), or imprisonment up to Six (6) months, or both.

Section 12-2-143 Indecent Solicitation of Minors

- (A) It is unlawful to:
 - (1) Willfully solicit or aid a minor child under the age of eighteen (18) to perform or participate in an act of a sexually deviant nature; or
 - (2) Shows, exhibits, loans, or distributes to a minor child under the age of sixteen (16) any obscene material or child pornography for the purpose of inducing said minor to participate in, any act specified in paragraphs 1, 2, 3 or 4 of Indecent Exposure, Indecent Exhibitions, shall be guilty of Solicitation of Minors.
- (B) Section 12-2-143 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both. Any person convicted of violating this section, or an attempted offense, shall register as a sex offender with this Tribe and comply with all laws affecting sex offenders.

Section 12-2-144 Abuse, Neglect or Financial Exploitation by Caretaker

- (A) No caretaker or other person, shall abuse, commit financial neglect, neglect, commit sexual abuse, or exploit any person entrusted to the care of such caretaker or other person in a nursing facility or other setting.
- (B) Section 12-2-144 is punishable by a fine up to Five Thousand Dollars (\$5,000), or imprisonment up to One (1) year, or both. Any person convicted of violating this section, or an attempted offense, involving abuse or neglect of a sexual nature, shall register as a sex offender with this Tribe and comply with all laws affecting sex offenders.

Section 12-2-145 Verbal Abuse by a Caretaker

- (A) No caretaker shall verbally abuse any person entrusted to the care of the caretaker, or knowingly cause, secure, or permit an act of verbal abuse to be done.
- (B) For the purpose of this section, “verbal abuse” means the repeated use of words, sounds, or other forms of communication by a caretaker, including but not limited to, language, gestures, actions or behaviors, that are calculated to humiliate or intimidate or cause fear, embarrassment, shame, or degradation to the person entrusted to the care of the caretaker.
- (C) Section 12-2-145 is punishable by a fine up to Two Thousand Five Hundred Dollars (\$2,500.00), or imprisonment up to Six (6) months, or both.

Section 12-2-146 Exploitation of Elderly Persons or Disabled Adults

- (A) As used in this section, “exploitation of an elderly person or disabled adult” means:
 - (1) Knowingly, by deception or intimidation, obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
 - (a) stands in a position of trust and confi-

dence with the elderly person or disabled adult, or

(b) has a business relationship with the elderly person or disabled adult, or

(2) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

(B) This Section is punishable by a fine up to Three Thousand Dollars (\$3,000), or imprisonment up to Six (6) months, or both.

(C) For purposes of this section, "elderly person" means any person sixty-two (62) years of age or older.

Section 12-2-147 Obscene Language in a Public Place

(A) It is unlawful for any person to utter or speak any obscene or lascivious language or word in any public place or in the presence of children under ten (10) years of age.

(B) This section is punishable by a fine up to Two Hundred Fifty Dollars (\$250.00), or imprisonment for not more than Two (2) days, or both.

Section 12-2-148 Incest

(A) It shall be unlawful for any persons, who being within the degree of consanguinity within which marriages are by the Citizen Potawatomi Nation declared incestuous and void, to the intermarry with each other, or commit adultery or fornication with each other.

(B) Tier I offense-Penalty. The penalty for incest shall be incarceration for not more than one (1) year and a fine of not more than Five Thousand Dollars (\$5,000.00), or both, plus costs.

Section 12-2-149 Misleading Domain Name on the Internet

(A) It shall be unlawful for a person to knowingly use a misleading domain name on the Internet

with the intent to deceive a minor or adult person into viewing material constituting obscenity.

(B) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as "sex" or "porn", is not misleading.

(C) For the purposes of this section, the term "material that is harmful to minors" means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context:

(1) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(2) Lacks serious literary, artistic, political, or scientific value for minors.

(D) Tier I offense-Penalty. Any person found to be in violation of this section shall be punished by imprisonment of not more than one (1) year or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

Section 12-2-150 Misleading Words or Digital Images on the Internet

It shall be unlawful for any person to:

(A) Knowingly embed words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity.

(B) Knowingly embed words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet.

(C) Construction. For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as "sex" or "porn", is not misleading.

(D) Tier I offense-Penalty. Any person found to be in violation of this section shall be punished by imprisonment of not more than one (1) year or a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

Sections 12-2-151 through 12-2-174 Reserved.

Section 12-2-175 Title

The ordinances codified at Sections 12-2-175 through

Title 12

12-2-204 herein establish, and shall be known as, “The Citizen Potawatomi Nation Criminal Sexual Crimes Registration Act”.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-176 Establishment of Registries

- (A) This Act hereby authorizes the Citizen Potawatomi Nation Police Department to serve as the Nation’s Sex Offender Registration Office, which shall maintain and operate a sex offender registration pursuant to the provisions of this code.
- (B) This Act hereby establishes a Citizen Potawatomi Nation Sex Offender Registration and Notification system, which shall be maintained and operated pursuant to the provisions of this code.
- (C) This Act hereby establishes a Citizen Potawatomi Nation Sex Offender registry website, which shall be maintained and operated pursuant to the provisions of this code.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-177 Criminal and Civil Sanctions

- (A) Offenders who reside or enter within the territorial jurisdiction of the Citizen Potawatomi Nation or otherwise reside on property owned by the Citizen Potawatomi Nation in fee or trust regardless of location, who are employed within the exterior boundaries of the Citizen Potawatomi Nation or on property owned in fee or trust regardless of location, or who attend school within the exterior boundaries of the Citizen Potawatomi Nation or on property owned in fee or trust regardless of location, that have been convicted of the offenses listed in this Act are subject to the requirements of this code.
- (B) Any violation of a provision of this code by a sex offender who is an Indian shall be considered a felonious crime and subject to the penalty of one (1) year imprisonment and/or a fine of five thousand dollars (\$5,000.00) or both.
- (C) Any violation of a provision of this code by a

sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including but not limited to the issuance of fines, forfeitures, civil contempt, and banishment.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-178 Definitions

Words and phrases as used herein and elsewhere in Title 12 shall be defined as follows:

- (A) “Absconder” shall mean a convicted sex offender who goes in a clandestine manner out of the jurisdiction of the Court, or lies concealed, in order to avoid process of law.
- (B) “Advocate” shall mean a person who speaks or writes in support or defense of a person, cause, etc.
- (C) “Bodily injury” shall mean, but is not limited to, bodily harm (however slight), disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (D) “Citizen Potawatomi Nation” shall mean the Government of the Citizen Potawatomi Nation and its membership as defined in Article III of the Constitution of the Citizen Potawatomi Nation.
- (E) “Citizen Potawatomi Nation Sex Offender Registration Office” shall mean the office designated by the Citizen Potawatomi Nation to register sexual offenders and maintain the sex offender registry, pursuant to the Constitution and applicable laws of the Citizen Potawatomi Nation.
- (F) “Consanguinity” shall mean a relationship by descent from a common ancestor.
- (G) “Consent” shall mean to voluntarily give permission, approval, or agreement.
- (H) “Convicted” shall mean a sex offender who has been subject to penal consequences based on a conviction, however it may be styled. This includes adults as well as juvenile offenders.
- (I) “Court” shall mean the Citizen Potawatomi Nation District Court and all proceedings under this Act shall refer to the same.

- (J) “Developmental Disability” shall mean an impairment of general intellectual functioning or adaptive behavior which meets the following criteria:
- (1) It originated before the person became 18 year of age;
 - (2) It has been continuous since its origination and can be expected to continue indefinitely;
 - (3) It constitutes a substantial burden to the impaired person’s ability to perform in society; and
 - (4) It is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other condition found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services to those required for a person who is mentally retarded.
- (K) “Digitized Format” shall mean information kept digitally on an electronic data base and does not mean hard copies or physical objects.
- (L) “Dru Sjodin National Sex Offender Public Website (NSOPW)” shall mean the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- (M) “Employee” shall mean any individual who is self-employed or works for any entity whether compensated or not. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.
- (N) “Force” or “Coercion” shall mean the exercise of physical control or threatening influence over a victim sufficient to negate voluntary consent, including but not limited to any of the following circumstances:
- (1) When the perpetrator overcomes the victim through the actual application of physical force or physical violence;
 - (2) When the perpetrator coerces the victim to submit by threatening to use force or violence on the victim;
 - (3) When the perpetrator coerces the victim to submit by threatening to retaliate in the future (including threats of physical punishment, kidnapping, or extortion) against the victim or against any other person, and the victim believes the perpetrator has the ability to execute this threat; and
 - (4) When the perpetrator, through concealment or by the element of surprise, is able to overcome the victim.
- (O) “Foreign Conviction” shall mean one obtained outside of the United States.
- (P) “Gender” -Throughout this code, the terms “he,” “his,” “him” and the like shall be deemed to include “she,” “her,” etc.
- (Q) “Immediate” or “Immediately” shall mean within four (4) hours of first entry onto lands within the Nation’s territorial jurisdiction. Any participants of the Citizen Potawatomi Festival, who are subject to mandatory registration in any jurisdiction, must register with the Citizen Potawatomi Nation Police Department prior to entering the Festival grounds.
- (R) “Imprisonment” shall mean incarceration pursuant to a conviction, regardless of the nature of the institution which the offender serves the sentence. The term is to be interpreted broadly rather than in a narrow sense, and includes for example confinement in a state “prison” as well as in a federal, military, foreign, BIA, private or contract facility, local or tribal “jail” or mental health facility. Persons under “house arrest” following conviction of a covered sex offense are required to register pursuant to the provisions of this code during their period of “house arrest”.
- (S) “Indecent” shall mean morally or sexually offensive.
- (T) “Indian” shall mean a person of any age who is a member of a federally recognized Indian tribe, as defined by 25 U.S.C. 450(b) et seq., and who resides or is found within, or is subject to, the jurisdiction of the Citizen Potawatomi Nation.
- (U) “Intimate Parts” shall mean parts of the human body primarily in, but not limited to, the genital area, groin, inner thigh, buttocks, and breast.
- (V) “Jurisdiction” shall mean, unless otherwise specified, the 50 states, District of Columbia, the five principal U.S. Territories – i.e. Commonwealth of Puerto Rico; Guam; American

Samoa; the Northern Mariana Islands; the United States Virgin Islands – and Indian tribes that elect to function as registration authorities under 42 U.S.C. § 16927.

- (W) “Lewd” shall mean, obscene, wicked, immoral, or lascivious.
- (X) “Mental Illness” shall mean a substantial disorder of thought or mood, which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with ordinary demands of life.
- (Y) “Minor” shall mean an individual who has not attained the age of 18 years of age.
- (Z) “Perpetrator” shall mean a person accused of criminal sexual conduct.
- (AA) “Physically Helpless Person” shall mean a person who is unconscious, asleep, or who for any other reason is physically unable to communicate unwillingness to an act.
- (AB) “Predisposition” shall mean to give an inclination or tendency to commit an act beforehand.
- (AC) “Resides” shall mean, with respect to an individual, the location of the individual’s home or other place where the individual habitually lives.
- (AD) “Sex Offender” shall mean a person convicted of a sex offense under state, federal, military, territorial, local, maritime, foreign, or tribal law.
- (AE) “Sex Offender Registry” shall mean the registry of sex offenders and notification program maintained by the Citizen Potawatomi Nation.
- (AF) “Sex Offense” shall mean, a criminal offense that has an element involving a sexual act or sexual contact with another. The term sex offense or sexual offense is not used to refer to any and all crimes of a sexual nature, but rather to those covered by definition of “sex offenses” appearing in 42 U.S.C. § 16911(5) and under this Act.
- (AG) “Sexual Act” shall mean (i) oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, (iii) direct genital touching of a child under the age of 16 years, and (iv) touching of oneself in a manner to humiliate, embarrass, or harass another person.
- (AH) “Sexual Contact” shall mean the intentional touching of the victim’s or perpetrator’s intimate parts by the perpetrator or by the victim through the action or initiation of the perpetrator, including the intentional touching of the clothing covering the immediate area of the victim’s or the perpetrator’s intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification, or done for a sexual purpose, or in a sexual manner, including such actions for revenge, to inflict humiliation, or out of anger.
- (AI) “Sexual Penetration” shall mean sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.
- (AJ) “SMART Office” shall mean the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. § 16920.
- (AK) “SORNA” shall mean the federal Sex Offender Registration and Notification Act of 2007.
- (AL) “Student” shall mean an individual who enrolls or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institutions of higher education.
- (AM) “Temporarily Incapacitated Person” shall mean a person who is rendered temporarily incapable of appraising or controlling his conduct due to the influence of a controlled substance, alcohol, anesthetic, or other substance, regardless of the voluntary or involuntary nature or method of the consumption or use, or due to any other act committed upon that person with or without his consent.
- (AN) “Victim” shall mean the person alleged to have been subjected to the criminal sexual conduct.
- (AO) “Weapon” shall mean any object, although not inherently dangerous, which is used in a

way that is likely to cause serious injury or death. Weapons include, without limitation, firearms, whether or not loaded and whether or not capable of being fired, knives, brass knuckles, clubs, iron bars, baseball bats, and any other device capable of causing serious injury.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-179 Consideration of Foreign Sex Offenses Under This Act

(A) Convictions which require registration under this Act include convictions for sex offenses by any country, including, but not limited to, any U.S. jurisdiction, Canada, the United Kingdom, Australia, and New Zealand, including sex offenses under federal, military, state, territorial, maritime, tribal, or local law, where an independent judiciary generally enforces the right to a fair trial in that country during the year in which the conviction occurred. Sex offense convictions under the laws of any foreign country shall require registration on the same footing as domestic convictions.

(B) The following are considered sex offenses that require registration under this Act:

(1) Sexual acts and sexual contact offenses that have an element involving a sexual act or sexual contact with another. The offenses covered include all sexual offenses whose elements involve:

- (a) Oral-genital or oral-anal contact;
- (b) Any degree of genital, anal, or oral penetration;
- (c) Direct genital touching of a child under the age of 16 years; and
- (d) Touching of oneself in a manner to humiliate, embarrass, or harass another person.

(2) Specified offenses against a minor that involves any of the following:

- (a) An offense (unless committed by a parent or guardian) involving kidnapping;

- (b) An offense (unless committed by a parent or guardian) involving false imprisonment;
- (c) Solicitation to engage in sexual conduct;
- (d) Use in a sexual performance;
- (e) Any sexual touching of, or contact with, a person's body, either directly or through the clothing;
- (f) Solicitation to practice prostitution; use of other persons in prostitution, including, but not limited to the crimes of pandering, procuring, or pimping;
- (g) Video voyeurism;
- (h) Possession, production, or distribution of child pornography;
- (i) Criminal sexual crime involving a minor, or the use of the internet to facilitate or attempt such crimes; and
- (j) Any crimes that by its nature is a sex offense against a minor.

(3) Any offenses listed within the Citizen Potawatomi Nation Code which are specifically set out as Sex Offenses or have an element involving a Sexual Act or Sexual Contact with another person.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-180 Offenses Considered Felony Offenses under this Act

(A) Attempts and conspiracies to commit offense that are otherwise covered by the definition of "sex offenses."

(B) A conviction for any of the following included within SORNA, or offenses prosecuted under the Assimilative Act (18 U.S.C. § 1752 or § 1753), or any similar offense, and any other offense listed hereafter in this code, shall be considered a felony offense:

- (1) 18 U.S.C. § 1591 (sex trafficking of children),
- (2) 18 U.S.C. § 1801 (video voyeurism of a minor),

Title 12

- (3) 18 U.S.C. § 2241 (aggravated sexual abuse),
- (4) 18 U.S.C. § 2242 (sexual abuse),
- (5) 18 U.S.C. § 2243 (sexual abuse of a minor or ward),
- (6) 18 U.S.C. § 2244 (abusive sexual contact),
- (7) 18 U.S.C. § 2245 (offenses resulting in death),
- (8) 18 U.S.C. § 2251 (sexual exploitation of children),
- (9) 18 U.S.C. § 2251A (selling or buying of children),
- (10) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
- (11) 18 U.S.C. § 2252A (material containing child pornography),
- (12) 18 U.S.C. § 2252B (misleading domain names on the internet),
- (13) 18 U.S.C. § 2252C (misleading words or digital images on the internet),
- (14) 18 U.S.C. § 2260 (production of sexually explicit depictions of a minor for import in to the United States),
- (15) 18 U.S.C. § 2421 (transportation of a minor for illegal sexual activity),
- (16) 18 U.S.C. § 2422 (coercion and enticement of a minor for illegal sexual activity),
- (17) 18 U.S.C. § 2423 (Mann Act),
- (18) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
- (19) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual crimes).

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-181 “Tier I” Offenses

- (A) A Tier I offense includes any sex offense not included in Tier II or Tier III for which a person has been convicted by any jurisdiction, local government, tribal law, or a foreign country that involves any sexual act or sexual contact with another person, including, but not limited to any tribal offense listed under this Act which expressly states that it is a Tier I offense

or is included in following list of tribal offenses as they are defined by Title 12 of the Citizen Potawatomi Nation Criminal Code:

- (1) Incest
- (2) Indecent Exposure
- (3) Sexual Assault
- (4) Deviate Sexual Intercourse
- (5) Coercion and Enticement
- (6) Offense Resulting in Death
- (7) Attempt
- (8) Criminal Conspiracy
- (9) Solicitation
- (10) Child Pornography; Possession or Receipt of Child Pornography
- (11) Child Abuse
- (12) Duty to Report Child Abuse and Obscene or Pornographic Material Depicting Minors
- (13) Child Endangerment by Permitting Child Abuse
- (14) Indecent Solicitation of Minors
- (15) Kidnapping
- (16) False Imprisonment of a Minor
- (17) Prostitution
- (18) Misleading Domain Name on the Internet
- (19) Misleading Words or Digital Images on the Internet
- (20) And any other offense not covered in this Act, but addressed in the Citizen Potawatomi Nation Tribal Statutes, that would require registration in a sex offender database pursuant to federal guidelines.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-182 “Tier II” Offenses

It is the intent of the Citizen Potawatomi Nation to reclassify all crimes which would be considered Tier II offenses under federal law as Tier III offenses pursuant to the Tribal Code.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-183 “Tier III” Offenses

- (A) Any sex offense where the offender is punishable by more than one (1) year in jail, is a Tier III offense. Tribal offenses specifically specified under this section need not include a punishment by more than one (1) year.
- (B) A Tier III offense includes any sex offense for which a person has been convicted by a jurisdiction, local government, tribal law, or a foreign country, that involves:
- (1) The use of minors in prostitution, including solicitations,
 - (2) Enticing a minor to engage in criminal activity,
 - (3) Sexual contact with a minor, including offenses that cover sexual touching of or contact with the intimate parts of the body, either directly or through the clothing,
 - (4) The use of a minor in a sexual performance, or
 - (5) The production for distribution of child pornography,
 - (6) Non-parental kidnapping of a minor,
 - (7) A sexual act with another by force or threat, or
 - (8) A sexual act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the crimes or declining to participate.
- (C) Conviction of any of the following federal offenses, or similar offenses, shall be considered Tier III Offenses:
- (1) 18 U.S.C. § 1801 (video voyeurism of a minor),
 - (2) 18 U.S.C. § 2252 (material involving the sexual exploitation of a minor),
 - (3) 18 U.S.C. § 2252 A (possession or receipt of material containing child pornography),
 - (4) 18 U.S.C. § 2252 B (misleading domain name),
 - (5) 18 U.S.C. § 2252 C (misleading words or digital images),
 - (6) 18 U.S.C. § 2422 (a) (coercion to engage in prostitution),
 - (7) 18 U.S.C. § 2423 (b) (travel with the intent to engage in illicit conduct),
 - (8) 18 U.S.C. § 2423 (c) (engaging in illicit conduct in foreign places),
 - (9) 18 U.S.C. § 2424 (failure to file factual statement about an alien individual),
 - (10) 18 U.S.C. § 2425 (transmitting information about a minor to further criminal sexual conduct),
 - (11) 18 U.S.C. § 1591 (sex trafficking by force, fraud, or coercion),
 - (12) 18 U.S.C. §2241 (aggravated sexual abuse),
 - (13) 18 U.S.C. §2242 (sexual abuse),
 - (14) 18 U.S.C. §2243 (sexual abuse of a minor or ward),
 - (15) 18 U.S.C. § 2244 (abusive sexual contact).
 - (16) 18 U.S.C. § 2251 (sexual exploitation of children),
 - (17) 18 U.S.C. §2251 A (selling or buying of children),
 - (18) 18 U.S.C. §2252 (production, sale, or distribution of material involving the sexual exploitation of a minor),
 - (19) 18 U.S.C. §2252 A (production, sale, or distribution of material containing child pornography),
 - (20) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the United States),
 - (21) 18 U.S.C. §2421 (transportation for prostitution),
 - (22) 18 U.S.C. §2422 (b) (coercing a minor to engage in prostitution),
 - (23) 18 U.S.C. §2423 (a) (transporting a minor to engage in illicit conduct).
 - (24) Any military offense specified by the Secretary of Defense of the United States under section 175(a)(8)(C)(i) of PL 105-119 (codified at 10 U.S.C. §951).
- (D) A Tier III offense includes any tribal offense listed under this Act which expressly states that is a Tier II or Tier III offense.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03

enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-184 Procedures

All criminal procedures regarding this Act shall follow and be bound by Title 11, Criminal Court Procedures.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-185 Rights of the Accused

(A) An accused sexual offender shall have the same rights as a non-sexual criminal offender under Title 5 of the Citizen Potawatomi Nation Code, including but not limited to the following:

- (1) The right to jury trial upon request;
- (2) The right to counsel;
- (3) If the accused is indigent, the right to have counsel appointed to him free of charge by the Nation.

(B) An accused sexual offender shall have any other rights conferred by tribal law.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-186 Inadmissible Evidence

(A) Evidence generally inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided:

- (1) Evidence offered to prove that any alleged victim engaged in other sexual behavior; or
- (2) Evidence offered to prove any alleged victim's sexual predisposition.

(B) Exceptions. In a criminal case, the following evidence is admissible:

- (1) Evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of the semen, injury, or other physical evidence; or
- (2) Evidence of specific instances of sexual behavior by the alleged victim with respect to the person other than the accused was the source of the semen, injury, or other physi-

cal evidence; or

(3) Evidence, which the exclusion of, would violate the constitutional rights of the defendant.

(C) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible only if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.

(D) Procedure to Determine Admissibility. A party intending to offer evidence under subdivision (B) must:

- (1) File a written motion at least fourteen (14) days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause, requires a different time for filing or permits filing during trial; and
- (2) Serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim's parent, guardian, or legal representative; and
- (3) Request the court to conduct a hearing out of the presence of the jury, if any, and afford the victim and parties a right to attend and be heard. The hearing shall be closed except to motion and related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-187 Testimony, Resistance and Suppression of Victim Information

(A) Testimony. In order to convict a person of any crime defined in this Act it shall not be necessary that the testimony of the alleged victim be corroborated.

(B) Resistance. A victim need not resist the perpetrator in the perpetrator's commission of an offense under any section or subsection of this Act. Resistance by a victim is not an element

of any offense and the absence of a victim's resistance is not a defense in a prosecution under this Act.

- (C) **Suppression of Names and Details.** Upon the request of the victim or the perpetrator in a prosecution under this Act, or by the court's own motion, the court shall order the names of the victim and the perpetrator and the details of the alleged offense to be confidential until such time as the perpetrator is convicted by a jury, the charge dismissed, or the case is otherwise concluded, whichever occurs first.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-188 Prior Bad Acts

- (A) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another sexual offense or offenses or sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.
- (B) In a case in which the prosecutor intends to offer evidence under this rule, the prosecutor shall disclose this evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fourteen (14) days before the scheduled date of trial or at such later time as the court may allow for good cause.
- (C) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-189 Court Orders

- (A) Court Orders of Judgment and Sentence shall contain all of the following:
- (1) The exact language of the Tribal criminal code under which the sex offender was convicted;
 - (2) If possible, the analogous federal crime statute and the maximum possible penalty for that crime under federal law;

- (3) That a lengthier sentence of imprisonment for the crime would have been imposed but for the restrictions of the Indian Civil Rights Act of 1968 prohibiting a sentence of greater than one year of incarceration;
- (4) The tier of the offense and the registration requirements of that tier offense. If different than the three-tiered system under SORNA, the tier that the conviction falls in under SORNA. Offender shall not be excused from mandatory registration requirements in the event that the court order fails to contain this information;
- (5) Whether the defendant had a right to counsel;
- (6) Whether the defendant was represented by counsel;
- (7) If applicable, whether the defendant knowingly and voluntarily waived his right to counsel;
- (8) Court order may also contain any additional information that the court deems necessary and appropriate.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-190 Victim-Advocate Privilege

- (A) For the purposes of this section, a victim advocate is a person who is an employee or volunteer at a sexual assault or sexual abuse shelter or is a service provider for victims of sexual assault or sexual abuse and who has had at least ten (10) hours of training or experience regarding sexual assault and sexual abuse or sexual assault or sexual abuse victims.
- (B) The victim-advocate privilege is applicable in all sexual assault cases and in domestic violence cases.
- (C) Except as otherwise provided in this section, a victim of sexual assault may prevent an advocate from disclosing confidential oral communications between the victim and the advocate and written records and reports concerning the victim unless the privilege is waived.
- (D) The privilege does not relieve a person from

any duty imposed in the mandatory reporting of sexual child abuse. A person may not claim privilege when providing evidence in proceedings concerning sexual child abuse.

- (E) The court may order the advocate to disclose information only if the information's probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party and only directly to the court in chambers. The court may then decide if such information shall be given to a jury.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-191 Mandatory Restitution

Notwithstanding any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this Act.

(A) Scope and Nature of Order:

- (1) Directions. The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (B).
- (2) Enforcement. An order of restitution under this section shall be issued and enforced in accordance with laws of the Citizen Potawatomi Nation.

(B) Definitions. For purposes of this subsection, the term "full amount of the victim's losses" includes any costs incurred by the victim for:

- (1) Medical services relating to physical, psychiatric, or psychological care;
- (2) Physical and occupational therapy or rehabilitation;
- (3) Necessary transportation, temporary housing, and child care expenses;
- (4) Lost income;
- (5) Attorneys' fees, as well as other costs incurred; and
- (6) Any other losses suffered by the victim as a proximate result of the offense.

(C) Order mandatory. The issuance of a restitution

order under this section is mandatory. The court may not decline to issue an order under this section because of the economic circumstances of the defendant or the fact that a victim has received, or is entitled to receive, compensation for his or her injuries from the proceeds of insurance or any other source.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-192 Criminal Forfeiture – Property Subject to Criminal Forfeiture

(A) A person who is convicted of an offense under this Act shall forfeit to the Citizen Potawatomi Nation such person's interest in:

- (1) Any visual depiction or child pornography described in this Act, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, or received in violation of this Act;
- (2) Any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
- (3) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.

(B) The procedure for forfeiture shall follow tribal law. If not tribal law has been enacted then the court shall follow procedures directed by federal law for forfeitures.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-193 Juveniles

(A) The term "convicted" or a variant thereof, used with respect to sex offenses, includes an adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse or was an attempt or conspiracy to commit such an offense.

- (B) Juvenile offenders not prosecuted as adults are not required to register in the sex offender registry unless the offender is 14 years of age or older at the time of the offense and has been adjudicated delinquent for an offense comparable to or more severe than aggravated sexual assault as described in this Act or an attempt or conspiracy to commit such an offense.
- (C) Juveniles who are prosecuted and convicted as adults of a sex offense covered by this Act shall be treated the same as an adult sex offender.
- (D) The court may, at the request of the juvenile, seal the juvenile's court record when the juvenile reaches the age of majority, however, the court shall not remove or expunge the status of the conviction under SORNA. The juvenile must continue to comply with all the requirements of sex offender registration.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-194 Sex Offender Mental Health

- (A) Any person who has been clinically diagnosed with a mental illness, mental retardation, or a developmental disability that is convicted of any offense in this Act, shall be required to undergo a psychiatric assessment to determine if incarceration is an appropriate penalty.
- (B) A psychiatric assessment may be done by a psychiatrist or a psychologist with a current license in good standing to practice in that field.
- (C) If the psychiatrist or psychologist administering the psychiatric assessment determines that incarceration is not appropriate, then the convicted person may be involuntarily civilly committed to an institution or other facility for treatment. However, the offender must continue to comply with all the requirements of the sex offender registration.
- (D) Such treatment shall last until the convicted person has been released by the facility under the direction of a psychiatrist or psychologist and that psychiatrist or psychologist believes that the convicted person is no longer a risk to society.
- (E) Periodic review hearings may be requested by

the court or by the prosecutor to inquire as to the ongoing treatment of the convicted person.

- (F) If the person is released from a treatment facility, he shall immediately report to the Citizen Potawatomi Nation Sex Offender Registration Office and register as a sex offender.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-195 Notice to the Offender

The Citizen Potawatomi Nation District Court shall notify and explain to the offender the requirements of registration either before his release from incarceration or immediately after sentencing. The Nation shall require the offender to sign a form that indicates he has been notified and explained such registration requirements and that he understands the registration requirements. The form shall be filed in the offender's criminal case.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-196 Registry Requirements for Offenders

- (A) All persons convicted under this Act must register as a sex offender. Registration is required for all offenses under this Act unless specifically stated to the contrary.
- (B) Where to Register:
 - (1) Sex offenders shall initially register with the Citizen Potawatomi Nation Sex Office within three (3) days of sentencing, if no jail time is ordered.
 - (2) If the offender is incarcerated, he shall register at the facility in which he is detained before his release.
 - (3) All offenders must also register within three (3) days in the jurisdiction in which he:
 - (a) Was convicted,
 - (b) Resides,
 - (c) Is employed, and
 - (d) Goes to school.
- (C) Current information. All sex offenders con-

victed under this Act shall keep their information current in the registry at all times. A sex offender is required to appear in person at the Citizen Potawatomi Nation Sex Offender Office to update any change in the offender's information within three (3) days of such change. The information required to be updated includes but is not limited to: (a) name, (b) address, (c) employment or termination of employment, (d) school, or termination of school (e) termination of residence.

(D) Current information. All sex offenders convicted under this Act shall keep their information current in the registry at all times. A sex offender is required to inform the Citizen Potawatomi Nation Sex Offender Office to update any change in the offender's information within three (3) days of such change. The information required to be updated includes but is not limited to: (a) email address, (b) instant message address, (c) any other designations used in internet communications, postings, or telephone communications, (d) vehicle information, or (e) temporary lodging information in order to notify jurisdictions where the offender will be temporarily staying.

(E) Registration Period. The registration period begins to run upon release from custody for an incarcerated offender, or at sentencing for sex offenders not incarcerated.

(F) Clean Record. A Tier I sex offender who has maintained a clean record for at least ten (10) years may petition the court to reduce the registration period. A clean record is satisfied if:

- (1) The offender has not been convicted of any offense for which imprisonment for more than one year may be imposed;
- (2) The offender has not been convicted of any sex offense;
- (3) The offender has successfully completed any periods of supervised release, probation, and parole; and
- (4) The offender has successfully completed an appropriate sex offender treatment program certified by the jurisdiction which convicted the offender or by the Attorney General (42 U.S.C. § 16915(b)(1)). Such jurisdiction shall decide what program design is suffi-

cient and what "successful completion" is.

(G) Clean Record. A Tier III sex offender who is required to register because of a juvenile adjudication may have a registration and notification requirement terminated if the following conditions are met:

- (1) The offender is required to register based on a delinquency adjudication for an offense which required Tier III registration;
- (2) The offender has had twenty-five (25) years with a "clean record";
 - (a) The offender has not been convicted of any offense for which imprisonment for more than one year may be imposed;
 - (b) The offender has not been convicted of any sex offense;
 - (c) The offender has successfully completed any periods of supervised release, probation, and parole; and
 - (d) The offender has successfully completed an appropriate sex offender treatment program certified by the jurisdiction which convicted the offender or by the Attorney General (42 U.S.C. § 16915(b)(1)). Such jurisdiction shall decide what program design is sufficient and what "successful completion" is.

(H) A Tier I sex offender is required to personally appear to take a photograph, and review and verify registration information at least one (1) time per year with the Citizen Potawatomi Nation Sex Offender Office. The offender's date of review shall be on or before the last date of registration.

This in-person appearance and requirements will occur at least one (1) time per year for fifteen (15) years unless otherwise established.

(I) All Tier II offenses are classified by the Citizen Potawatomi Nation as Tier III offenses for purposes of this Act and, as such, all Tier II sex offenders are required to personally appear to take a photograph, and review and verify registration information every three (3) months with the Citizen Potawatomi Nation Sex Offender Office.

This in-person appearance and requirements will occur at least every three (3) months.

- (J) A Tier III sex offender is required to personally appear to take a photograph, and review and verify registration information every three (3) months with the Citizen Potawatomi Nation Sex Offender Office.

This in-person appearance and requirements will occur every three (3) months for life unless otherwise established.

- (K) Upon entering the Nation's jurisdiction for residency, work, or school, a sex offender from another jurisdiction must register with the Citizen Potawatomi Nation Sex Offender Office within twenty-four (24) hours of entering.
- (L) Failure to register in any jurisdiction, or update current information, shall carry a maximum penalty of incarceration of not more than one (1) year, or a civil penalty of not more than Five Thousand Dollars (\$5,000.00) or both.
- (M) When a new jurisdiction is informed an offender intends to reside, be employed, or attend school in their jurisdiction, and that offender fails to appear for registration as required in a new jurisdiction, the jurisdiction receiving notice must inform the jurisdiction that provided notification (that the offender was to commence employment, residence, and/or school in the new jurisdiction) that the offender failed to appear for registration.
- (N) International Travel Abroad: All sex offenders must inform the Citizen Potawatomi Nation Sex Offender Registry Office twenty-one (21) days in advance if they intend to travel outside of the United States. The registering office must immediately notify the United States Marshals' Service and any other jurisdiction where the sex offender is either registered or is required to register, of that updated information, and immediately update NCIC/NSOR.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance #11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011. Amended by Ordinance #13-08, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-2-197 Registry Requirements of The Citizen Potawatomi Nation

- (A) This Act applies to all sex offenders, including those convicted of sexual offenses prior to its enactment. The Nation is specifically required to register offenders if they are in the tribal judicial system as prisoners, supervisees, or registrants or if they re-enter the system due to another conviction. The Nation shall develop a plan to notify such offenders of the new requirement. The Nation shall register:
 - (1) Sex offenders convicted by a tribal court who are sentenced and released on probation or post-imprisonment supervision prior to the jurisdiction's passage of this Act and registration was not required at that time.
 - (2) Sex offenders who were not required to register previously, or who have completed any registration or probation requirements, and have been convicted of any new offense.
 - (3) Tier I offenders within three (3) months of becoming subject to the Act.
 - (4) Tier II offenders within three (3) months of becoming subject to the Act.
 - (5) Tier III offenders within three (3) months of becoming subject to the Act.
- (B) If a sex offender fails to register, cannot be located, or may have absconded in the Nation's jurisdiction, as required by this Act, the Nation shall:
 - (1) Put forth an effort to determine whether the sex offender has absconded;
 - (2) If no determination can be made, then a law enforcement agency with the jurisdiction to investigate must be notified;
 - (3) If another jurisdiction or federal authorities gave notice of the possibility of a sex offender absconding, the jurisdiction proving such shall be notified.
- (C) If a sex offender fails to register, cannot be located, or has absconded in the Nation's jurisdiction, as required by this Act, the Nation shall:
 - (1) Petition the court for a warrant to arrest and detain the offender until a hearing can be set to determine the penalty, if any, for the offender's non-compliance;

- (2) Revise the information in the tribal registry and the Nation Sex Offender Registry to reflect that the sex offender has failed to register and the offender's new status as an absconder;
- (3) Notify the United States Marshal Service; and
- (4) Enter the sex offender into the National Crime Information Center Wanted Person File.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-198 Maintenance and Management of Registry

- (A) The Citizen Potawatomi Nation shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of the national Sex Offender Registration and Notification Act of 2007
- (B) The Nation may manage and enforce the registration of all tiers of offenders who are convicted, reside, go to school, or work within this jurisdiction.
- (C) The Citizen Potawatomi Nation may implement and maintain an electronic database of information and ensure that such information can be immediately transmitted to others and immediately accessed.
- (D) The Citizen Potawatomi Nation shall procure and maintain all times computer software to enable the Nation to establish and operate a uniform sex offender registry and Internet web sites. Such software shall facilitate (a) the immediate exchange of information among jurisdictions, (b) public access over the Internet to appropriate information, including the number of registered sex offenders in the Nation's jurisdiction, (c) full compliance with the requirements of the Sex Offender Registration and Notification Act of 2007, (d) communication of information to community notification program participant.
- (E) Sex Offender Website. The Nation's registered sex offender information shall be made available on the Internet, and in a manner that is

readily accessible to all jurisdictions and to the public. The website shall:

- (1) Allow for immediate exchange of information among other jurisdictions;
- (2) Provide for public access to appropriate information on sex offenders in the Nation's jurisdiction;
- (3) Be able to receive information from other participating jurisdictions regarding offenders entering the tribal jurisdiction;
- (4) Work in conjunction with the Dru Sjodin National Sex Offender Public Website;
- (5) Allow for data links to sex offender safety and education resources;
- (6) Have instructions on how to correct erroneous information on a sex offender listed on the website;
- (7) Give notice and warning that information on the website should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry, or residing, or working at any reported address. The warning shall note that any action could result in civil and criminal penalties;
- (8) Implement field search capabilities, including but not limited to, name, telephone numbers, county, city, or town, zip code, and geographical radius; and
- (9) Provide an automated notification system which incorporates substantially the following features:
 - (a) The information required to be included on sex offender websites is posted on the Nation's sex offender website within three (3) business days;
 - (b) The Nation's sex offender website includes a function under which members of the public and organizations can request notification when sex offenders commence residence, employment, or school at attendance within zip codes or geographic radius areas specified by the requester, where the requester provides an e-mail address to which the notice is to be sent; and
 - (c) Upon posting on the Nation's sex of-

fender website of new residence, employment, or school attendance information for a sex offender within an area specified by the requester, they system automatically send an e-mail notification to the requester which identifies the sex offender sufficiently that the requester can then access the Nation's website and view the information about the sex offender on the website.

(F) In addition to the public website, the Nation shall notify, within three (3) business days of an offender registering or updating information, the following:

- (1) The U.S. Attorney General or national database;
- (2) All States, including the District of Columbia, the five principal U.S. Territories, and any tribe operating as a SORNA registration jurisdiction;
- (3) All law enforcement agencies, including, but not limited to police departments, sheriff's offices, prosecutor's offices, probation agencies, and any other agencies with criminal investigation, prosecution, or sex offender supervision functions, schools, and the public housing agency in the area where the offender resided;
- (4) Each jurisdiction where the offender is or will be employed, attends school, and resides;
- (5) Agencies in the immediate area that conduct employment background checks under section 3 of the National Child Protection Act of 1993;
- (6) Social Service or volunteer entities in the area responsible for protecting minors;
- (7) Any organization or individual that has requested notification.

(G) The Citizen Potawatomi Nation shall submit all information to the Federal Bureau of Investigation's National Sex Offender Registry in a manner conforming to the requirements of the National Sex Offender Registration and Notification Act of 2007.

Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011. Amended by Ordinance #13-08, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-2-199 Registry Information Required to be Reserved by The Potawatomi Nation

(A) The following information on each sex offender is required to be kept by the Citizen Potawatomi Nation Sex Offender Office, and shall be used on the public website unless specifically excluded:

- (1) Name including a legal name, a nickname, a tribal or traditional name, any aliases;
- (2) Date of Birth, and dates that the offender uses at a birth date;
- (3) Detailed physical description. This includes a general appearance of the offender including tattoos, scars, or other identifying marks;
- (4) Current Photos. At least one photograph of the offender shall be posted. If available, more than one photographs should be used showing the front and back of the offender, and the offender in other presentations;
- (5) All internet identifiers or monikers for purposes of routing or self-identification in the Internet communications or postings and email and instant messaging addresses;
- (6) Telephone numbers including cell, work, and residential locations or any other designations used by sex offender for purposes of routing or self-identification in telephonic communication;
- (7) Residence address. Past and current street addresses only, no post office boxes. If no street address is available, then a reasonable description of where the person's home is located shall be used;
- (8) Other residences or temporary lodging information. This includes any place where the offender has stayed or will stay for seven (7) accumulative days or more, including the address and period of time the offender stays there;
- (9) Employer name and address, which included self-employment whether compensated

or not. If the sex offender has no fixed place of employment, list other employment information concerning places where the sex offender works such as a normal travel route or the general area(s) in which the offender works;

- (10) Professional licenses;
 - (11) School or educational information. Name and address of any educational institution where the offender is currently enrolled and physically present;
 - (12) Vehicle information. License plate, registration number or identifier, description of any vehicle owned or regularly operated by the offender for personal or work use, and permanent or frequent location where all vehicles are kept. This includes watercraft, aircraft, and any other land vehicles, such as ATV's;
 - (13) Text of provision of law defining the criminal offense for which the offender is registered. This can be electronic text or a data link;
 - (14) Fingerprints and palm prints. This can be digitized form, or links to the central registry.
 - (15) Driver's license or identification card (digitized photocopy);
 - (16) Tribal affiliation and CDIB card (digitized photocopy);
 - (17) Passport and immigration documents. However, all document numbers must be digitized;
 - (18) Criminal History, including the date of all arrests, the date of all convictions, any outstanding warrants, the registration status, and the status of parole, probation, or supervised release;
 - (19) A DNA sample taken from the sex offender for analysis and entry into the Combined DNA Index System (CODIS); and
 - (20) Social Security number.
- (B) Such information shall be promptly shared among registration jurisdiction and disclosure of all of the information, except that which is mandatorily excluded, to the general public and specified entities.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-200 Mandatory Exclusions

The following information shall not be placed for public viewing on the sex offender registry web site: a) the identity of any victims of a sex offense, b) the offender's social security number, c) arrests that did not result in conviction, d) travel and immigration document number, or e) internet identifiers.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-201 Review Information

- (A) Each time an offender appears before the Citizen Potawatomi Nation Sex Offender Office for review and verification of his information, the attending officer shall take a new photo of the offender and provide additional forms to the offender to verify or correct the offender's information.
- (B) The updated information must be immediately entered into the register and transmitted by electronic means to all participating jurisdictions.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-202 Citizen Potawatomi Nation as Residence, Employer, and School Jurisdictions

- (A) If the Citizen Potawatomi Nation registers a sex offender because he resides, works, or attends school within its jurisdiction, the Nation shall immediately notify all jurisdictions where the offender intends to reside, work, or attend school and shall immediately notify other jurisdictions where the offender is currently registered, or is required to register.
- (B) If a sex offender is currently registered in the Citizen Potawatomi Nation jurisdiction because he was convicted, resides, works, or attends school therein, and the offender gives notice that he intends to take up residence outside the Citizen Potawatomi Nation Jurisdiction, the Nation must immediately notify all jurisdictions

where the offender is currently registered or is required to register. The Nation shall also notify the U.S. Marshals Service and update all of the offender's registry information.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-203 Registration Not Required

The nation shall not require registration with the sex offender registry based on a tribal court conviction if the defendant was denied the right to the assistance of counsel and the defendant would have had a right to the assistance of counsel under the United States Constitution in comparable state court proceedings.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

Section 12-2-204 Miscellaneous

(A) Immunity for Good faith Conduct:

The Citizen Potawatomi Nation and their agencies, officers, and employees, shall be immune from liability for good faith conduct under this Act.

(B) Employee of the Citizen Potawatomi Nation:

Any employee of the Citizen Potawatomi Nation who fails to inform the Citizen Potawatomi Nation that he is a registered sex offender, or who fails to register as a sex offender, or who fails to keep sex offender registration current, may be discharge from employment with the Citizen Potawatomi Nation without further notice.

Ordinance #11-02 enacted by the Citizen Potawatomi Legislature on June 28, 2010 and Ordinance # 11-03 enacted by the Citizen Potawatomi Legislature on May 26, 2011.

CHAPTER THREE INCHOATE CRIMES

Section 12-3-101 Attempt

(A) It is unlawful to engage in conduct constituting a substantial step toward commission of any offense under Tribal, Federal, or State laws applicable to the jurisdiction which any part of the offense was to be completed with the culpability required for the commission of the offense.

(B) Anywhere constituting a substantial step toward the commission of any Tribal or Federal offenses while acting with the culpability required for the commission of the offense.

(C) Attempts shall be punishable by the same penalties as the completed crime.

Section 12-3-102 Criminal Conspiracy

(A) It is unlawful to agree to engage in or cause the performance of conduct with the intent to commit any offense punishable by Tribal, Federal, or State laws applicable to the jurisdiction in which the conduct is agreed to be performed, and any one person commits an overt act in pursuance of the conspiracy.

(B) Anywhere to engage or cause the performance of conduct with the intent to commit any Tribal or Federal offense and anyone commits an overt act in pursuance of the conspiracy.

(C) Conspiracy to commit an offense carries the same punishment as the completed offense.

Section 12-3-103 Solicitation

(A) It is unlawful to entice, advise, incite, order, or encourage another to commit any offense, with intent such person commit an offense under laws of the jurisdiction where the conduct was to be performed.

(B) In any place, entice, advise, incite, order, or encourage another to commit any offense, with intent such other person commit an offense punishable by Tribal Federal, or State laws within the Tribal jurisdiction.

(C) Section 12-3-103 is punishable by fine up to Five Hundred Dollars (\$500.00), or imprisonment up to Six (6) months, or both.

CHAPTER FOUR CRIMES AGAINST PUBLIC JUSTICE

Section 12-4-101 Bribery

(A) It is unlawful to ask for, give, or accept any money, goods, property, thing of value or advantage, or any promise or undertaking, given with intent influence a person.

(B) Section 12-4-101 is punishable by fine up to Three Thousand Dollars (\$3,000.00); or imprisonment up to Six (6) months, or both. Banishment not exceeding Ten (10) years may

additionally be imposed. For a subsequent conviction, banishment may be imposed for Ten (10) years and less than life.

Section 12-4-102 Improper Influence In Official Matters

(A) It is unlawful to:

- (1) Threaten harm with intent to influence decisions, recommendations, votes or discretion as a public servant, official, or voter; or,
- (2) Threaten harm to any public servant or relative with intent to influence his decision, recommendation, vote or discretion in a judicial, legislative, or administrative, proceeding; or,
- (3) Threaten harm to any public servant, official or relative with the intent to influence him to violate his duty; or,
- (4) Privately address a court official in a judicial or administrative proceeding and make representation, argument, or communication designed to influence the outcome.

(B) It is no defense a person was not qualified to act.

(C) Section 12-4-102 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Ten (10) years may additionally be imposed. For a subsequent conviction, banishment may be imposed for Ten (10) years and less than life.

Section 12-4-103 Retaliation For Past Official Action

(A) It is unlawful to harm in retaliation for anything done by a person in his capacity as a public servant.

(B) Section 12-4-103 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Ten (10) years may additionally be imposed. For a subsequent conviction, banishment may be imposed for Ten (10) years and less than life.

Section 12-4-104 Improper Gifts To Public Servants

(A) It is unlawful to knowingly confer, offer to agree or confer any benefit to a public servant with intent to induce an exercise of discretion or undermine official impartiality.

(B) This section shall not apply to:

- (1) Gifts or benefits conferred because of kinship, traditional ceremonies, or personal, professional or business relationship independent of official status; or
- (2) Trivial benefits incidental to personal, professional or business contacts and involving no substantial risk of undermining official impartiality.

(C) Section 12-4-104 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed.

Section 12-4-105 Unofficial Misconduct

(A) It is unlawful to exercise or attempt to exercise functions of a public office when not elected or appointed.

(B) Section 12-4-105 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-106 Oppression In Office

(A) It is unlawful when acting or purporting to act in an official capacity or taking advantage of actual or purported capacity, with knowledge such conduct is illegal, to:

- (1) Subject to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of personal or property rights; or,
- (2) Deny or impede the exercise or enjoyment of any right, power, or immunity.

(B) Section 12-4-106 is punishable by fine of Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-107 Misusing Public Money

(A) It is unlawful for a person charged with receipt, safekeeping, transfer or disbursement of public monies to:

- (1) Appropriate the money to his own use or use of another; or,
- (2) Loan the money; or,
- (3) Fail to keep the money in his possession or control until disbursed; or,
- (4) Deposit the money in an unauthorized bank or with a person not authorized; or,
- (5) Keep any false account, or make a false entry or erasure relating to the money; or,
- (6) Fraudulently alter, falsify, conceal, destroy, or obliterate any account; or,
- (7) Knowingly refuse or omit to pay on demand by competent authority; or,
- (8) Knowingly omit to transfer money when transfer is required; or,
- (9) Make a profit for himself or another out of public monies; or,
- (10) Fail to pay the proper account or authority any fines, forfeitures, or fees; or,
- (11) Handle public money in a manner not authorized by law; or,
- (12) Handle public money in a careless manner creating a significant risk of loss.

(B) "Public money" includes all money, bonds, and evidences of indebtedness, belonging to, received held by the Tribe or government, or any account or money held by the Tribe or government for any individual or group.

(C) Section 12-4-107 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-108 Perjury In The First Degree

- (A) It is unlawful to make a false statement under oath or affirmation, or swear or affirm the truth of a statement previously made, when the statement is material and it is not believed to be true.
- (B) Falsification is material, regardless of the admissibility of the statement, if it could have affected the course or outcome. It is no defense the declarant mistakenly believed the falsifica-

tion to be immaterial. Whether a falsification is material in a factual situation is a question of law.

- (C) It is no defense the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation when the actor presents it as being verified shall be deemed to have been duly sworn or affirmed.
- (D) No person shall be guilty if they retracted the falsification before the falsification was or would be exposed and before the falsification substantially affected the proceeding.
- (E) No person shall be convicted where proof of falsity rests solely upon contradiction by testimony of a single other person.
- (F) Section 12-4-108 is punishable by up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-109 Perjury In The Second Degree

- (A) It is unlawful to:
 - (1) Make any written false statement which they do not believe to be true; or,
 - (2) Purposely create a false impression in a written application by omitting information necessary to prevent statements from being misleading; or,
 - (3) Submit or invite reliance on any writing which they know to be forged, altered or lacking in authenticity; or,
 - (4) Submit or invite reliance on any sample, specimen, map, boundary mark, or object which he knows to be false, with a purpose to mislead a public servant.
- (B) It is no defense the oath or affirmation was administered or taken in an irregular manner or the declarant was not competent to make the statement. A document purporting to be made on oath or affirmation when the actor presents it as being verified shall be deemed to have been duly sworn or affirmed.

- (C) No person shall be guilty if they retracted the falsification before the falsification was or would be exposed and before the falsification substantially affected the proceeding.
- (D) No person shall be convicted where proof of falsity rests solely upon contradiction by testimony of a single other person.
- (E) Section 12-4-109 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-110 Tampering With Witnesses

- (A) It is unlawful:
 - (1) Believing an official proceeding or investigation will begin or is pending to attempt to induce or cause a person to:
 - (a) Testify or inform falsely; or,
 - (b) Withhold any testimony, information, document or thing; or,
 - (c) Elude legal process summoning them to testify or supply evidence; or,
 - (d) Absent themselves from any proceeding or investigation to which they have been summoned; or,
 - (2) Harm another by retaliation for anything done as a witness or informant; or,
 - (3) Solicit, accept or agree to accept benefit for doing things specified in this section.
- (B) Section 12-4-110 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment not exceeding One (1) year, or both.

Section 12-4-111 Tampering With Evidence

- (A) It is unlawful, believing an official proceeding or investigation will begin or is pending to:
 - (1) Alter, destroy, conceal or remove any record, document, or thing with intent to impair its verity or availability; or,
 - (2) Make, present, or use any record, document, or thing knowing it to be false to mislead a public servant.

- (B) Section 12-4-111 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-112 Tampering With Public Records

- (A) It is unlawful to:
 - (1) Knowingly make a false entry in, or alteration of, any record, document thing belonging to or received or kept by, the Tribe or government, or required to be kept for information of the Tribe or government; or,
 - (2) Make, present or use any record, document, or thing knowing it to be false, to be taken as a genuine part of information or records referred to in subsection (1) above; or,
 - (3) Purposely and unlawfully destroy, conceal, remove or otherwise impair the truth or availability of any record, document or thing.
- (B) Section 12-4-112 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-113 Impersonating A Public Servant

- (A) It is unlawful to pretend to hold a public office to induce submission to pretended official authority or act in reliance upon that pretense.
- (B) Section 12-4-113 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-114 Obstructing Governmental Function

- (A) It is unlawful to:
 - (1) Use force, violence, intimidation, or any act to interfere with a public servant performing or purporting to perform an official function; or,
 - (2) Obstruct, impair, or prevent the administration of governmental function by force, violence, physical interference or obstacle,

breach of official duty, or any act, this section does not apply to flight, refusing arrest.

- (B) Section 12-4-114 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-115 through 12-4-125 Reserved

Section 12-4-126 Obstruction of a Law Enforcement Officer

- (A) Any person who willfully delays or obstructs any law enforcement officer in the discharge or attempt to discharge the lawful performance of his or her duty is guilty of obstructing a law enforcement officer.
- (B) Section 12-4-126 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-127 Eluding a Law Enforcement Officer

- (A) Any operator of a motor vehicle who is given by hand, voice, emergency light, or siren, a visual or audible signal by a law enforcement officer acting in the lawful performance of his or her duty, directing the operator to bring the vehicle to a stop and who willfully increases the speed or extinguishes the lights of the vehicle in an attempt to elude the law enforcement officer, or willfully attempts in any other manner to elude the law enforcement officer, is guilty of eluding a law enforcement officer.
- (B) Section 12-4-127 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-128 Resisting Lawful Arrest

- (A) It is unlawful to employ means of resistance to prevent a law enforcement officer from effecting an arrest or detention.
- (B) Section 12-4-128 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-4-129 Assault and Battery Upon a Law Enforcement Officer

- (A) Any person who, without justifiable or excusable cause, knowingly commits any assault upon a law enforcement officer acting in the lawful performance of his or her duties, shall be guilty of assault and battery upon a law enforcement officer.

- (B) Section 12-4-129 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-130 Aggravated Assault and Battery Upon a Law Enforcement Officer

- (A) Any person who, without justifiable or excusable cause, knowingly commits any aggravated assault upon a law enforcement officer acting in the lawful performance of his or her duties shall be guilty of assault and battery upon a law enforcement officer.
- (B) Any person Section 12-4-130 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-131 Mistreating or Interfering with a Police Dog or Horse

- (A) No person shall willfully torture, torment, beat, mutilate, injure, disable, or otherwise mistreat a police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the Tribe or acting with or on behalf of the Tribe.
- (B) No person shall willfully interfere with the lawful performance of any police dog or police horse.
- (C) Section 12-4-131 is punishable by fine up to Two Thousand Dollars (\$2,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-132 Killing a Police Dog or Horse

- (A) No person shall kill any police dog or police horse owned, or the service of which is employed, by a law enforcement agency of the Tribe or acting with or on behalf of the Tribe.
- (B) Section 12-4-132 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-133 Refusing To Aid An Officer

- (A) It is unlawful to knowingly or irresponsibly refuse to aid a law enforcement officer or fireman when called upon by the officer.
- (B) Section 12-4-133 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-4-134 False Arrest

- (A) It is unlawful for any person pretending to be

a public officer to, under pretense or color of legal authority, arrest or detain any person.

- (B) Section 12-4-134 punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-135 Obstructing Justice

- (A) It is unlawful to hinder the apprehension, prosecution, conviction or punishment of another to:

- (1) Harbor or conceal; or,
- (2) Provide or aid in providing a weapon, transportation, disguise or means of avoiding apprehension or effecting escape; or,
- (3) Conceal or destroy evidence or tamper with a witness, informant, document or source of information, regardless of admissibility; or,
- (4) Warn of impending discovery or apprehension, except to get the person to comply; or,
- (5) Volunteer false information to a law enforcement officer; or,
- (6) Obstruct by force, threat, bribery or deception anyone from performing an act which might aid in the discovery, apprehension, prosecution or conviction.

- (B) Section 12-4-135 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Unless the recipient of above aid has been previously banished a conviction may result in both parties being banished equal to one half of the original sentence, plus a fine up to One Thousand Dollars (\$1,000.00).

Section 12-4-136 Providing Contraband

- (A) It is unlawful to provide any person under arrest or in detention with alcoholic beverages, drugs, weapons, implements of escape, or other thing or substance which the actor knows is improper or unlawful.

- (B) Section 12-4-136 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to Three (3) months, or both.

Section 12-4-137 Escape

- (A) It is unlawful to:

- (1) Remove oneself or fail to return to official detention; or,
- (2) Knowingly procure, make, or possess anything which may facilitate escape; or,

- (3) Aid another to escape; or,

- (4) Knowingly provide a person in detention with anything which may facilitate escape.

- (B) “Detention” means arrest, detention in any facility or any other detention for law enforcement purposes.

- (C) Section 12-4-137 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-138 Bail Jumping

- (A) It is unlawful to fail to appear after release by court order or upon condition they subsequently appear.

- (B) Section 12-4-138 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-139 Failure To Obey A Lawful Order Of The Court

- (A) It is unlawful to purposely or knowingly fail to obey an order, subpoena, warrant or command issued, or given by Court or any officer.

- (B) This Section shall not apply to a failure to appear in a Civil action.

- (C) Section 12-4-139 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both.

Section 12-4-140 Unlawful Return Of Banished Persons

- (A) It is unlawful during the term of banishment to:

- (1) Physically return to the territorial jurisdiction except while actually traveling a public highway, or as allowed by law, or,
- (2) To apply or attempt to claim any right, privilege or immunity by Tribal membership Tribe except as provided.

- (B) Section 12-4-140 is punishable by fine up to Five Thousand Dollars (\$5,000.00), and imprisonment not exceeding One (1) year, or both. Banishment not exceeding One (1) year may additionally be imposed.

- (C) Any personal property which the person brought with them or used to return shall be contraband and forfeited by civil forfeiture provided, if any property belongs to another, that person, if known, shall be served with forfeiture proceeding and may defend.

Section 12-4-141 Aiding Return Of Banished Persons

- (A) It is unlawful to aid, abet, or assist a person under banishment to:
- (1) Physically return to the territorial jurisdiction except while traveling a public highway, or as allowed by law; or,
 - (2) Apply or attempt to claim any right, privilege, or immunity by Tribal membership except as allowed.
- (B) Section 12-4-141 is punishable by fine up to Five Thousand Dollars (\$5,000.00), and imprisonment not exceeding Six (6) months. Banishment not exceeding One (1) year may additionally be imposed.
- (C) Any personal property which the banished person brought with him or used to return shall be contraband and forfeited by civil forfeiture if any property belongs to another, that person, if known, shall be served with forfeiture proceedings, and may defend.

Section 12-4-142 through 12-4-144 Reserved

Section 12-4-145 False Alarms

- (A) It is unlawful to knowingly:
- (1) Cause a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property; or,
 - (2) Give false information to any law enforcement officer with purpose to implicate another in an offense; or,
 - (3) Report to law enforcement authorities an offense or other incident knowing or believing it did not occur; or,
 - (4) Pretend to furnish law enforcement authorities with information when one knows they have no information relating to such offense or incident; or,
 - (5) Give a false name or address to a law enforcement officer.
- (B) Section 12-4-145 is punishable by fine up Three Thousand Dollars (\$3,000.00), or by imprisonment up to Six (6) months, or both.

Section 12-4-146 Doing Business Without A License

- (A) It is unlawful to commence or carry on business, trade, or profession, without having an appropriate license.
- (B) Section 12-4-146 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-4-147 Tampering With Public Property

- (A) It shall be unlawful to:
- (1) Steal, deface, mutilate, alter, falsify, or remove any notice, sign, record, map, book, document or thing, or court documents or records, placed or filed in any public place, office, or with any public officer, or permit another to do so; or,
 - (2) Knowingly injure, deface or remove any signal, monument or other marker placed or erected as part of an official survey; or,
 - (3) Intentionally deface, obliterate, tear down, or destroy any copy or transcript or law extract or proclamation, advertisement, or notice set up or displayed by any public officer or court; before the expiration of the set up time.
- (B) Section 12-4-147 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-4-148 Injuring Public Property

- (A) It is unlawful to:
- (1) Intentionally break, pull down, injure or destroy any jail or place of confinement; or,
 - (2) Intentionally dig up, remove, displace, injure or destroy any public roadway, bridge, private road or bridge or public building or structure; or,
 - (3) Remove or injure any milepost, guidepost or road or highway sign or marker or any inscription erected along a road or highway; or,
 - (4) Knowingly remove, injure, deface, or destroy any public or structure, or personal property belonging to the Tribe or other government or government agency.

- (B) Section 12-4-148 is punishable by a fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-4-149 through 12-4 155 Reserved

Section 12-4-156 Compensation For Past Official Behavior

- (A) It is unlawful to solicit, accept or agree to accept financial benefit for having, as a public servant, given a decision, opinion, recommendation or favorable vote or having exercised a discretion in his favor, or having violated their duty; or offer, confer or agree to confer compensation.
- (B) Section 12-4-156 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-157 Official Unlawful Action

- (A) It is unlawful, being a public servant, and with the intent to materially benefit them self or another to harm another, to:
- (1) Knowingly commit an unauthorized act which purports to be an act of their office, or knowingly refrains from performing a non-discretionary duty; or,
 - (2) Knowing official action is contemplated or in reliance on information acquired by virtue of their office or another public servant, which information has not been made public, they:
 - (a) Acquires or divests them self of a valuable interest in property, transaction, or enterprise which may be affected by such action or information; or,
 - (b) Speculates or wagers on the basis of such action or information, or knowingly aid another to do any of the foregoing.
- (B) Section 12-4-157 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to one year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

Section 12-4-158 Special Influence

- (A) It is unlawful to solicit, receive, or agree to receive any financial benefit for exerting special unlawful influence upon a public servant, to influence that public servant to violate law or exercise discretion in a particular fashion or procuring another to do so; or to offer, confer or agree to confer any financial benefit receipt of which is prohibited.
- (1) Section 12-4-158 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to one year, or both. Banishment not exceeding Five (5) years may additionally be imposed. For a subsequent conviction, banishment may be imposed more than Five (5) years and less than life.

**CHAPTER FIVE
CRIMES AGAINST PUBLIC HEALTH, SAFETY,
AND WELFARE**

Section 12-5-101 Rioting

- (A) It is unlawful to simultaneously, with others engage in tumultuous or violent public conduct which endangers person or property, and knowingly or recklessly create a risk of public alarm; or to assemble with the purpose of engaging in the above conduct.
- (B) Section 12-5-101 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) six months, or both.

Section 12-5-102 Failure To Disperse

- (A) It is unlawful to refuse or knowingly fail to obey an order to disperse or leave the vicinity given by a law enforcement officer or other public servant at the scene of a riot, fire, or public disorder or given during the investigation of an accident, fire, offense or suspected offense.
- (B) Section 12-5-102 is punishable by fine up to Three Thousand Dollars (\$3,000.00); or imprisonment up to Three (3) months, or both.

Section 12-5-103 Disorderly Conduct

- (A) It is unlawful to purposely cause public inconvenience, annoyance or alarm, or irresponsibly create a risk there of, by:
- (1) Engaging in fighting, or threatening to engage in violent or tumultuous behavior; or,

- (2) Making unreasonable noise or offensively coarse utterances, gestures, or displays, or abusive language to persons present; or,
- (3) Creating a hazardous or physically offensive condition which serves no legitimate purpose; or,
- (4) Appearing in public in an intoxicated condition and:
 - (a) Passing out or falling or sleeping in a public place or property of another without permission; or,
 - (b) Bothering, disrupting or otherwise intruding upon another person; or,
 - (c) Wandering without giving a reasonable destination to a law enforcement officer; or,
 - (d) Appearing or being found in a religious area or traditional ceremonial site, or by order of the Tribal or conducting authorities, set aside free from alcoholic beverage consumption or presence of intoxicated persons, during religious or ceremonial or public activity.

(B) Section 12-5-103 is punishable by fine up to Three Thousand Dollars (\$3,000.00) or imprisonment up to Six (6) months, or both.

(C) A subsequent conviction is punishable by a fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to Nine (9) months, or both. Banishment not exceeding Two (2) years may additionally be imposed.

Section 12-5-104 Harassment

(A) It is unlawful with the purpose to annoy or alarm to insult, taunt, or challenge in a manner likely to provoke a violent or disorderly response; or make repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language.

(B) Section 12-5-104 is punishable by fine up to Two Thousand Dollars (\$2,000.00); or imprisonment up to Three (3) months, or both.

Section 12-5-105 Public Nuisance

(A) It is unlawful to do any act, or fail to perform any duty, which act or omission either:

- (1) Unreasonably and substantially annoys and injures or endangers the comfort, repose, health, or safety of three or more persons; or,
- (2) Offends public decency; or,
- (3) Interferes obstructs, or renders dangerous for use or passage any lake, stream, or campground, pow-wow ground, public park, square, street, highway or road; or,
- (4) Unreasonably renders three or more persons insecure in life or the use of property.

(B) Section 12-5-105 is punishable by fine up to Three Thousand Dollars (\$3,000.00); or imprisonment up to Three (3) months, or both.

Section 12-5-106 Disrupting A Public Or Religious Assembly

(A) It is unlawful to intentionally prevent or disrupt a meeting or religious assembly, by obstructing or interfering physically; or utterance, gesture or display which outrage the sensibilities or prevent the conducting of business.

(B) Section 12-5-106 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-107 Weapons Offense

(A) Definitions:

- (1) "Dangerous weapon": any item in its use or intended use is capable of causing death or serious bodily injury. Whether an item, object or thing not commonly known as a dangerous weapon is a dangerous weapon, the character of the thing, wound and the manner used shall be determinative.
- (2) "Firearms": Any device that expels a projectile by some means of force.
- (3) A firearm shall be deemed loaded when an unexpended cartridge, shell or projectile is in firing position except in pistols and revolvers, which shall be deemed loaded when the unexpended cartridge, shell or projectile is in position as next to be fired.

(B) It is unlawful to:

- (1) Have a dangerous weapon in one's possession:
 - (a) While being addicted to any narcotic; or,

- (b) After being declared mentally incompetent; or,
 - (c) While intoxicated or under the influence of alcohol or other intoxicating substance, drug, or medicine; or,
 - (d) With intent to assault another; or,
 - (e) After having a domestic violence conviction in any Tribal or state jurisdiction.
 - (f) An exception exists for law enforcement and officers of the court.
- (2) Carry a loaded firearm in a vehicle on a public road without authority or firearm from a motor vehicle without authority or a firearm from upon or across any public highway without authority.

(C) Section 12-5-107 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. A banishment less than life may additionally be imposed.

Section 12-5-108 Aggravated Weapons Offense

- (A) It is unlawful to carry a concealed dangerous weapon or threaten or exhibit a dangerous weapon in a dangerous and threatening manner, or use a dangerous weapons in a fight or quarrel; or to possess a dangerous weapon at any meeting held pursuant to the Constitution or laws, including, but not limited to, Legislature, Election Committee, General Council and Tribal Court; (OR TO POSSESS A SHOTGUN HAVING A BARREL OR BARRELS OF LESS THAN EIGHTEEN , OR RIFLE HAVING A BARREL OR BARRELS LESS THAN SIXTEEN INCHES IN LENGTH).
- (B) Section 12-5-108 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. A banishment less than life may additionally be imposed.
- (C) Individuals may possess firearms in and around their homes for protection and hunting, except those persons convicted of a domestic violence offense.

Section 12-5-109 Dangerous Devices

- (A) It is unlawful to:

- (1) Deliver or cause to be delivered to any express, railway company or common carrier, or place in the mail or deliver to any person, or throw or place on or about the premises or property of another a dangerous device, knowing it to be such; or,
 - (2) Knowingly construct or contrive any dangerous device, or with the intent to injure another have a dangerous device in one's possession.
- (B) A "dangerous device" is any box, package, contrivance, bomb, or apparatus containing or arranged with an explosive or acid or poisonous or inflammable substance, chemical, or compound, knife, loaded firearm or other dangerous or harmful weapon or thing, constructed, contrived, or arranged so as to explode, ignite, or throw forth its contents, or strike when moved handled, or opened or after the lapse of time or in a manner calculated to endanger health, life, limb, or property.
- (C) Section 12-5-109 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-5-110 Terroristic Threats

- (A) It is unlawful to knowingly, willfully or recklessly threaten to commit any crime of violence with the purpose to terrorize another or cause evacuation of a building, place of assembly or facility of public transportation, or otherwise to cause serious public inconvenience or in reckless disregard of the risk of causing such terror or inconvenience.
- (B) Violation of this Section is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Amended by Ordinance #13-05, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-5-111 through 12- 5 115 Reserved

Section 12-5-116 Desecration

- (A) It is unlawful purposely desecrate any public monument or structure; or place of worship or burial, or other sacred place.
- (B) Desecrate: deface, damage, pollute, destroy, take or otherwise physically mistreat in a way the actor knows, or believes will outrage, the

sensibilities of persons likely to observe or discover his action.

- (C) Section 12-5-116 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-117 Littering

(A) It is unlawful to throw, dump, place or deposit upon the lands of another or Tribal or public property, or highway, street, road, or area without consent of the owner or other permission, any garbage, debris, junk, carcasses, trash, refuse or substances of any nature which could mar the appearance or detract from the cleanliness of the area; or to store, keep, or allow to accumulate an unreasonable number of any wrecked, junked, or unserviceable vehicles, appliances, or implements.

- (B) Section 12-5-117 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-118 through 12-5-125 Reserved

Section 12-5-126 Abusing A Corpse

(A) It is unlawful to purposely remove, conceal, dissect, or destroy a corpse or disinter a corpse.

- (B) Section 12-5-126 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. Banishment not exceeding Five (5) years may additionally be imposed.

Section 12-5-127 Prostitution

(A) It shall be unlawful to:

- (1) Be a resident of a house of prostitution or engage in sexual activity as a business; or,
- (2) Loiter in or within view in public to be hired to engage in sexual activity; or,
- (3) Engage in, offer or agree to engage in sexual activity with another for a fee; or,
- (4) Pay, offer or agree to pay another to engage in sexual activity; or,
- (5) Enter or remain in a house of prostitution to engage in sexual activity; or,
- (6) Own, control, manage, supervise, or otherwise keep, alone with another, a house of prostitution or a prostitution business; or,
- (7) Solicit a person to patronize a prostitute; or,

- (8) Procure or attempt to procure a prostitute for another; or,
- (9) Lease or otherwise permit a place controlled by the actor, alone or with others, to be used for prostitution or promotion of prostitution; or,
- (10) Procure an inmate for a house of prostitution; or,
- (11) Encourage, induce, or cause another to become or remain a prostitute; or,
- (12) Transport a person to promote that person's engaging in prostitution or procuring or paying for transportation with the purpose; or,
- (13) Share in the proceeds of a prostitute unless one is the child or legal dependent of a prostitute; or,
- (14) Solicit, receive, or agree to receive any benefit for doing any of the acts prohibit by this subsection.

(B) Definitions:

- (1) "Sexual Activity" intercourse or any sexual act involving the genitals of one person and the mouth or anus of another regardless of the sex of either participant.
- (2) "House of prostitution" a place where prostitution or promotion of prostitution is regularly carried on under the control, management, or supervision of another.
- (3) "Inmate" a person who engages in prostitution in or through the agency of a house of prostitution.
- (4) "Public" any place which the public or a substantial group has access.

(C) The following shall be admissible whether a place is a house of prostitution: Its general reputation; the reputation of the persons who reside in or frequent the place; the frequency, timing and duration of visits by non-residents. Testimony against a spouse shall be admissible.

- (D) Section 12-5-127 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both. Banishment not exceeding Two (2) years may additionally be imposed.

Section 12-5-128 Spreading Venereal Disease

- (A) It shall be unlawful to infect another person with venereal disease, if one knows or has reason to believe she/he is infected.
- (B) The Court shall have power to order medical examination and treatment of the convicted offender and an investigation to determine what others may have been infected.
- (C) Section 12-5-128 is punishable by fine up to Three Thousand Dollars (\$3,000.00) or imprisonment up to Three (3) months, or both.

Section 12-5-129 Obscenity

- (A) It is unlawful to:
 - (1) Sell, deliver or provide, or offer or agree to sell, deliver or provide, obscene writing, picture, record, representation or embodiment; or,
 - (2) Present or direct an obscene play, dance, or performance, or participate in that portion which makes it obscene; or,
 - (3) Publish, exhibit, transmit electronically or make available obscene material; or,
 - (4) Possess obscene material for purposes of sale or commercial dissemination; or,
 - (5) Sell, advertise or commercially disseminate material, whether or not obscene, by representing or suggesting it is obscene.
- (B) Material is obscene if, considered as a whole:
 - (1) It lacks serious literary, artistic, political, or scientific value; and,
 - (2) It depicts or describes nudity, sex or excretion in patently offensive manner that goes substantially beyond customary limits of candor in describing or representing such matters; and,
 - (3) If the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals predominantly to a morbid or unnatural interest in nudity, sex, or excretion.
- (C) A person who disseminates or possesses obscene material in the course of his business is presumed to do so knowingly or recklessly.
- (D) Predominant appeal shall be judged with reference to ordinary adults unless the character of

the material or circumstances of its dissemination is designed for children or some specially susceptible audience.

- (E) Undeveloped photographs molds, printing plates and the like, shall be deemed obscene notwithstanding processing or other acts may be required to make the obscenity patent or to disseminate it.
- (F) It shall be a defense that dissemination was restricted to institutions or persons having scientific, educational, governmental or similar justification for possessing obscene material.
- (G) Section 12-5-129 is punishable by fine up to Three Thousand Dollars (\$3,000.00), and imprisonment up to Three (3) months. All obscene material shall be confiscated and destroyed.

Section 12-5-130 through 12-5-134 Reserved

Section 12-5-135 Minor in Possession of Intoxicating Beverage

- (A) It shall be unlawful for any person under the age of twenty-one (21) years of age to be in possession of any intoxicating beverage containing at least three and two-tenths percent (3.2%) or more by weight while such person is upon any public street, road or highway; or in any public building, Tribal place of business or public place; or in any parking lot or other area exposed to public view or to which the public is invited.
- (B) Violation of this Section is punishable by a fine up to One Thousand Dollars (\$1,000.00) or imprisonment up to Three (3) months, or both, if over the age of eighteen (18) years. If the Minor is under the age of eighteen (18) years, by a fine up to One Thousand Dollars (\$1,000.00) and Juvenile Detention up to three (3) months, or both.

Enacted by Ordinance #13-05, by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-5-136 Intoxication

- (A) It is unlawful to be under the influence of an intoxicating beverage, drugs, or controlled substance, or a substance which releases vapors, to any degree, in a public or private place under circumstances not amounting to disorderly conduct.
- (B) Section 12-5-136 is punishable by fine up to

One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both. A judge or arresting officer may order release and the dropping of a charge if he believes further imprisonment is unnecessary and the individual is sober. The Judge may commit a convicted person to a facility for treatment if it appears the person is dependent upon an intoxicant.

Section 12-5-137 Possession Of An Alcoholic Beverage

- (A) It shall be unlawful to buy, sell, serve, give away, consume, furnish, or possess any beer, ale, wine, liquor, spirits, or product containing alcohol or appear or be found in a place where alcoholic beverages are sold and/or consumed, without authority of the Tribal Legislative Body.
- (B) Section 12-5-137 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-138 Open Container in a Vehicle

- (A) No person, while operating or occupying a motor vehicle shall have within the passenger or driving area of that vehicle, any alcoholic liquor or malt beverage regarding which the seal has been broken.
- (B) Section 12-5-138 is punishable by fine up to One Thousand Dollars (\$1,000.00) or imprisonment up to Three (3) months, or both.

Section 12-5-139 Tobacco Offense

- (A) It is unlawful to:
- (1) Purchase, obtain, possess, smoke, chew, inhale or ingest any tobacco product under eighteen (18) years old; or,
 - (2) Sell to, obtain or arrange obtaining of a tobacco product for a person under the age of eighteen (18), or knowingly permit such a person to operate a machine dispensing tobacco products in his place of business or in an area over which he is charged with the management or operation.
- (B) Section 12-5-139 is punishable by fine up to Two Hundred Fifty Dollars (\$250.00) or imprisonment up to Three (3) months, or both.

Section 12-5-140 Abuse Of Psychotoxic Chemical Solvents

- (A) It is unlawful to smell or inhale the fumes of

any psychotoxic chemical solvent, or possess, purchase, or attempt to possess or purchase psychotoxic chemical solvent; or to sell, give away, dispense, or distribute, or offer to sell, give away, dispense, or distribute any psychotoxic chemical solvent.

- (B) "Psychotoxic chemical solvent" includes, but is not limited to, any glue, cement, or substance containing the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, methyl ethyl, petone, pentachlorophenol, petroleum ether, or chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system. The listing of contents by the manufacturer or producer shall be proof of the contents.
- (C) Section 12-5-140 is punishable by fine up to Five Thousand Dollars (\$5,000.00) or imprisonment up to Six (6) months, or both. The Court may order the convicted person to be committed to a facility for treatment.
- (D) Such psychotoxic chemical solvents used for intoxicating purposes are declared contraband and shall be confiscated.

Section 12-5-141 Dangerous Drug Offense – Unlawful Possession

- (A) No person shall knowingly or intentionally:
- (1) Possess, use, or be under the influence of a controlled substance unless the substance was obtained pursuant to a valid prescription and directly from an order of a licensed practitioner while acting in the course of his professional practice; or,
 - (2) Possess any drug paraphernalia including, but not limited to, pipes, bongs, clips, or other article used or likely to be used to directly assist in the injection, ingestion, or inhalation of a controlled substance.
- (B) As used in this Section:
- (1) "Controlled substance" means, for purposes of definition only, a drug, substance, or immediate precursor in Schedule I, II, III, IV, or V of the Federal Control Substance Act, except Peyote in the Native American Church;
 - (2) "Drug paraphernalia" means all equipment,

products, and materials of any kind when used, advertised for use, intended for use, or designed for use for manufacturing, converting, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this Code;

- (3) "Marijuana" includes all parts of the plant, cannabis sativa L., whether growing or not; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake except the resin extracted therefrom.
- (4) "Narcotic drug" means any drug which is produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and
- (5) The weights designated shall include the weight of the controlled substance and the weight of any carrier element, cutting agent, diluting agent, or any other substance excluding packaging material.

(C) Section 12-5-141 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. The Court may order the convicted person to be committed to a facility for treatment.

(D) Any personal property used in conjunction with the unlawful commission of this section shall be subject to civil forfeiture proceedings.

Section 12-5-142 Dangerous Drug Offense – Unlawful Sale or Delivery

(A) No person shall knowingly or intentionally sell, barter, give away, or deliver a controlled substance to another unless acting as a licensed practitioner in the course of his professional practice.

(B) As used in this Section:

- (1) "Controlled substance" means, for purposes of definition only, a drug, substance, or immediate precursor in Schedule I, II, III, IV, or V of the Federal Control Substance Act, except Peyote in the Native American Church;
- (2) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance;
- (3) "Marijuana" includes all parts of the plant, cannabis sativa L., whether growing or not, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake except the resin extracted therefrom; and,
- (4) Narcotic drug" means any drug which is produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(C) Section 12-5-142 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. The Court may order the convicted person to be committed to a facility for treatment.

(D) Any personal property used in conjunction with the unlawful commission of this section shall be subject to civil forfeiture proceedings.

Section 12-5-143 Dangerous Drug Offense – Unlawful Manufacture

(A) No person shall manufacture or possess with intent to manufacture a controlled substance.

(B) As used in this Section:

- (1) "Controlled substance" means, for purposes of definition only, a drug, substance, or immediate precursor in Schedule I, II, III, IV, or V of the Federal Control Substance Act, except Peyote in the Native American Church;

(2) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extractions and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance by a licensed practitioner as an incident to his administering or dispensing a controlled substance in the course of this professional practice;

(3) “Marijuana” includes all parts of the plant, cannabis sativa L., whether growing or not, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks, fiber, oil, or cake except the resin extracted therefrom.

(4) “Narcotic drug” means any drug which is produced directly or indirectly by extraction from substances of vegetable origin independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.

(C) Section 12-5-143 is punishable by fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both. The Court may order the convicted person to be committed to a facility for treatment.

(D) Any personal property used in conjunction with the unlawful commission of this section shall be subject to civil forfeiture proceedings.

Section 12-5-144 through 12-5-152 Reserved

Section 12-5-153 Animals at Large

(A) No owner, keeper or other person in control shall permit any animal, harbored or kept by him, to be at large. It is unlawful for any such

animal to be at large at any time with the Citizen Potawatomi Nation, with the exception of rural residences that are exempt from this Section.

(B) Violation of this Section is punishable by a fine up to Five Hundred Dollars (\$500.00)

Enacted by Ordinance #13-05, by the Citizen Potawatomi Legislature on May 30, 2013.

Section 12-5-154 Cruelty To Animals

(A) It is unlawful to purposely or knowingly:

- (1) Torture or seriously overwork an animal; or,
- (2) Fail to provide necessary food, care, or shelter for an animal in one’s custody; or,
- (3) Abandon an animal in one’s custody; or,
- (4) Transport or confine an animal in a cruel manner; or,
- (5) Kill, injure, or administer poison to an animal without legal privilege; or,
- (6) Cause one animal to fight with another.

(B) Section 12-5-154 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-155 Livestock Offense

(A) It is unlawful to:

- (1) Knowingly or recklessly refuse or fail to mark or brand livestock when required in the interest of livestock identification or directed by Tribal officials; or,
- (2) Alter, obliterate, or remove a brand or mark, or misbrand or mismark livestock with a purpose to deceive another; or,
- (3) Knowingly permit livestock to graze or trespass on the property of another or Tribe without permission in excess of permitted time or amount; or,
- (4) Knowingly fail to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock; or,
- (5) Fail to dip, inoculate or treat livestock in the manner which the representative of the Tribe shall direct; or,
- (6) Make a false report of livestock owned.

(B) Except where the owner or person having custody cannot be found, for subsections 1, 3, 4, 5, or 6 no conviction may be sustained unless

the owner or person having custody is given forty-eight hours written notice of his alleged violation.

- (C) Livestock found in violation may be impounded without prior notice if a court orders upon receipt of evidence such animals seriously threatens the property of the Tribe or another or health of other livestock and immediate action is necessary to protect such interests from serious harm. A reasonable fee for the care maybe collected prior to their release.
- (D) Section 12-5-155 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Six (6) months, or both.
- (E) Livestock handled or in violation are declared to be contraband and civil proceedings may be had for forfeiture.

Section 12-5-156 through 12-5-163 Reserved

Section 12-5-164 False Reports

- (A) It is unlawful to initiate or circulate a report or warning of a fire, bombing, or other crime or catastrophe, knowing the report is false or baseless and it is likely to cause evacuation of any building, place or assembly, or facility of public transport, or to cause public inconvenience or alarm or action by an official or volunteer emergency agency.
- (B) Section 12-5-164 is punishable by fine up to Two Thousand Dollars (\$2,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-165 Emergency Telephone Abuse

- (A) It is unlawful to knowingly refuse to yield or surrender the use of a party line or public pay telephone upon being informed said telephone is needed to report a fire, or summon police, medical or other aide in case of an emergency; or to ask for or request the use of a party line or public pay phone on the pretext an emergency exists, knowing no emergency exists.
- (B) "Emergency": A situation where property or human life or their safety is in jeopardy and the prompt summoning of aid or reasonable appears to be essential.
- (C) Section 12-5-165 is punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-166 Violation Of Privacy

(A) It is unlawful to:

- (1) Trespass with intent to subject anyone to eavesdropping or surveillance in a private place; or,
- (2) Install in any private place, without consent any device for observing, photographing, recording, amplifying, or broadcasting sounds or events, or use any such unauthorized installation; or,
- (3) Install or use outside of any private place any device for hearing, recording, amplifying, or broadcasting sounds originating in such place which would not ordinarily be audible or comprehensible outside, without consent; or,
- (4) Divulge without consent of the sender or receiver the existence or contents of any message if the actor knows the message was illegally intercepted, or if he learned of the message in the course of employment with a transmitting agency.

(B) Definitions:

- (1) "Eavesdrop" to overhear, record, amplify, or transmit any part of an oral or written communication of others without consent of at least one party by means of any electrical, mechanical or device.
- (2) "Private place" a place where one can reasonably expect to be safe from casual or hostile intrusion or surveillance.

- (C) Section 12-5-166 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-167 Criminal Defamation

- (A) It is unlawful to knowingly and with malicious intent communicate to any person orally or in writing any information which one knows or should know to be false and knowingly the information tends to impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, or who has not been declared missing or dead, and thereby expose them to public hatred, contempt or ridicule. An injurious publication is presumed to have been malicious if justifiable motive is not shown by way of defense.

(B) Section 12-5-167 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both. It shall be a defense the person was engaged in the formal broadcast or publication of news by public news media and in good faith believed he was reporting a newsworthy event concerning a public figure with a basis in truth.

Section 12-5-168 Gambling

(A) It is unlawful to:

- (1) Participate in any tribally unauthorized gambling; or,
- (2) Knowingly permit any tribally unauthorized gambling to be conducted upon any real or personal property owned, rented, or under the control of the actor; or,

(B) Section 12-5-168 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both.

Section 12-5-169 Waters Offense

(A) It is unlawful to:

- (1) Interfere with or alter the flow of water in any stream, river, or ditch, in violation of the right of any other person; or,
- (2) Knowingly break, injure, alter or destroy any bridge, dam, levee, embankment, reservoir, water tank, water line, or other structure intended to create hydraulic power or pressure to direct the flow of water; or,
- (3) Pollute or befoul any water in the following ways:
 - (a) Construct or maintain a corral, sheep pen, goat pen, stable, pig pen, chicken coop, or other offensive yard or outhouse where the waste or drainage there from shall flow directly into the waters of any stream, well, spring, or source of water used for domestic purposes; or,
 - (b) Deposit, pile, unload or leave any manure heap, rubbish, or the carcass of any dead animal where the waste or drainage there from will flow directly into the waters of any stream, well, spring or source of water used for domestic purpose; or,

(c) Knowingly cause or allow any substance harmful or potentially harmful to human life to enter into a source of water used for domestic purposes.

(B) Section 12-5-169 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both.

Section 12-5-170 Contributing To The Delinquency Of A Minor

(A) It is unlawful for a person twenty-one (21) years of age or older to:

- (1) Knowingly or recklessly sell or give to or otherwise make beer, liquor, wine or other alcoholic beverages available to a person under the age of twenty-one; or,
- (2) Knowingly or recklessly, by act or omission, encourage, cause or contribute to the delinquency or unlawful conduct of a minor under the age of twenty-one.

(B) Section 12-5-170 is punishable by fine less than Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both.

Section 12-5-171 Trafficking In Children

(A) It is unlawful to:

- (1) Accept compensation, money, property or thing of value, from persons adopting a child, for services performed or rendered, or purported to be performed or rendered, in connection with such adoption; or,
- (2) Accept compensation money, property or thing of value, from any person, in return for placing, assisting to place, or attempting to place a child for adoption or care in a foster home; or,
- (3) Offer to place, or advertise to place, a child for adoption or care in a foster home, as inducement to any woman to enter an institution or home or other place for maternity care for the delivery of a child.

(B) "Child" means an unmarried or unemancipated person under the age of eighteen.

(C) Section 12-5-171 is punishable by a fine up to Five Thousand Dollars (\$5,000.00), or imprisonment up to One (1) year, or both.

Section 12-5-172 Curfew Violation

- (A) It is unlawful for a parent, guardian or person having physical charge of a minor to allow said minor under eighteen to be away from his residence in a public or private place other than where he intends to spend the night with permission of the owner or in a vehicle driving about, after eleven o'clock p.m. unless accompanied by parent, guardian, or person having physical charge of said minor or in attendance at or returning directly home from an organized school, church, Tribal or public function.
- (B) Section 12-5-172 punishable by fine up to One Thousand Dollars (\$1,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-173 Fireworks Offense

- (A) It is unlawful to possess, buy, sell distribute, transport, activate, ignite, or detonate or to allow any minor under one's physical or care, custody, or control to possess, buy, sell distribute, transport, activate, ignite, or detonate any firecracker or firework device which is intended to explode, ignite, become self-propelled, give off any object or manifestation, or give off sound or light.
- (B) It shall not be an offense:
- (1) To use or ignite hand-held sparkler devices that burn openly and singly or toy caps and cap guns singly in the intended fashion; or,
 - (2) To use or ignite fireworks at a patriotic, religious, or Tribal ceremony, gathering, or celebration in a safe manner with a permit from the Tribe or Tribal agency prior to importation and use.
 - (3) To buy, possess, use, or ignite fireworks between June 25 and July 10 provided such devices are handled safely with regard to the safety of others and their property, and minors under twelve buying, possessing, using, or igniting fireworks must be under the actual direct physical supervision of some responsible adult over twenty-one.
 - (4) To possess or sell fireworks between June 25 and July 10 with a permit from the Tribe or Tribal agency prior to possession and sale, provided upon proof of a secure and safe facility, such permit may state a particular location for year round storage by a

business engaged in retail or wholesale of fireworks.

- (C) Section 12-5-173 is punishable by a fine up to Two Thousand Dollars (\$2,000.00), or imprisonment up to Three (3) months, or both.

Section 12-5-174 Negligent Burning

- (A) No person shall purposely or knowingly start a fire or cause an explosion whether on his own property or another's property, including property of the Tribe, and thereby negligently:
- (1) Place another person in danger of death or bodily injury; or,
 - (2) Place property of another, including the Tribes', in danger of damage or destruction.
- (B) Section 12-5-174 is punishable by a fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to Six (6) months, or both.

CITIZEN POTAWATOMI NATION
DOMESTIC RELATIONS AND SUPPORT
TITLE 13

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CHAPTER ONE FAMILY RELATIONS

Section 13-1-101 Tribal Custom Marriage and Divorce

- (A) Indians may become married or divorced by Tribal custom and common law. Indians who assume or claim a divorce by Tribal common law and custom shall not remarry until they have complied with Tribal common law, remain separated for six months and until they have recorded such divorce at the District Court.
- (B) The validity of Indian custom marriage and divorce shall continue to be recognized.
- (C) Where the marital status of an Indian is at issue, the Court shall have full authority to determine the marital status of the parties to any purported Tribal common law marriage or divorce and enter its declaratory judgment.
- (D) Marriage in the Citizen Potawatomi Nation shall consist only of the union of one man and one woman. Nothing in the tribal code or any other provision of tribal law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.
- (E) A marriage between persons of the same gender performed in another jurisdiction shall not be recognized as valid and binding in the Citizen Potawatomi Nation as of the date of the marriage.

Section 13-1-102 Tribal Custom Adoption

Tribal Custom Adoptions shall be fully recognized without necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, child support and other family matters. However, Tribal common law adoptions shall not be recognized for probate of descendant's estates unless, prior to death of descendant, the common law adoption was formalized by the Court, or with adults, by a writing acknowledging adoption filed in the Court. A Tribal Common law adoption does not terminate parental rights nor deprive natural parents of their ultimate right to custody.

Section 13-1-103 Determination of Paternity and Support

The Court shall have jurisdiction to determine paternity

of a child and obtain a judgment for support. A judgment establishing the father shall be conclusive in all subsequent determinations of inheritance by the Department of the Interior or by the Court.

Section 13-1-104 Determination of Heirs

- (A) When any member dies within Tribal jurisdiction or owning a non-trust interest in land within Tribal jurisdiction, leaving property other than an allotment or other trust property any person claiming to be an heir may bring suit to determine the heirs and divide such property. No determination of heirs shall be made unless all possible heirs known to the Court, and the claimant have been notified as in service of summons and given full opportunity to defend their interests. Possible heirs not residents of Tribal jurisdiction may be notified by certified mail, return receipt requested, and if notice is returned refused or unclaimed, by further first class mail containing a copy of the original notice and an additional notice stating the action will proceed ten (10) days after mailing of the second notice. A copy of every such notice must be preserved.
- (B) In the determination of heirs the Court shall apply Tribal laws or custom, if such custom is proved and no law exists. Otherwise, the Court shall apply State law.

Section 13-1-105 Approval of Wills

When any member dies domiciled within Tribal jurisdiction or owning a non-trust interest in land within Tribal jurisdiction, leaving a will disposing of property other than an allotment or other trust property the Court shall, at the request of any person named in the will or interested party, determine the validity of the will after giving notice and full opportunity to appear to all persons who might be heirs. A will shall be deemed valid if descendant had a same mind and understood what he was doing when he made the will and was not subject to undue influence of any kind and if made in accordance with Tribal law or custom or made in writing and signed by descendant in the presence of two (2) witnesses who also sign. If the will is validly executed, it shall order the property described to be given to the persons named or their heirs; but no distribution shall be made in violation of Tribal law or proven Tribal custom which restricts the privilege of Tribal members to distribute by will.

Section 13-1-106 Marriage Defined

Marriage is an institution recognized by legal authorities whereby a man and a woman join themselves into a special kind of social and legal dependence for the purpose of founding and maintaining a family. The marriage relation shall only be entered into, maintained or abrogated as provided by law.

Section 13-1-107 Who May Marry

Any unmarried person of the age of eighteen (18) years or older is capable of contracting and consenting to marriage with a person of the opposite sex unless disqualified by consanguinity as hereinafter defined.

Section 13-1-108 Consanguinity

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited.

Section 13-1-109 License Required

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage within Tribal jurisdiction without a license being first issued by the judge or clerk of the district court authorizing the marriage.

Section 13-1-110 Judge or Clerk of District Court to Issue License

The judge or clerk of the district court, upon application in writing signed and sworn to in person before him by both of the parties to be married setting forth their places and residence and setting forth their full names and ages as the same appear upon a certified copy of a birth certificate, or upon a current motor vehicle operator's, chauffeur's or commercial license, or upon a current voter's registration certificate, or upon a current passport or visa or upon any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state or other governmental subdivision thereof, when each such document accepted as proof of identity and age is described with reasonable particularity in the application shall also set forth that such persons to be married are not disqualified or incapable of entering into the marriage relation, nor of the relationship prohibited by law, and being satisfied of the truth and sufficiency of such application and

that there is no legal impediment to such marriage, and after application for such marriage license has issued, shall issue under his hand and the seal of his court, the license authorizing such marriage.

Section 13-1-111 License - Contents

The license herein provided shall contain the date of its issuance, name of the court, the full names of the persons to be married thereunder, their ages, places of residence, and social security numbers, if any, and shall be directed to any person authorized by law to perform and solemnize the marriage ceremony, and shall fix the time of the return thereof, which shall not be more than thirty (30) days from the date of its issuance, and shall contain a blank certificate to be made out by the person solemnizing or performing the marriage ceremony.

Section 13-1-112 Solemnization of Marriages

- (A) All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge, the Chairman, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained, or authorized by the church to which he or she belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age.
- (B) No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefore be first delivered into his possession nor unless he has good reason to believe the persons presenting themselves before him for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that no legal objection or impediment exists to such marriage.

Section 13-1-113 Endorsement and Return of License

The person performing or solemnizing the marriage ceremony shall immediately upon the completion thereof endorse upon the license authorizing the marriage his name; official or clerical designation; the court of which he is judge or the congregation or body of which he is pastor, preacher, minister, priest, rabbi or dignitary and signed by him with his official or clerical designation. The witnesses to the ceremony shall endorse the license authorizing the marriage with their names and addresses. The license with such certificate

thereon shall be transmitted without delay to the judge or the court clerk who issued the same.

Section 13-1-114 Records - Return of Original

The judge or clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, in connected form, each subjoining the other on an optical disc, microfilm, microfiche, or in a book kept by the judge or clerk for that purpose, properly indexed; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinafter required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate on the back thereof showing the book and page where the same has been recorded.

Section 13-1-115 Change of Name

(A) The District Court of the Citizen Potawatomi Nation shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents, guardian or next of friend of any minor, if at least one party is Native American or a Tribal Employee and is within the jurisdiction of the District Court.

(B) The individual(s) petitioning the Court for change of name shall publish notice in a newspaper according to the rules of Civil Procedure in the Tribal Code of the Citizen Potawatomi Nation.

Amended by Ordinance #13-06, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

**CHAPTER TWO
STATUTORY DIVORCE**

Section 13-2-101 Grounds for Divorce

The District Court may grant a divorce for any of the following causes:

- (A) Abandonment for one (1) year;
- (B) Incompatibility;
- (C) Imprisonment in a State or Federal Prison for a felony at the time the petition is filed;

(D) Insanity for a period of three (3) years. The fact and duration of insanity being proved by testimony of two physicians. Such divorce does not relieve the sane spouse from obligation and support and shall not be granted unless a guardian has been appointed.

Section 13-2-102 Residence of Plaintiff or Defendant

The plaintiff or defendant must be an actual resident, in good faith, of Tribal jurisdiction for three (3) months next preceding the filing or a Tribal employee who has submitted to the Tribe's jurisdiction or a member.

Section 13-2-103 Personal Jurisdiction

The Court may exercise personal jurisdiction over a person, whether or not a resident who lived within Tribal jurisdiction in a marital or parental relationship, or both, or who has submitted to the jurisdiction, as to all obligations for alimony and child support. When the person subject to the jurisdiction has departed he may be served outside of Tribal jurisdiction by any method that is authorized.

Section 13-2-104 Custody of Children, Disposition of Property

Where the Court grants a divorce or where a divorce is refused, the Court may for good cause shown make such order for custody, maintenance and education of the children, and for control and equitable division and disposition of property.

Section 13-2-105 Orders Concerning Property, Children, Support and Expenses

After a petition has been filed for divorce, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of property and for the use, management, and control thereof, or for the control of children and support of the wife or husband during pendency and make such order relative to the expenses of the suit and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other considering the means and property of each; provided the Court may make additional orders relative to expenses of any subsequent actions, for enforcement or modification of orders. Provided, no ex parte orders shall be issued unless such ex parte order provided instead of performing the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show cause why they should not comply.

Section 13-2-106 Care and Custody of Children

A petition or cross-petition for divorce, legal separation, or annulment must state whether the parties have minor children of the marriage. If there are children, the Court shall make provision for guardianship, custody, support and education and may modify or change any order whenever circumstances change either before or after final judgment.

Any child, not emancipated shall be entitled to support by parents until the child reaches eighteen (18) years. If the Court determines the parents are unable to provide support it may order any person obligated to support the children by Tribal common law to be brought into the action by service of summons, and may enter an order requiring said person to contribute to support.

Section 13-2-107 Preference of Child

In any divorce the child may express a preference as to custody. The Court may determine whether the best interest of the child will be served and if so then the Court may consider the expression of preference. The Court shall not be bound by that choice in awarding custody.

Section 13-2-108 Paternity Determination

In a divorce, legal separation or annulment with children born to the parties, the Court may determine if the parties are the parents although the parties are not married; and if the parties are the parents, the Court may determine custody and it may award child support and order payment of costs and attorney's fees.

Section 13-2-109 Interest of Delinquent Payment

Court-ordered child support payments and payments of suit monies shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and shall be collected as the payments upon which the interest accrues.

Section 13-2-110 Restoration of Wife's Maiden Name

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

Section 13-2-111 Disposition of Property

The Court may enter its decree confirming the property owned before marriage and the undisposed of property acquired after marriage. Alimony may be allowed from real or personal property, or a money judgment, payable in gross or installments. As to such property, whether real or personal, which has been acquired jointly during

marriage, whether the title be in either or both the Court shall make division of the property in kind, or by setting the same apart and requiring the other to pay such sum. The Court may set apart a portion of the separate estate to the other spouse for support of children of the marriage.

Section 13-2-112 Effect of Divorce

A divorce granted at the instance of one party shall operate as dissolution of the marriage as to both, and shall be a bar to any claim of either party in or to the other, except where actual fraud shall have been committed by or on behalf of the successful party.

Section 13-2-113 Reserved**Section 13-2-114 Reserved****Section 13-2-115 Remarriage Within Six Months**

A marriage wherein one of the parties had not been divorced for six months shall be ground for annulment.

Section 13-2-116 Time When Judgment Final

Every decree of divorce shall recite the date judgment was rendered. If an appeal be taken that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of the judgment except the granting of the divorce, the divorce shall be final and take effect from the date rendered, that part appealed shall not become final and take effect until the appeal be determined.

Section 13-2-117 Avoidance of Marriage of Incompetents

When either party is incapable of contracting marriage, the marriage may be declared void in an action brought by the incapable party or the parent or guardian. The children of such marriage before annulled, shall be legitimate. Cohabitation after such incapacity ceases is a defense.

Section 13-2-118 Alimony Without Divorce

The wife or husband may obtain alimony without divorce, for any causes for which divorce may be granted. Either may defend the same as divorce, and may, obtain a divorce.

Section 13-2-119 Reserved**Section 13-2-120 Setting Aside of Divorce Decrees**

The Court is authorized to dissolve divorce decrees, provided both parties file a petition, asking the decree be set aside. Both parties shall prove neither has married a third party since the decree.

Section 13-2-121 Termination of Money Payments

- (A) For periodic alimony payments, the Court shall state, what dollar amount of each payment is designated as support, and as division of property. Upon death of the recipient, payments for support shall terminate, but division of property payments shall continue. The division of property payments shall be irrevocable. Upon proof of death, the Court shall order the payment of support terminated, and the lien released unless a claim is made for past due support within ninety (90) days from death. The Court shall also provide any payment of support shall terminate after remarriage unless the recipient shows some amount of support is still needed and payment is not inequitable. Provided the recipient shall commence an action for determination within ninety (90) days of remarriage.
- (B) An order continuing payments of support shall not be a lien against real property unless the order specifically provides a lien on real property or an arrearage in payments of support has been reduced to judgment.
- (C) The voluntary cohabitation of a former spouse shall be a ground to modify a final judgment or order for alimony. If voluntary cohabitation is alleged, the Court may reduce or terminate support payments upon substantial change of circumstances. Cohabitation shall mean the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not a lawful marriage or not meeting all standards of a common law marriage. The petitioner shall make application and follow notification procedures used in divorce decree modification.

Section 13-2-122 Mailing of Alimony and Support Payments

If a judicial order, judgment or decree directs payment of child support, alimony, temporary support or any payment be made to the Clerk, they shall transmit to the payee by first class mail. The payee shall furnish the Clerk any new address.

Section 13-2-123 Modification of Decree

The Court may modify its judgment relative to child support or alimony, upon motion for modification filed and served with summons requiring an answer within

twenty (20) days. Motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion shall be a final appealable order.

Section 13-2-124 Effect on Common Law Divorce

This subchapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for those who prefer the statutory method or who cannot agree to matters necessary to effectuate a Tribal common law divorce.

CITIZEN POTAWATOMI NATION
**DOMESTIC VIOLENCE AND PREVENTION OF
 DOMESTIC ABUSE**
TITLE 14

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CHAPTER ONE **DOMESTIC VIOLENCE & PREVENTION OF** **DOMESTIC ABUSE**

Section 14-1-101 Title of Code

This title shall be known as the code of Domestic Violence and Prevention of Domestic Abuse of the Citizen Potawatomi Nation.

Section 14-1-102 Objective

The Tribal code of Domestic Violence and Prevention is construed to promote the following:

- (A) That violence against family members is not keeping with Citizen Potawatomi Nation traditional values. It is the expectation that the criminal justice system respond to victims of domestic violence with fairness, compassion, and in a prompt and effective manner. The goal of this code is to provide victims of domestic violence, stalking, and harassment with safety and protection.
- (B) It is the goal to utilize the criminal justice system in setting standards of behavior within the family that are consistent with traditional Tribal values, and, as such, the criminal justice system will be utilized to impose consequences upon offenders for behaviors that violate traditional Tribal values that hold woman and children as sacred. The consequences are meant as responses that will allow offenders the opportunity to make positive changes in their behavior while providing protection to the victims of their intentional or negligent actions.
- (C) The Prevention of future violence in all families through prevention and public education programs that promote cultural teachings and traditional Tribal values so as to nurture non-violence within Native families and respect for Native women.

Section 14-1-103 Authority of the Tribe to Regulate Domestic Violence Within its Jurisdictional Boundaries

- (A) The problem of domestic violence within the Tribal boundaries is seriously impacting the ability of the Tribe to provide for the health and wellbeing of its Tribal members and threatens the political integrity of the Tribe.
- (B) Domestic violence is also being perpetrated by persons who are not members of the Tribe.

These activities of non-member and non-Indians, who have entered into consensual relations with Tribal members, will be regulated under this code just as the activities of Tribal members.

- (C) The Tribe has the right to exclude non-members as well as the inherent authority to protect its political integrity and provide for the welfare of its members and others who chose to live or conduct business within its territories.

Section 14-1-104 Definitions

As used in this Title:

- (A) “Abuse” means the infliction of physical harm, bodily injury, threats of bodily harm, financial loss, property damage, criminal trespass, stalking, telephone harassment, mental abuse, or any un-consented to sexual relations between members of the household or family, or persons in/or were in a dating relationship.
- (B) “Domestic Violence” means the occurrence of one or more of the following acts by a family, household member, and/or someone within a dating relationship, but does not include acts of self-defense:
 - (1) Attempting to cause or causing physical harm, or
 - (2) Placing such person in fear of physical harm, or
 - (3) Causing such person to engage in involuntary sexual activity by force, threat of force, or duress.
- (C) “Stalking” means the willful, malicious, and repeated following of a person, by an adult, emancipated minor or minor thirteen years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury. Stalking also means using intimidating acts against a person or personal property, using substantial intimidation or placing a person at a substantial safety risk; or the use of a third person to carry out acts that if done by the person using such person would result in stalking.
- (D) “Harassment” means unwanted contact and or any of the following:
 - (1) A knowing and willful course or pattern of conduct by a family or household member

or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose.

- (2) Harassment also means a willful course or pattern of conduct by a person against a public official which based upon that public official's office causes the person to annoy or seriously alarm the public official, and which serves no legitimate purpose.
- (3) The "course of conduct" must be such as would cause a reasonable person to suffer substantial emotional distress. "Harassment" shall include, but not be limited to telephone calls which are obscene or are threatening in nature.

(E) "Family or Household members" means:

- (1) spouses,
- (2) ex-spouses,
- (3) present spouses of ex-spouses,
- (4) parents, including grandparents, stepparents, adoptive parents and foster parents,
- (5) children, including grandchildren, stepchildren, adopted children and foster children,
- (6) persons otherwise related by blood or marriage,
- (7) persons living in the same household or who formerly lived in the same household,
- (8) persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time.

(F) "Dating Relationship" means a subjective courtship or engagement relationship.

(G) "Foreign Protective Order" means any valid order of protection issued by a court of another state or a Tribal court.

(H) "Mutual Protective Order" means a final protective order or orders issued to both a plaintiff who had filed a Petition for a Protective Order and a defendant included as the defendant in the plaintiff's Petition restraining the parties from committing domestic violence, stalking, harassment or sexual assault against one another.

Section 14-1-105 Rights of Victim of Domestic Violence

A victim of domestic violence is entitled to all rights granted to victims of crime, including but not limited to the right to:

- (A) Be informed of all hearing dates and continuances;
- (B) Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of future harm;
- (C) Be present at sentencing and address the court;
- (D) Advise the court of conditions of probation and parole required to ensure the safety of the victim and other family or household members;
- (E) Restitution for losses sustained as a direct result of any criminal conduct.
- (F) Or any relief the Court deems necessary.

The victim's advocate shall notify any victim of domestic violence of his/her rights set forth in this section, in writing. For notice to be meaningful, it should be actual, timely and written in a language which the victim understands.

Section 14-1-106 Crime Involving Domestic Violence Defined

Regardless of the elements of any crime committed in conjunction with the crime of "domestic violence", the crime of "domestic violence" shall be considered a separate and distinct offense and shall be charged in addition to any other crime. The purpose of this Title is to clarify that domestic violence is a separate crime punishable separate and apart from the underlying offense, and to acknowledge that when the following crimes are committed against a family or household member, as defined in Section 14-1-104 (E), a finding of such shall trigger the application of this Title. The crime of "Domestic Violence" occurs when a family member or household member commits one or more of the following against another family or household or former family or household member:

- (1) Arson
- (2) Assault or Battery Offenses
- (3) Burglary, Breaking and Entering
- (4) Destruction of Property
- (5) Homicide
- (6) Kidnapping, Abduction

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- (7) Sex Offenses
- (8) Theft
- (9) Weapons Law Violations
- (10) Disorderly Conduct
- (11) Non-violent family offenses
- (12) Stalking
- (13) Trespass of Real Property
- (14) Public Intoxication
- (15) Habitual offenses
- (16) Harassment

It is recognized, that the commitment of the preceding offenses should not diminish the seriousness or take precedence over the crime of domestic violence since the intent of this code is to prevent further acts of domestic violence. The commission of one of the preceding offenses shall trigger the application of this Title if committed against a family, household member, or person within a dating relationship or former household, family member, or person within a dating relationship, even if the criminal complaint also charges one of the above offenses.

The use and or presence of drugs and alcohol shall not be used to mitigate the seriousness of the domestic violence offense.

Section 14-1-107 Mandatory Arrest for Crimes Involving Domestic Violence Determination of Predominate Aggressor, Required Report

- (A) A law enforcement officer shall arrest any person, with or without a warrant, whom he has probable cause to believe committed any crime involving domestic violence as defined in this Code, either in the presence of the officer or within forty-eight (48) hours of a report to law enforcement officers of the commission of an offense. The officer shall promptly, within one business day, file a report with the prosecutor's office.
- (B) If a law enforcement officer receives a complaint of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the predominate aggressor. If the officer determines that one person was the predominate aggressor, the officer need not arrest the opposing person alleged to have committed domestic violence. In determining whether a person is

the predominate aggressor, the officer shall cumulatively consider the following factors:

- (1) The history of domestic violence, both documented prior complaints and convictions and the law enforcement officer's own prior knowledge of the family;
 - (2) The relative severity of the injuries inflicted on each person evidenced by who in the relationship poses the most danger to the other person?
 - (3) The likelihood of future injury to each person;
 - (4) Whether one of the person acted in self-defense or defense of another?
 - (5) The degree to which one of the persons has acted with more deliberate intent to control, isolate, intimidate, emotionally demean, cause injury or pain or fear of harm to the person or third person.
- (C) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possibility of arrest of all parties to discourage requests for intervention by any party.
 - (D) A law enforcement officer shall not consider the use or abuse of alcohol by either party in making a determination as to whether or not domestic violence has been committed.
 - (E) The law enforcement officer is not required to make an arrest based on who hit who first but shall consider the dynamics of domestic violence and the definition of predominate aggressor in determining which party to arrest.

Section 14-1-108 Officials Who Batter, Including Law Enforcement Officers; Procedure

Law enforcement officers and public officials who are suspected of committing the crime of domestic violence shall be subject to all provisions of this code.

Upon receiving a report or notification that a law enforcement officer is a possible perpetrator of domestic violence:

- (A) The responding officer shall immediately notify the on duty supervisor or designate. The supervisor shall respond to the call and will notify the chief or designate.
- (B) Line officers will secure the scene and ensure the safety of all parties.

(C) Under no circumstances will line officers be responsible for or be assigned to investigate calls regarding other officers of equal rank or superior officers. Someone of higher rank than the alleged perpetrator shall be involved in responding.

(D) The domestic violence investigator or designate shall be notified of the call.

(E) Once the preceding has been complete the line officer shall await the response of a superior.

Upon receiving notification that a public official is a possible perpetrator:

(A) The responding officer shall notify the duty supervisor and domestic violence investigator or designate.

(B) The responding officer shall proceed with all reasonable means to secure the scene and ensure the safety of all parties, if necessary, and await the response of the supervisor or domestic violence investigator.

Section 14-1-109 Prosecution Responsibility

The Citizen Potawatomi Nation Attorney General or Prosecutor designee shall be responsible for initiating, presenting, and prosecuting any domestic violence criminal case involving any official or law enforcement officer. Domestic violence cases involving prominent persons or other high-profile individuals and or circumstances shall also fall under the direct prosecution responsibility of the Attorney General or Prosecutor designee.

Section 14-1-110 Authority of Law Enforcement Officers to Seize Weapons

Incident to an arrest, or in the course of securing a crime scene involving domestic violence a law enforcement officer:

(A) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime or any weapon in the immediate vicinity of the alleged commission of the offense. The immediate vicinity is not limited to the “wingspan” of the perpetrator and can include additional rooms of the home if weapons are reasonably suspected to be present.

(B) Shall seize a weapon that is in the plain view or which is located during a search authorized by a person entitled to consent to the search. The

seizure of weapons is without regard to ownership of the weapons; weapons owned by a third party are subject to seizure when officers conclude that the weapon must be seized to protect law enforcement, victims of domestic violence or others.

Section 14-1-111 Immunity

Any law enforcement officer shall have immunity from any liability, civil or criminal, in making arrests or exercising any authority granted under this Code, if the law enforcement officer acts in good faith and has probable cause based on the totality of the circumstances upon the best information so as to provide protection for victims of domestic violence. Law enforcement officers shall have the same immunity with respect to participation in any court proceedings resulting from arrests made for domestic violence or any crimes involving domestic violence.

Section 14-1-112 Conditions for Pre-Trial Release

(A) No person arrested or a crime of domestic violence or violation of protective order shall be released from detention until after the expiration of seventy-two (72) hours from arrest, notwithstanding the ability to post a cash or surety bond or the failure of the prosecutor to file a criminal complaint. The Court may modify the seventy-two (72) hour requirement at the initial appearance/ arraignment for good cause shown.

(B) No person arrested for the crime of domestic violence or violation of protective order shall be allowed a temporary release before arraignment except for extreme medical emergency or death of an immediate family member, and provide such release does not represent an imminent danger to the perpetrator’s spouse/partner, immediate family or others.

(C) The use or abuse of alcohol and/or other chemicals by the alleged perpetrator shall be considered, not only in relationship to the alleged assault but as alcohol and/or other chemicals relate to the alleged perpetrator’s overall lifestyle, in the likelihood that alcohol and/ or other chemicals greatly increase the likeliness or unlikeliness of a person to appear in court, potential for lethality, or enhances the possibility of further threats or injury to the victim.

(D) Before releasing a person arrested for a charge with a crime involving domestic violence, or

a violation of protective order, the court shall make findings on the record, and may impose conditions to the release or bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at subsequent court proceedings. These conditions may include, but are not limited to the following:

- (1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim or other family or household members.
 - (2) An order prohibiting the person from harassing, annoying, telephoning, contacting, or otherwise communicating with the alleged victim, either directly or indirectly through family, relations by marriage, friends or co-workers.
 - (3) An order directing the person to stay away from the home of the alleged victim and/or child(ren) and to stay away from any location where the victim is likely to be.
 - (4) An order prohibiting the person from using or possession of a firearm or other weapons specified by the Court. The Court may order weapons turned into the Citizen Potawatomi Nation Police Department as a requirement of bond.
 - (5) An order prohibiting the person from possession or consumption of alcohol or controlled substances; and
 - (6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.
- (E) If conditions of release are imposed, the court shall:
- (1) Issue a written order for conditional release;
 - (2) Provide public safety with any available information concerning the location of the perpetrator in a manner that protects the safety of the victim;
 - (3) Inform the person being release that he is to be monitored by a public safety officer/ domestic violence officer for compliance with his conditions on release, and that a violation of these conditions may cause his conditional release to be revoked.

- (F) The clerk of courts shall provide a copy of the conditions to the arrested person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the person has been provided other notice of the conditions.

Section 14-1-113 Mandatory Arrest for Violations of Condition of Release

If a law enforcement officer or domestic violence officer has probable cause to believe that a person on domestic violence probation, parole, or other supervised released has violated a condition of release imposed in accordance with Section 14-1-112 herein, the officer shall, without a warrant, arrest the alleged perpetrator whether the violation was committed in the presence of the officer or not. A domestic violence advocate may, for reasons of dangerousness and safety, direct a law enforcement officer to take physical custody on the authority of the advocate's probable cause.

Section 14-1-114 Role of the Court; Sentencing, Probation Conditions

In responding to the crime of domestic violence the court shall consider;

- (A) The range of punishment for the crime of domestic violence.
- (1) For first time offenders, the defendant can be incarcerated for a period of time not to exceed one (1) year nor less than ten (10) days. The fine for such an offense is to be no more than fifteen hundred dollars and/ or banishment. The punishment of Banishment from the Tribe for a period of up to three (3) years in accordance with Tribal law is applicable.
 - (2) For second and subsequent offenses, the defendant can be incarcerated for a period not to exceed one (1) year nor less than twenty (20) days. The fine for such an offense is to be nor more than five thousand dollars (\$5,000.00) and no less than one thousand dollars (\$1,000.00). The punishment of lifelong banishment from the Tribe, is also applicable, in accordance with Tribal law.
- (B) Mandatory Service of Jail Time.
- (1) First Offense: If the alleged assailant pleads guilty or is found guilty, the judge shall order a minimum ten (10) days in jail with

suspended imposition of the remainder of the sentence available based on the successful completion of a treatment plan provided by the Citizen Potawatomi Nation's Family Violence Program.

- (2) Second Offense: If the alleged assailant pleads guilty or is found guilty, the judge shall order a minimum of twenty (20) days in jail with suspended imposition of the remainder of the sentence available upon successful completion of the probation plan designed by the Office of Family Violence.

(C) Noncompliance

In the event that the offender does not comply with the Office of Family Violence program and/or other conditions of probation, the court may, in addition to revoking his suspended sentence, and in addition to civil contempt, recommend criminal contempt be filed which may require any sentence for contempt to be served consecutively to the imposition of the offenders original sentence for the underlying offense.

Section 14-1-115 Probation Violations, Process for Revocation, Consequences

- (A) The court may recognize the signed affidavit of a member of the family violence program and accompanying documentation outlining any violation of probation conditions as probable cause to issue a warrant for the perpetrator's arrest.
- (B) Upon arrest for a violation of probation, the person on probation shall be held without bond.
- (C) The police department shall report to the Office of Domestic Violence and the prosecutor of any person arrested for any crime who is also on probation for a crime of domestic violence, when they have such knowledge.

Section 14-1-116 Civil Sanctions Sought in the Name of The Citizen Potawatomi Nation

(A) Removal and Exclusion.

- (1) Whenever a non-native is involved in a crime involving instances of domestic violence as the perpetrator upon the Tribal land, the mandatory arrest provision shall apply. The provision will apply to the extent that the non-native perpetrator shall be detained until the appropriate law enforcement agency is contacted. Once contacted,

the officer will follow the directions of such agency regarding transport or further detention. The officer shall also ban the individual from Tribal property and escort him off of the same. The duty of law enforcement is to protect the victim, and if necessary turn the perpetrator over to the proper criminal prosecution authority.

- (2) The officer who detains the perpetrator and bans him from the Tribal property shall file a report with the prosecutor's office within the next business day of the incident occurring.
- (3) The prosecutor for the Tribe shall file a civil complaint against the perpetrator for removal and exclusion from the businesses and land of the Citizen Potawatomi Nation. It is necessary to understand that exclusion is a proper remedy to ensure the safety and well being of victims of domestic violence.

(B) Civil Fines

A person found to have committed an act of domestic violence may be liable for a civil fine for domestic violence not to exceed seven thousand five hundred dollars (\$7,500.00). This is in addition to a civil order of restitution that can be sought on behalf of the victim of domestic violence by the Tribal prosecutor.

(C) Civil Forfeitures

- (1) Any weapon, vehicle, or item of personal property used by a native or non-native in the furtherance of an attempt or perpetration of a crime of domestic violence is subject to forfeiture by the Tribal authorities. The requirement for forfeiture is a filing of a civil petition and proof by a preponderance of the evidence that the particular item sought to be forfeited was used in an attempt to commit or in the perpetration of a crime of domestic violence.
- (2) Any third-party lawful owner of such property may petition the court for return of such property. Upon a finding that the third party participated in or acknowledged that their property would be used for violation of the Citizen Potawatomi Nation's Domestic Violence and Prevention code, the court has the

discretionary authority to return the property or order it to be disposed of or sold for the benefit of the Tribe.

(D) Contempt of Court.

All civil remedies can be enforced by Contempt of Court. The punishment for indirect contempt of court is up to a year in jail and or a fine of two thousand five hundred dollars (\$2,500.00). This fine is in addition to any other fines imposed upon the perpetrator of domestic violence.

(E) Appellate Review

Appeals Under this Section shall be pursuant to the Rules of Civil Procedure.

Section 14-1-117 Spousal Privileges Inapplicable to Criminal Proceedings Involving Domestic Violence

The following evidentiary privileges do not apply in criminal proceedings in which a spouse or other family member is the victim of an alleged crime involving domestic violence perpetrated by the other spouse:

(A) The privilege of confidential communications between spouses.

(B) The testimonial privilege of spouses.

Section 14-1-118 Advocate-Victim Privilege Applicable in Cases Involving Domestic or Family Violence

(A) Except as otherwise provided in Subsection (B), confidential oral communications between a victim of domestic violence or family violence and domestic violence/family violence advocate, and written records and reports concerning the victims are privileged. The privilege can be claimed by:

(1) The victim; or

(2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if the victim is deceased or if the privilege has been waived by the victim.

(B) The privilege does not relieve a person from a duty imposed under the Tribal code or federal laws requiring the reporting of violence against children.

Section 14-1-119 Appearance or Testimony of Victim Not Required

No judge or prosecutor shall require a victim of

domestic violence or related offense addressed by this code to appear or testify as a condition of proceeding with the prosecution of any offense included in the domestic violence code.

Section 14-1-120 Self-Defense, Judicial Safeguards for Victims

In the event of a dual arrest for domestic violence, the presiding judge will take judicial notice of all factors in the case, including evidence determining who is the predominate aggressor, before entering a guilty plea by an alleged perpetrator. Indications of self-defense shall be sufficient reason for a judge to order a hearing to show cause before proceeding with a domestic violence charge against the alleged perpetrator. Such procedure and hearing shall take place to determine the possibility of self-defense, with or without concurrence of the prosecutor.

During such hearing to show cause, the presiding judge will entertain any pertinent information and/or expert testimony of domestic violence advocates pertaining to domestic violence or any other factors relating to the self-defense characteristics displayed in domestic violence cases.

Section 14-1-121 Protective Order Petition, Form, Filing/Fees, Preparation

(A) A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of sexual assault, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief under the provisions of the code of Domestic Violence and Prevention.

(1) The person seeking relief may file a Petition for a protective order with the District Court. If the person seeking relief is a victim of stalking but is not a family member or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a report against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court, or provide good cause why the report was not filed.

(2) The filing of a petition for protective order shall not require the court to have jurisdiction or venue of the criminal offense.

(B) The petition forms shall be provided by the clerk of the court. The court clerk shall develop a standard form for the Petition. If the plaintiff has retained counsel for the filing of the protective order, the attorney may substitute his Petition for the standard Petition prepared by the Clerk of the court.

(C) Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether the protective order is granted or not granted. The court may assess court costs, service of process fees, attorneys fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay costs and fees.

If the court makes a specific finding that a petition for protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.

The person seeking relief shall prepare the petition, or at the request of the plaintiff, the court clerk, victim-witness coordinator, or the court case manager shall prepare or assist the plaintiff in preparing the petition.

Section 14-1-122 Hearing, Service of Process, Emergency Ex Parte Orders, Protective Orders, Period of Relief, Title to Real Property

A copy of the petition, notice of hearing and copy of the ex-parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. Any fee for service of an emergency ex parte order, petition for protective order, and notice of hearing shall be charged pursuant to Section 4, subsection C of this title, and shall be the same as the Citizen Potawatomi Nation's Police Department's service fee plus mileage expenses.

Emergency ex parte orders shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known. When the Citizen Potawatomi Nation's Police Department cannot perform service, service may be acquired by another law enforcement officer, private investigator, private process server, or any other means deemed appropriate.

The return of service shall be filed in the court and submitted to the court file prior to the hearing date.

Within twenty (20) days of the filing of the petition for protective order, the court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of this Act to hold a hearing, such hearing shall be scheduled regardless of whether an emergency ex parte order has previously been issued, requested or denied.

The court may, in its discretion, schedule a full hearing on the petition for protective order within seventy-two (72) hours when the court issues an emergency ex parte order suspending child visitation rights due to physical violence or threats of abuse.

If service has not been made on the defendant at the time of the hearing, the court may continue the hearing and the validity of the ex parte order.

A petition for protective order shall automatically renew every twenty (20) days until the defendant is served. A petition for protective order shall not expire and must be dismissed by court order.

Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order, upon the finding that the defendant is eluding service and good faith attempts have been made to serve the defendant, unless the plaintiff or victim requests dismissal.

At the hearing, the court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family and may order the defendant to obtain a domestic violence inventory or to seek domestic violence counseling as well as drug or alcohol treatment.

Final protective orders authorized by this section shall be on a standard form developed by the administrative office of the courts.

After notice and hearing, protective orders authorized by this section may require the plaintiff and defendant or both to undergo treatment or participate in court-approved counseling to bring about the cessation of domestic violence.

Either party or both may be required to pay the costs of such treatment or counseling services. The court shall not be responsible for such costs.

Any protective order issued on or after October 1st, 2005

shall be valid for a period not to exceed three (3) years unless extended, modified, vacated or rescinded upon motion by either party if the court approves any consent agreement entered into by the plaintiff and defendant.

The court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.

Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the issuing court may take such action as is necessary under the circumstances.

Upon extension of a protective order the protective order shall be given a new number reflective of the issuing year. An extended protective order shall be valid for three years.

The court may, in its discretion, and for good cause shown, issue a protective order that does not expire, when, in the opinion of the court, it is unnecessary to review the matter every three years.

It shall be unlawful for any person to knowingly and willingly seek a protective order against a spouse or ex-spouse for purposes of harassment, undue advantage, intimidation or limitation of child visitation rights in any divorce proceedings or separation action without justifiable cause.

The violator shall, upon conviction, be guilty of the crime of abuse of civil process and may be fined the cost of the action as well as a fine of \$1000 and imprisonment in the Tribal jail for a period of six months, or both. Or in the alternative a civil violation for abuse of process, that will apply to non-Native Americans, the burden of proof being by a showing of clear and convincing evidence that the defendant meant to abuse the process and will subject such person to a civil fine and civil forfeiture of any property used to carry out such abuse.

A protective order shall not in any manner affect title of real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, child support, or division of property or any other like relief; except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order.

When granting a protective order for the protection of a minor child from violence or threats of abuse, the

court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

The court shall refrain from issuing any mutual protective orders, as defined in Section 4(G) except in extraordinary circumstances. A finding of such extraordinary circumstances shall be made on the record.

If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The court shall review each petition separately, in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the court finds cause to grant both motions, the court may do so by separate orders and with specific findings justifying the issuance of each order.

The court may consolidate a hearing if:

(A) The court makes specific findings that:

- (1) Sufficient evidence exists of domestic abuse, stalking, harassment, or sexual assault against each party, and
- (2) Each party acted primarily as aggressors, and

(B) The defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and

(C) The original plaintiff had not less than forty-eight (48) hours prior notice to the full hearing on the petition filed by the original defendant.

The court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings and such person may speak on the plaintiff's behalf with leave of court.

Section 14-1-123 Police To Be Sent a Copy of The Protective Order

- (A) Within thirty-six (36) hours of the return of service of any ex parte or final protective order, the clerk of the issuing court shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff or the victim. A certified copy of any extension, modification, vacation, cancellation or consent

agreement concerning a final protective order shall be sent within thirty-six (36) hours by the clerk of the court to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the court.

- (B) The Citizen Potawatomi Nation Police Department shall maintain a data base which is accessible twenty-four hours to provide information to any law enforcement agency seeking information regarding the validity of any protective orders issued by the court.

Section 14-1-124 Violation of Protective Order-Punishment

- (A) Any person who has been served with an ex parte or final protective order and is in violation of such protective order, upon conviction shall be guilty of Violation of the protective order and shall be punished by a fine not exceeding two thousand dollars (\$2,000.00) or by a term of imprisonment in the Tribal jail of not more than one (1) year, or both.
- (B) Any person who has been found guilty of violation of a protective order in Tribal or state court and is found guilty of a subsequent violation shall be guilty of a Violation of protective order second or subsequent offense and shall be punished by a fine not exceeding five thousand dollars (\$5,000.00) or by a term of imprisonment in the Tribal jail of not more than one year, or both. In addition, the crime of violation of protective order second or subsequent violation also carries the punishment of banishment from the Citizen Potawatomi Nation.

Section 14-1-125 Validity of Orders

All orders issued pursuant to this code shall have statewide and nationwide validity, unless specifically modified or terminated by a judge of the district court, or Supreme Court Justice.

Section 14-1-126 Warrantless Arrest-Procedure

- (A) A peace officer, without a warrant, shall arrest and take into custody a person if the peace officer has probable cause to believe that:
- (1) An emergency ex parte or final protective order has been issued by a Tribal Court or State District Court anywhere in the United States and served upon the person; and

- (2) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the peace officer by the plaintiff; and
- (3) The person named in the order has received actual notice of the order and has had a reasonable time to comply with such order.

Section 14-1-127 Foreign Protective Orders

Foreign protective orders shall be enforceable upon Tribal property. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all police officers and courts within the Tribe's jurisdiction.

Police Officers need not obtain a Tribal judges approval to enforce a foreign protective order pursuant to Section 14-1-126 of this code. Report enforcement of a foreign protective order to the prosecutor's office within twenty four (24) hours of such enforcement when arrest occurs.

Section 14-1-128 Address Confidentiality Program

- (A) It is a fact that persons attempting to escape from actual or threatened domestic violence, sexual assault, or stalking establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this section is to enable Tribal organizations to respond to requests for public records without disclosing the locations of victims of domestic violence, sexual assault, harassment or stalking, and to enable cooperation with the State of Oklahoma in providing confidentiality for victims of domestic violence, sexual assault, harassment or stalking, and to enable the Tribal office of domestic violence to accept mailings for victims and to act as a substitute address.

- (B) As used in this section:

- (1) "Address" means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this section;
- (2) "Program participant" means a person certified as a participant under this section;

Title 14

(3) “Domestic abuse” means any act of domestic violence as defined in Section 4 of this Code.

(C) The Tribe is authorized to create a address confidentiality program office to be staffed by unclassified employees who have been subjected to a criminal history records search.

(D) After the address confidentiality program office is created a person may apply to the office to have an address designated by the office to act as the address of the person or victim of a crime. The Office shall provide a form for the application procedure.

Section 14-1-129 Mandatory Training

All employees of the Court Staff, Prosecutors Office, Office of Family Violence and Police Department shall participate in at least sixteen hours of annual training to include but not be limited to:

(A) The dynamics of domestic violence, the impact of victimization, offenders reeducation programs, coordinated system response in order to facilitate the goals of this Title. In addition, law enforcement training shall include the technical aspects in making a domestic violence arrest including probable cause, self-defense, mutual arrest, evidence gathering, evidence based prosecution and report writing.

(B) Failure to participate in the required training may result in appropriate court actions.

Section 14-1-130 Severability Clause

If any clause, section or part of this code is declared invalid by the Tribal court, such shall not render invalid the remainder thereof, but shall be confined in its operation to the offending section.

CITIZEN POTAWATOMI NATION
**HEALING TO WELLNESS COURT
ADMINISTRATION AND PROCEDURE
TITLE 15**

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CHAPTER ONE
CITIZEN POTAWATOMI NATION HEALING
TO WELLNESS COURT ADMINISTRATION
AND PROCEDURE

Section 15-1-101 Citation

This Act, codified at Section 15-1-101 through 15-1-109 herein, may be cited as “The Citizen Potawatomi Nation Healing to Wellness Court Act of 2014”.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-102 Establishment of the Healing to Wellness Court

The Citizen Potawatomi Nation Healing to Wellness Court shall be a deferred sentencing program established to divert those offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-103 Administrative Authority of the Healing to Wellness Court

Nothing in this Act shall be construed to limit the authority of the tribal court system to exercise administrative control over the procedures to be followed in the Healing to Wellness Court to the extent its actions are not inconsistent with the provisions of this Act.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-104 Healing To Wellness Court Composition

The Citizen Potawatomi Nation Healing to Wellness Court shall be composed of one (1) Healing to Wellness Court Judge and a Healing to Wellness Court Team.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-105 Duties Of The Healing To Wellness Court Judge

- (A) The Healing to Wellness Court Judge shall have jurisdiction and shall preside over all matters referred to it by the Citizen Potawatomi Nation District Court.
- (B) The Healing to Wellness Court Judge shall have the following additional duties and responsibilities.

- (1) Schedule sessions of the Healing to Wellness Court, where the Judge shall meet with each individual Healing to Wellness Court participant in Court;
- (2) Draft and promulgate rules governing the administration of the Healing to Wellness Court; provided, that such rules do not contradict any rules of procedure of the Citizen Potawatomi Nation Tribal Code, or abridge, enlarge or modify the substantive right of any party;
- (3) Meet with the Healing to Wellness Court Team as necessary;
- (4) Order punishments and incentives as necessary to further the objectives of the Healing To Wellness Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
- (5) Monitor the privacy and accuracy of all the Healing To Wellness Court records.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-106 Participation In Healing To Wellness Court

- (A) A defendant in Tribal Court is eligible to participate in the Healing to Wellness Court if:
 - (1) The defendant is a Tribal Member, or a child of a Tribal member or a Native American;
 - (2) The defendant is not a juvenile;
 - (3) The defendant has a substance abuse problem;
 - (4) The defendant is charged with crime or civil offense motivated by substance abuse.
 - (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to the Healing To Wellness Court;
 - (6) The defendant is charged with a nonviolent offense; provided, however that the Citizen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the violent nature of the offense;
 - (7) The defendant does not have a history of violent acts; provided, however that the Citi-

zen Potawatomi Nation District Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;

- (8) The defendant has not participated more than twice in the Healing To Wellness Court;
- (9) The defendant's participation in the program has never been revoked; and
- (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in a civil offense.
- (11) The defendant voluntarily agrees to enter the Healing To Wellness Court upon proper application and is accepted by the Healing To Wellness Court Team.
- (12) A non-Indian subject to the CPN District Court's jurisdiction may voluntarily participate when there is an appropriate relationship to the Healing To Wellness Court purpose. For example Indian Child Welfare matters and Domestic Violence.

(B) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in the Healing To Wellness Court if he or she is referred to the Healing To Wellness Court for a state Court or social service agency, including the Citizen Potawatomi Nation Indian Child Welfare or Family Preservation Department.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-107 Conditions Of Healing To Wellness Court

- (A) In any case in which a defendant is admitted into the Healing To Wellness Court, there shall be a written agreement between the defendant and the Healing To Wellness Court Team. The agreement shall include, but not be limited to, the terms of the Healing To Wellness Court.
- (B) The conditions of the Healing To Wellness Court may include, but are not limited to, one or more of the following:
 - (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;

- (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
- (3) Refrain from the use of alcohol and drugs and from frequenting places where alcoholic beverages or illegal controlled substances are sold, possessed, or used;
- (4) Refrain from contact with certain persons or premises;
- (5) Obtain and maintain employment;
- (6) Attend individual, group, or family counseling;
- (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (8) Pay costs associated with participation in the Healing To Wellness Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
- (10) Observe any other terms or conditions of the Healing To Wellness Court Judge or the Healing To Wellness Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-108 Healing To Wellness Court Records And Communications

The Healing To Wellness Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Healing To Wellness Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

Section 15-1-109 Revocation Of Participation In The Healing To Wellness Court

- (A) Upon the recommendation from the Healing To Wellness Court Team that the defendant's participation in the Healing To Wellness Court should be revoked, the Tribal Prosecutor shall file a petition in the Healing To Wellness Court showing probable cause that a defendant has violated the terms or conditions of the Healing To Wellness Court. The Healing To Wellness Court Judge shall order a hearing on the revocation. The order must require the defendant to appear at a specified time and place for the hearing. A copy of the petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Healing To Wellness Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.
- (B) At the hearing, the defendant must be advised of:
 - (1) The allegations of the petition;
 - (2) The opportunity to appear and to present evidence on the defendant's behalf;
 - (3) The opportunity to question adverse witnesses; and
 - (4) The right to be represented by legal counsel.
- (C) A hearing is required before the defendant's participation in the Healing To Wellness Court is revoked unless the defendant admits the allegations and waives the right to a hearing.
- (D) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the Healing To Wellness Court.
- (E) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of the Healing To Wellness Court, the Healing To Wellness Court Judge may;
 - (1) Continue the defendant's Healing To Wellness Court participation without a change in terms or conditions;
 - (2) Continue the defendant's Healing To Wellness Court participation with modified or additional terms and conditions; or

- (3) Revoke the defendant's participation in the Healing To Wellness Court and transfer the matter back to the Citizen Potawatomi Nation District Court where the Judge may impose any sentence that could have been originally imposed. The Healing To Wellness Court Judge shall state the reasons for his or her determination in the order.
- (F) If the Healing To Wellness Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there has been a violation of the terms and conditions of the Healing To Wellness Court participation, the Healing To Wellness Court Judge:
 - (1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and
 - (2) May modify or add terms and conditions of the Healing To Wellness Court participation.
- (G) If a defendant's participation in the Healing To Wellness Court is revoked, the matter is transferred to the Citizen Potawatomi Nation District Court, along with a copy of the Healing To Wellness Court Judge's order revoking participation in the Healing To Wellness Court. The Citizen Potawatomi Nation District Court Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

Enacted by Ordinance #15-02 by Citizen Potawatomi Legislature on February 26, 2015.

CITIZEN POTAWATOMI NATION
EVIDENCE
TITLE 16

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CHAPTER ONE GENERAL PROVISIONS

Section 16-1-101 Scope

This Act governs evidentiary questions in all proceedings.

Section 16-1-102 Purpose and Construction

This Act shall be construed to secure: fairness in administration; elimination of unjustifiable expense and delay; promotion of growth and development of the law of evidence, truth and Justice.

Section 16-1-103 Rulings on Evidence

(A) **Effect of erroneous ruling.** Unless a substantial right of the party is affected, a judgment shall not be reversed or modified, upon an evidentiary ruling, and:

- (1) **Objection.** If the ruling is an admission, a timely objection or motion to strike was made, stating specific grounds, if not contextually apparent; or
- (2) **Offer of proof.** If the ruling is exclusion, the evidence's substance was made by offer of proof, or was apparent from the context.

(B) **Record of offer and ruling.** The Court may add statements which show the character of the evidence, the form it was offered, the objection, and the ruling. It may direct the making of an offer in question and answer form.

(C) **Hearing of jury.** In jury cases, proceedings shall prevent inadmissible evidence from being suggested, like making statements or offers of proof or asking questions in the hearing of the jury. Prior evidentiary matters may be determined by a prior hearing. Questions concerning admissibility during trial may be resolved in open Court, at the bench out of the hearing of the jury, or a recess may be taken.

(D) **Plain error.** Nothing precludes taking notice of plain errors affecting substantial rights not brought to the attention of the court.

Section 16-1-104 Preliminary Questions

(A) **Questions of admissibility generally.** Preliminary questions concerning the witness qualifications of a person, the existence of privilege, or the admissibility of evidence shall be determined by the court.

(B) **Relevancy conditioned on fact.** When relevancy depends upon the fulfillment of a condition of fact, the court shall admit it upon, or may admit it subject to, evidence sufficient to support the fulfillment of the condition.

(C) **Hearing of jury.** Admissibility of confessions shall be conducted out of the jury hearing. Preliminary matters shall be conducted when the interests of justice require or, when an accused is a witness, if they request.

(D) **Testimony by accused.** The accused's testimony on a preliminary matter, or matter heard outside the hearing of the jury, does not subject them to cross-examination to other issues. The accused waives his right against self-incrimination to all issues by testifying upon any fact pertaining to any element of the charge during the trial.

(E) **Weight and credibility.** This Section does not limit the right of a party to introduce evidence relevant to weight or credibility.

Section 16-1-105 Limited Admissibility

Evidence which is admissible to one party or for one purpose but not admissible to another party or another purpose is admitted, the court, shall restrict the evidence to its proper scope and instruct the jury.

Section 16-1-106 Remainder or Related Writings or Recorded Statements

When a writing or recorded statement is introduced, an adverse party may require the introduction of any other part which ought in fairness be considered contemporaneously.

CHAPTER TWO JUDICIAL NOTICE

Section 16-2-101 Judicial Notice of Adjudicative Facts

(A) **Scope of Chapter.** This Chapter governs only judicial notice of adjudicative facts.

(B) **Kinds of facts.** A judicially noticed fact must not be subject to reasonable dispute, it is either

- (1) generally known within the jurisdiction, or,
- (2) capable of accurate and ready determination by accurate sources.

(C) **When discretionary.** The Courts may take judicial notice, whether requested or not at any stage.

- (D) **When mandatory.** The Courts shall take judicial notice if requested and supplied with the necessary information.
- (E) **Opportunity to be heard.** A party may request a hearing about the propriety of judicial notice. A request may be subsequently made.
- (F) **Instructing jury.** In a civil proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.

CHAPTER THREE PRESUMPTIONS

Section 16-3-101 Presumptions in General in Civil Actions and Proceedings

In all actions and proceedings, a presumption imposes upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift the risk of non-persuasion, which remains upon the original party.

CHAPTER FOUR RELEVANCY AND ITS LIMITS

Section 16-4-101 Definition of “Relevant Evidence”

“Relevant evidence”: any tendency to make the existence of any fact of consequence more probable or less probable.

Section 16-4-102 Relevant Evidence Generally Admissible Irrelevant Evidence Inadmissible

All relevant evidence is admissible, except as provided by Tribal Law or rules prescribed by the Supreme Court. Evidence not relevant is not admissible.

Section 16-4-103 Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time

Relevant evidence, may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury, or considerations of delay, waste of time, or needless presentation of cumulative evidence.

Section 16-4-104 Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes

(A) **Character evidence generally.** A person’s character or trait is not admissible to prove he acted similarly on a particular occasion, except;

- (1) **Character of accused.** Evidence of a pertinent trait offered by an accused, or the prosecution is rebuttal;
- (2) **Character of victim.** Evidence of a pertinent trait of the victim offered by an accused, or the prosecution is rebuttal, or evidence of a trait of peacefulness offered by the prosecution to rebut evidence the victim was the first aggressor;
- (3) **Character of witness.** Evidence of the character of a witness, form impeachment or credibility.
- (4) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs, or acts is not admissible. It may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(B) This Section does not apply to Domestic Violence, or sexual abuse cases where character, character traits and past: Crimes; Charges Filed; and Police Reports are admissible.

Section 16-4-105 Methods of Proving Character

- (A) **Reputation or opinion.** If evidence of character or trait is admissible, proof may be made by testimony or in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.
- (B) **Specific instances of conduct.** Where character or a trait of character is an essential element, proof may also be made by specific instances of conduct.

Section 16-4-106 Habit; Routine Practice

Evidence of habit or routine practice, whether corroborated or not, is relevant to prove the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Section 16-4-107 Subsequent Remedial Measures

When measures are taken which would have made an event less likely to occur, evidence of subsequent measures is not admissible to prove negligence or culpable conduct. This Section does not require exclusion of subsequent measures when offered for another purpose, such as proving ownership, control, or

feasibility of precautionary measures, if controverted.

Section 16-4-108 Compromise and Offers to Compromise

Evidence of:

- (A) furnishing or offering or promising to furnish, or
- (B) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim, is not admissible to prove liability, invalidity or amount. Evidence of conduct or statements in negotiations is not admissible. This Section does not require the exclusion of evidence discoverable presented during compromise negotiations. This Section does not require exclusion of evidence offered for another purpose, such as proving: bias; prejudice; undue delay; obstructing a criminal investigation or prosecution.

Section 16-4-109 Payment of Medical and Similar Expenses

Evidence of furnishing, offering or promising to pay, or the payment of medical, hospital, or similar expenses is not admissible to prove liability. Evidence of payment may be introduced to reduce judgment damages.

Section 16-4-110 Inadmissibility of Pleas, Offers of Pleas, and Related Statements

- (A) Evidence of a plea of guilty, later withdrawn, or nolo contendere, or any offer, or statements, relevant to, any pleas or offers, is not admissible. Such statements, are admissible in a criminal proceeding for perjury or false statement if the statement was made under oath, on the record, and in the presence of counsel.
- (B) A plea of guilty which has not been withdrawn, and statements made in connection therewith are admissible if relevant.

Section 16-4-111 Liability Insurance

- (A) Evidence that a person was or was not insured is not admissible upon whether he acted negligently or wrongfully. This Section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.
- (B) In the discretion of the District Court, and subject to rules, evidence that a person was or was

not insured against liability and the limits of coverage and other relevant factors is admissible in a bifurcated jury or judge trial for damages only, or in the second phase upon the issue of the amount of actual and consequential damages, after liability has been determined.

**CHAPTER FIVE
PRIVILEGES**

Section 16-5-101 Privileges Recognized Only as Provided

Except as otherwise provided, no person has a privilege to:

- (A) refuse to be a witness;
- (B) refuse to disclose any matter;
- (C) refuse to produce any object or writing; or
- (D) prevent another from being a witness or disclosing any matter or producing any object or writing.

Section 16-5-102 Lawyer-Client Privilege

(A) Definitions.

- (1) A "Client" is a person, public officer, or corporation, association, or organization or entity, public or private, who is rendered professional legal services, or who consults a lawyer to obtain professional legal services.
- (2) A client's representative has authority to obtain professional legal services, and to act on advice rendered.
- (3) A "lawyer" is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law.
- (4) A "representative of the lawyer" is employed by the lawyer to assist in providing professional legal services.
- (5) A communication is "confidential" if not intended to be disclosed to third persons made in furtherance of the retention of professional services or reasonably necessary for the provision of services.

(B) General rule of privilege. A client has a privilege to refuse to disclose and to prevent any person from disclosing confidential communications made for the purpose of facilitating the rendition of professional services.

- (1) between themselves or their representative and their lawyer or lawyer's representative,
- (2) between their lawyer and the lawyer's representative,
- (3) by them, or their representative or their lawyer or a representative of the lawyer to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a common interest,
- (4) between representatives of the client or between the client and a representative of the client, or
- (5) among lawyers and their representatives representing the same client.

(C) Who may claim the privilege. The privilege may be claimed by the client, their guardian or conservator or relative who assists in obtaining legal representation, the personal representative of a deceased client, or the successor, trustee, or representative of a corporation, association, other organization. The person who was the lawyer or the lawyer's representative at the time of the communication is presumed to have authority to claim the privilege on behalf of the client.

(D) Exceptions. There is no privilege when:

- (1) **Furtherance of crime or fraud.** If the services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
- (2) **Claimants through same deceased client.** Communication between parties who claim through the same deceased client, whether the claims are testate, intestate succession or between the living.
- (3) **Breach of duty by a lawyer or client.** Communication of breach of duty by the lawyer to client or by the client to lawyer;
- (4) **Document attested by a lawyer.** Communication concerning an attested document which the lawyer is an attesting witness;
- (5) **Joint clients.** Communication of common interest among clients if made to a lawyer retained or consulted in common, when offered between or among the clients or;

(6) Public officer or agency. Communication between a public officer, agency and its lawyers unless concerning pending or contemplated investigation, claim, or action and the court determines disclosure will seriously impair the ability to process the claim or investigation, litigation, or proceeding in the public interest. Communications of the Tribal Attorney are not within this exception unless such communications have been released for public information.

Section 16-5-103 Physician and Psychotherapist - Patient Privilege

(A) Definitions.

- (1) "patient" a person who consults or is examined or interviewed by a physician or psychotherapist.
- (2) "physician" a person authorized to practice medicine or healing arts.
- (3) A "psychotherapist" is:
 - (a) a physician engaged in diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or
 - (b) a person licensed or certified as a psychologist.

(B) General rule of privilege. A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of their physical, mental or emotional condition, including alcohol or drug addiction.

(C) Who may claim the privilege. The privilege may be claimed by the patient, their guardian or conservator, or representative. The physician or psychotherapist, and any other persons directly involved have authority to claim the privilege on behalf of the patient.

(D) Exceptions.

- (1) **Proceeding for hospitalization.** No privilege for communications in proceedings to hospitalize the patient for mental illness, if the physician or psychotherapist has determined the patient needs hospitalization.
- (2) **Examination by order of court.** If the court orders an examination of the physical,

mental or emotional condition of a patient, party or witness, communications made are not privileged.

(3) Condition an element of claim or defense.

No privilege for communication of the physical, mental or emotional condition in which the condition; is an element or, after the patient's death, any party where the condition is an element.

Section 16-5-104 Husband and Wife Privilege

(A) Definition. A communication is confidential if made privately to their spouse not intended for disclosure.

(B) General rule of privilege. An accused may prevent his spouse from testifying to any confidential communication.

(C) Exceptions. No privilege in legal separation or divorce when relevant for separate maintenance, divorce, or one spouse is charged with a crime against the person or property of:

- (1) The other,
- (2) A child of either,
- (3) A person residing in the household of either, or
- (4) A third person while committing a crime against any of the above.
- (5) Except a Tribal Action to protect a child. Testimony received under this exception may not be used or referred to in any other proceeding.

Section 16-5-105 Religious Privilege

(A) Definitions. As used in this Section:

- (1) "clergyman" a minister, priest, rabbi, accredited Christian Science Practitioner, Native American Church Roadman, properly traditional band or society headman or fire keeper or functionary of a religious organization of a recognized active traditional Tribal religion, or individual reasonably believed by the person consulting him.

(B) General rule of privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing communication to a clergyman as spiritual advisor.

(C) Who may claim the privilege. The privilege

may be claimed by the person, guardian, conservator, or personal representative if deceased. The clergyman has authority to claim the privilege on behalf of the communicant.

Section 16-5-106 Political Vote

(A) General rule of privilege. Every person has a privilege to refuse to disclose his vote.

(B) Exceptions. This privilege does not apply if the court finds the vote was cast illegally or disclosure should be compelled pursuant to election laws.

Section 16-5-107 Trade Secrets

A privilege, may be claimed by a person, agent or employee, to not disclose and prevent others from disclosing a trade secret, if the privilege will not conceal fraud or work injustice. If disclosure is directed, the court shall take protective measures.

Section 16-5-108 Secrets of the Tribal Government and Other Official Information: Governmental Privileges

(A) United States Law created governmental privilege, may be claimed.

(B) No other governmental privilege is recognized except as created by Tribal Constitution Law.

(C) Privileges Recognized. The following governmental privileges are recognized:

- (1) Tribal Legislature Members are privileged against disclosure of their mental processes and reasoning in any vote, except where alleged unlawful influence or bribery or attempted bribery was involved. This privilege is waived if the member testifies.
- (2) Justices, Judges, and Magistrates are privileged against disclosure of their mental processes and reasoning, except a proceeding where alleged unlawful influence, bribery or attempted bribery was involved. The Supreme Court may remand for further findings of fact or conclusions of law to obtain an adequate record.
- (3) Tribal Officers instituting legal proceedings before any agency or Courts to enforce Tribal law have a privilege against disclosure of mental processes and reasoning in the determination of whether or not to institute legal proceedings.

(D) Effect of sustaining claim. If a claim of governmental privilege is sustained and a party is deprived of material evidence, the court shall make any order the interests of justice require, including striking testimony, declaring a mistrial, finding against the Government upon an issue which the evidence is relevant, or dismissing the action.

Section 16-5-109 Identity of Informer

(A) Rule of privilege. The Tribe, having police powers has a privilege to refuse to disclose the identity of a person who has furnished information relating to or assisting in an investigation by law enforcement, the Court and legislative committee.

(B) Who may claim. The privilege may be claimed by a representative.

(C) Exceptions:

(1) Voluntary disclosure; informer a witness. No privilege exists if the identity of the informer or his interest has been disclosed by a holder of the privilege, the informer, or if the informer appears as a witness.

(2) Testimony on relevant issue. If an informer is able to testify in a case where a public entity is a party, and the public entity invokes the privilege. The court shall give the public entity an in camera hearing to determine whether the informer can supply testimony. The showing will ordinarily be affidavits. The court may take testimony if not resolved upon affidavit. If there is a reasonable probability the informer can give the testimony, and the public entity elects not to disclose identity, in criminal cases the court on motion of the defendant or its own shall grant appropriate relief. Relief may include: requiring the Prosecution comply with a defense request for relevant information, granting the defendant additional time or a continuance, relieving the defendant from making disclosures prohibiting the prosecution from introducing specific evidence, and dismissing charges. In civil cases, the court may make any order. Evidence submitted in camera shall be sealed and preserved to be made available to the Supreme Court. The contents shall not be

revealed without consent. No counsel or party shall be permitted to be present at in camera hearings.

Section 16-5-110 Waiver of Privilege by Voluntary Disclosure

A person waives if they or their predecessor voluntarily discloses or consents to disclose any part of the privileged matter.

Section 16-5-111 Privileged Matter Disclosed Under Compulsion or without Opportunity to Claim Privilege

A claim of privilege is not defeated by a disclosure which was (1) compelled erroneously or (2) made without opportunity to claim the privilege.

Section 16-5-112 Comment Upon and Inference From Claim of Privilege; Instruction

(A) Comment or inference not permitted. The claim of a privilege, whether in the present proceeding or a prior occasion, is not a proper subject of comment by judge or counsel.

(B) Claiming privilege without knowledge of jury. In jury cases, proceedings shall be conducted, to facilitate the making of claims of privilege without jury knowledge.

(C) Jury instruction. Any party against whom the jury might draw an adverse inference from a claim of privilege is entitled to an instruction that no inference may be drawn.

CHAPTER SIX WITNESSES

Section 16-6-101 Lack of Personal Knowledge

A witness may not testify unless evidence is introduced he has personal knowledge. Evidence may, but need not, consist of the witness testimony.

Section 16-6-102 Oath or Affirmation

Every witness shall be required to declare they will testify truthfully, by oath or affirmation administered in a form approved by the Court.

Section 16-6-103 Interpreters

An interpreter is subject to qualification as an expert and an oath or affirmation he will make a true translation.

Section 16-6-104 Competency of Judge as Witness

The presiding judge may not testify in that trial.

Section 16-6-105 Competency of Juror as Witness

(A) **At trial.** A sitting jury member may not testify in the trial.

(B) **Inquiry into validity of verdict or indictment.**

Upon inquiry into the validity of a verdict or indictment, a juror may not testify, provide an affidavit or evidence of statement to any matter or statement occurring during deliberations or effect of anything upon their or any other juror's mind or emotions influencing their assent or dissent. A juror may testify whether extraneous prejudicial information was improperly brought to the jury's attention, whether the jury determined the verdict, or other relevant issues by chance, or whether any outside influence was brought. Nor may their affidavit or evidence of any statement by them concerning a matter they were precluded from testifying be received for these purposes.

Section 16-6-106 Who May Impeach

The credibility of a witness may be attacked by any party.

Section 16-6-107 Evidence of Character and Conduct of Witness

(A) **Opinion and reputation evidence of character.** The credibility of a witness may be attacked or supported by opinion or reputation, subject to these limitations:

- (1) the evidence may refer only to character for truthfulness or untruthfulness, and
- (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked.

(B) **Specific instances of conduct.** Specific instances of witness conduct attacking or supporting credibility, may not be proved by extrinsic evidence. Specific instances of conduct may, in the discretion of the Court, if probative of truthfulness or untruthfulness, be inquired during cross-examination

- (1) concerning character for truthfulness or untruthfulness, or
- (2) concerning character for truthfulness or untruthfulness of another witness to which the witness being cross-examined has testified.

(C) **Special Rule for Criminal cases.** Testimony, by an accused or other witness, does not operate

as a waiver of self-incrimination with respect to matters which relate only to credibility.

Section 16-6-108 Impeachment by Evidence of Conviction of Crime

(A) **General Rule.** To attack the credibility of a witness, evidence of conviction shall be admitted if elicited from them or established by public record during cross-examination only if the crime

- (1) was punishable by death or imprisonment more than one year under federal or state law, and the Court determines the probative value of admitting outweighs its prejudicial effect (if the defendant's credibility is being questioned), or
- (2) involved dishonesty or false statement, or
- (3) was punishable by banishment or imprisonment for six months, or is classified as a serious offense.

(B) **Time Limit.** A conviction is not admissible if more than ten years ago or since release from confinement or punishment, whichever is later. The Court may determine the probative value of the conviction supported by circumstances substantially outweighs its prejudicial effect. A conviction more than 10 years old, is not admissible unless the proponent gives the adverse party sufficient notice to provide a fair opportunity. Convictions may be admissible if other admissible convictions not ten years old have occurred since the conviction in question.

(C) **Effect of pardon, annulment, or certificate of rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been pardoned, annulled, rehabilitated, based on a finding of rehabilitation, and they have not been convicted of a subsequent crime, or
- (2) the conviction has been pardoned, annulled, or equivalent procedure based on a finding of innocence.

(D) **Juvenile adjudications.** Juvenile adjudications are generally not admissible. The Court may, in a criminal case allow evidence of a juvenile adjudication of a witness, other than the accused, if conviction would be admissible to attack the credibility of an adult and the Court is satisfied admission is necessary.

- (E) **Pendency of appeal.** Evidence of the pendency of an appeal is admissible when evidence of the underlying convictions has been introduced.

Section 16-6-109 Religious Beliefs or Opinions

Evidence of the religious beliefs or opinions of a witness is not admissible to show by reason of their nature their credibility is impaired or enhanced.

Section 16-6-110 Mode and Order of Interrogation and Presentation

- (A) **Control by Court.** The Court shall exercise reasonable control to:

- (1) make the interrogation and presentation effective,
- (2) avoid needless consumption of time, and
- (3) protect witnesses from harassment or embarrassment.

- (B) **Scope of cross-examination.** Cross-examination should be limited to the direct examination and the credibility of the witness. The Court may, permit inquiry as if direct examination.

- (C) **Leading questions.** Leading questions should not be used on the direct examination of a witness except to develop testimony. Ordinarily leading questions should be permitted on cross-examination. When a party calls a child, or person with trouble understanding questions, a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions.

- (D) Narrative Testimony may be allowed from parties as the Court determines.

Section 16-6-111 Writing Used to Refresh Memory

- (A) If a witness uses a writing to refresh their memory while or before testifying, an adverse party may have the writing produced to inspect, cross-examine, and introduce.
- (B) If the writing contains matters not related to the testimony the Court shall examine the writing in camera, make deletions and order delivery of the remainder. Any portion withheld over objections shall be preserved. If a writing is not produced or delivered, the Court shall make any order required. In criminal cases, if the prosecution does not comply, the Court may declare a mistrial.

Section 16-6-112 Prior Statements of Witnesses

- (A) **Examining witness concerning prior statements.** A witness examined concerning a prior statement, the statement need not be shown nor its contents disclosed, but on request shall be shown or disclosed to opposing counsel.

- (B) **Extrinsic evidence of prior inconsistent statements of witness.** Extrinsic evidence of a prior inconsistent statement is not admissible unless the witness is allowed to explain and the opposing party to interrogate.

Section 16-6-113 Calling and Interrogation of Witnesses by Court

- (A) **Calling by Court.** The Court may call witnesses, and all parties are entitled to cross-examine.

- (B) **Interrogation by Court.** The Court may interrogate all witnesses.

- (C) **Objections.** Objections may be made or at the next opportunity when the jury is not present. The Court should exercise its authority to call or question witnesses with great restraint in a jury trial.

Section 16-6-114 Exclusion of Witnesses

The Court on its own or at a party's request may exclude witnesses. This does not authorize exclusion of

- (1) a party, or
- (2) an officer or employee, designated as its representative, or
- (3) a person who is essential to the presentation of their cause.

CHAPTER SEVEN

OPINIONS AND EXPERT TESTIMONY

Section 16-7-101 Opinion Testimony by Lay Witnesses

If the witness is not an expert, their opinion or inferences are limited to those which are:

- (A) rationally based;
- (B) helpful to an understanding of their testimony or determination of a fact; and
- (C) a subject which is presumed the general public has sufficient knowledge to reach a reasonable opinion, conclusion, or inference.

Section 16-7-102 Testimony by Experts

If scientific, technical, or specialized knowledge will assist to understand evidence or determine fact, a witness qualified as an expert by knowledge, skill, experience, training, or education, may offer opinion.

Section 16-7-103 Basis of Opinion Testimony by Experts

The facts or data upon which an expert bases an opinion or inference may be those perceived by or made known to them. If of a type reasonably relied upon by experts in forming opinions or inferences, the facts or data need not be admissible.

Section 16-7-104 Opinion on Ultimate Issue

Opinion or inference testimony admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

Section 16-7-105 Disclosure of Facts or Data Underlying Expert Opinion

Experts may give reasons for opinions or inferences without prior disclosure of the underlying facts or data, unless the Court requires otherwise. The expert may be required to disclose underlying facts or data on cross-examination.

Section 16-7-106 Court Appointed Experts

(A) Appointment. The Court may or upon motion enter an order to show cause why expert witnesses should not be appointed, and request parties to submit nominations. The Court may appoint any expert witnesses agreed upon, and of its own. An expert witness shall not be appointed unless he consents. A witness appointed shall be informed of his duties, a copy of which shall be filed with the clerk, or at a conference. The witness shall advise the parties of his findings, his deposition may be taken; and he may be called to testify. He shall be subject to cross-examination.

(B) Compensation. Expert witnesses are entitled to reasonable compensation as the Court allows, payable from the Court fund, reimbursed by the parties as the Court directs, and thereafter charged in like manner as other costs.

(C) Disclosure of Appointment. The Court may authorize disclosure to the jury that the Court appointed the expert witness.

(D) Parties' Experts of Own Selection. The parties may call their own experts.

**CHAPTER EIGHT
HEARSAY****Section 16-8-101 Definitions**

The following definitions apply under this Chapter:

(A) Statement: an oral or written assertion or Non-verbal conduct, intended as an assertion.

(B) Declarant: A person who makes a statement.

(C) Hearsay: a statement, other than one made by the declarant while testifying, offered in evidence to prove the truth of the matter asserted. This includes affidavits and notarized statements unless made admissible.

(D) Statements which are not hearsay. A statement is not hearsay if:

(1) Prior statement by witness. The declarant testifies, is subject to cross-examination and is:

- (a) inconsistent with their testimony, and was given under oath at a proceeding, or deposition, or
- (b) consistent with their testimony and is offered to rebut an express or implied charge of recent fabrication, improper influence or motive, or
- (c) one of identification of a person or object made after perceiving him or it; or

(2) Admission by party-opponent. The statement is offered against a party and the statement is made:

- (a) in their individual or representative capacity or
- (b) of their adoption or belief in its truth, or
- (c) by a person authorized concerning the subject, or
- (d) by their agent or servant within the scope of agency or employment, during the existence of the relationship, or
- (e) by a co-conspirator during the course and in furtherance of the conspiracy.

Section 16-8-102 Hearsay Rule

Hearsay is not admissible except as provided or prescribed by Tribal Law.

Section 16-8-103 Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded, though the declarant is available as a witness:

- (A) **Present sense impression.** A statement describing or explaining an event or condition made while perceiving the event or condition, or immediately thereafter.
- (B) **Excited utterance.** A statement relating to a startling event or condition made while under the stress of excitement caused by the event or condition.
- (C) **Then existing mental, emotional, or physical condition.** A statement of existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), not including a statement of memory or belief to prove the fact remembered or believed unless it concerns probate.
- (D) **Statements for purposes of medical diagnosis or treatment.** Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations.
- (E) **Recorded recollection.** A memorandum or record which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh. If admitted, the memorandum or record may be read into evidence but may not be received as an exhibit unless offered by an adverse party.
- (F) **Records of regularly conducted activity.** A memorandum, report, record, or data compilation, concerning acts, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of regularly conducted business, as shown by the testimony of the custodian or qualified witness, unless the source, method or circumstances indicate lack of trustworthiness.
- (G) **Absence of entry in records.** Evidence a matter is not included in the memoranda reports, records, or data compilations, to prove the non-occurrence or nonexistence, if the matter was one which a memorandum, report, record, or data compilation was regularly made and preserved, unless the source or circumstances indicate lack of trustworthiness.
- (H) **Public records and reports.** Records, reports, statements, or data compilations, of public offices or agencies, setting forth
 - (1) activities of the office or agency, or
 - (2) matters observed pursuant to duty which there was a duty to report, excluding, in criminal cases matters observed by law enforcement personnel, or
 - (3) in civil actions and against the Government in criminal cases, factual findings resulting from an investigation, unless the source or circumstances indicate lack of trustworthiness.
- (I) **Records of vital statistics.** Records or data compilations, of birth, fetal deaths, deaths, or marriages, made to a public office.
- (J) **Absence of public record or entry.** To prove the absence of a record, report, statement, or data compilation, was regularly made and preserved by a public office or agency, evidence, that diligent search failed to disclose the record, report, statement, or data compilation, or entry.
- (K) **Records of religious organizations.** Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood, marriage, or acts of personal or family history, contained in a regularly kept record of a religious organization.
- (L) **Marriage, baptismal, and similar certificates.** Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or person authorized by a religious organization or, and purporting to have been issued at the time or within a reasonable time.
- (M) **Family records.** Statements of fact concerning personal or family history contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones.
- (N) **Records of documents affecting an interest in property.** The record of a document purport-

ing to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office.

(O) Statements in documents affecting an interest in property. A statement in a document purporting to establish or affect an interest in property if relevant to the document, unless subsequent dealings have been inconsistent with the truth of the document.

(P) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(Q) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public professionals.

(R) Learned treatises. When an expert witness during examination, relies upon statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or, established as a reliable authority. If admitted, the statements may be read into evidence but may not be received as exhibits.

(S) Reputation concerning personal or family history. Reputation among family members by blood, adoption, or marriage, or among associates, or in the community, concerning a person's birth, adoption, marriage, divorce, death, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other similar fact of personal or family history.

(T) Reputation concerning boundaries or general history. Reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands, and reputation as to general history important to the Tribe, community, State or nation.

(U) Reputation as to character. Reputation of a person's character among his associates or in the community.

(V) Judgment of previous conviction. Evidence of a final judgment, entered after a trial or upon a plea of guilty, adjudging a person guilty of

a crime or offense, to prove any fact essential to sustain the judgment in the criminal case as against persons in any civil case, but not against the accused in a criminal case. The pendency of an appeal may be shown but does not affect admissibility.

(W) Other exceptions. A statement not specifically covered but having equivalent circumstantial guarantees of trustworthiness, if the Court determines

- (1) the statement is offered as evidence of a material fact;
- (2) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and
- (3) the purposes of justice will best be served by admission.

A statement may not be admitted unless the proponent gives advance notice to the adverse party sufficient to object. The notice will include particulars including the name and address of the declarant.

Section 16-8-104 Hearsay Exceptions; Declarant Unavailable

(A) Definition of unavailability: Situations which the declarant:

- (1) is exempted by the Court on privilege; or
- (2) in refuses to testify despite a Court order; or
- (3) testifies to a lack of memory; or
- (4) is unable to be present or testify because of death or existing physical or mental illness or infirmity; or
- (5) is absent and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

A declarant is not available as a witness if his exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent to prevent the witness from attending or testifying.

(B) Hearsay exceptions. The following are not excluded if the declarant is unavailable:

- (1) Former testimony.** Previous testimony or deposition, if an opposing party, or interest, had an opportunity and motive to develop the testimony by examination.

- (2) **Statement under belief of impending death.** In any proceeding, a statement made believing death was imminent, concerning the cause or circumstances of what was believed to be their impending death.
- (3) **Statement against interest.** A statement contrary to pecuniary or proprietary interest, or tended to subject to liability, or render invalid a claim, that a reasonable person would not have made the statement unless they believed it was true. A statement to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate trustworthiness.
- (4) **Statement of personal or family history.**
- (a) a statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption, or marriage, ancestry, or other fact of personal or family history, even though declarant had no means of acquiring personal knowledge; or
 - (b) a statement concerning the foregoing matters, and death, of another person, if the declarant was related to the other by blood, adoption, or marriage or was intimately associated with the other's family to likely have accurate information.
- (5) **Other exceptions.** A statement not specifically covered by the foregoing exceptions having equivalent circumstantial guarantees of trustworthiness, if the Court determines:
- (a) the statement is offered as evidence of a material fact;
 - (b) the statement is probative on the point for which offered than any other evidence which the proponent can procure through reasonable efforts; and
 - (c) the purposes of justice will be served by admission. A statement may not be admitted under this exception unless the proponent gives notice to the adverse party before trial or hearing to provide a fair opportunity to oppose

it, and the particulars, including the name and address of the declarant.

Section 16-8-105 Hearsay Within Hearsay

Hearsay within hearsay is not excluded if each part of the combined statements conforms with an exception provided.

Section 16-8-106 Attacking and Supporting Credibility of Declarant

When the hearsay statement, or a statement has been admitted in evidence, the credibility of the declarant may be attacked, and may be supported, by any evidence admissible if declarant had testified as a witness. Evidence of a statement or conduct by the declarant at any time, inconsistent with his hearsay statement, is not subject to any requirement that he be afforded an opportunity to deny or explain. If the party against whom a hearsay statement has been admitted calls the declarant, the party is entitled to examine him as if cross-examination.

CHAPTER NINE

AUTHENTICATION AND IDENTIFICATION

Section 16-9-101 Requirement of Authentication or Identification

- (A) **General provision.** Authentication or identification as a condition of admissibility is satisfied by evidence supporting a finding the matter in question is what its proponent claims.
- (B) **Illustrations.** By illustration, and not limitation, the following are examples:
- (1) **Testimony of witness with knowledge.** Testimony a matter is what it is claimed to be.
 - (2) **Non-expert opinion on handwriting.** Non-expert opinion as to genuineness of handwriting, based upon familiarity not acquired for purposes of litigation.
 - (3) **Comparison by trier or expert witness.** Comparison by the trier of fact or by expert witnesses with a specimen which have been authenticated.
 - (4) **Distinctive characteristics and the like.** Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.
 - (5) **Voice identification.** Identification of a voice, whether heard firsthand or through

mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstance connecting it with the alleged speaker.

- (6) **Telephone conversations.** Evidence a call was made to the number assigned at the time by the telephone company to a particular person or business, if:
 - (a) circumstances, including self-identification, show the person answering to be the one called, or
 - (b) the call was made to a place of business and the conversation related to business transacted over the telephone.
- (7) **Public records or reports.** Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, is from the public office where items are kept.
- (8) **Ancient document or data compilation.** Evidence that a document or data compilation,
 - (a) is in condition to create no suspicion concerning its authenticity,
 - (b) was in a place where, if authentic, would be likely to be, and
 - (c) has been in existence 20 years or more at the time offered.

Section 16-9-102 Self-Authentication

Extrinsic evidence of authenticity is not required for:

- (1) **Domestic public documents under seal.** A document bearing a seal purporting to be that of the United States, or Indian Tribe, State, District, Commonwealth, territory, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.
- (2) **Domestic public documents not under seal.** A document purporting to bear the signature in their official capacity of an officer or employee of any entity included in paragraph (1) having no seal, if a public officer having a seal and having official duties certifies under seal that the signer has the official capacity and the signature is genuine.

- (3) **Foreign public documents.** A document purporting to be executed or attested in their official capacity authorized by the laws of a foreign country, and accompanied by a final certification as to the genuineness of the signature and official position:

- (a) of the executing or attesting person, or
- (b) of any foreign official whose certificate of genuineness of signature and official position related to the execution or attestation or is in a chain of certificates of genuineness.

A final certification may be made by a diplomatic, or consular agent of the United States, or of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to investigate the authenticity and accuracy of official documents, the Court may, for good cause shown, order they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

- (4) **Certified copies of public records.** A copy of an official record or report of entry, or a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or authorized person.
- (5) **Official publications.** Books, pamphlets, or other publications purporting to be issued by public authority.
- (6) **Newspapers and periodicals.** Printed materials purporting to be newspapers or periodicals.
- (7) **Trade inscriptions and the like.** Inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.
- (8) **Acknowledged documents.** Documents accompanied by a certificate of acknowledgement executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments or administer oaths.
- (9) **Commercial paper and related documents.** Commercial paper, signatures, and documents relating to the extent provided by commercial law.

(10) Presumptions under Acts or Ordinances.

Any signature, document, or other matter declared by Act or Ordinance of the Tribal Legislature to be presumptively or prima facie genuine or authentic.

Section 16-9-103 Subscribing Witness Testimony Unnecessary

The testimony of a subscribing witness is not necessary to authenticate a writing unless required by the laws of the jurisdiction whose laws govern the validity.

**CHAPTER TEN
CONTENTS OF WRITING, RECORDINGS,
AND PHOTOGRAPHS**

Section 16-10-101 Definitions

- (A) Writings and recordings.** consist of letters, words, or numbers or their equivalent, written, typed, printed, photostated, photographed, mechanical or electronic recording, or any form of data compilation.
- (B) Photographs.** includes X-ray films, video tapes, and motion pictures.
- (C) Original.** the writing or recording itself or any counterpart intended to have the same effect. An "Original" of a photograph includes the negative or any print. If data is stored in a computer or similar device, any output readable reflecting the data accurately, is an "Original".
- (D) Duplicate.** A "duplicate" is a counterpart produced by the same impression as the original, or the same matrix, or by photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by equivalent techniques which accurately reproduces the original.

Section 16-10-102 Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided.

Section 16-10-103 Admissibility of Duplicates

A duplicate is admissible unless:

- (A) a genuine question is raised as to the authenticity of the original or
- (B) it would be unfair to admit the duplicate in lieu of the original.

Section 16-10-104 Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (A) Originals lost or destroyed.** All originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith; or
- (B) Original not obtainable.** No original can be obtained by any judicial process or procedure; or
- (C) Original in possession of opponent.** when an original was under the control of the adverse party, who was on notice, the contents would be a subject of proof, and they do not produce the original, or
- (D) Collateral matters.** The writings, recording, or photograph is not closely related to a controlling issue.

Section 16-10-105 Public Records

The contents of an official record, or an authorized, recorded or filed document, if admissible, may be proved by copy, certified as correct or testified to be correct. If such copy cannot be obtained by reasonable diligence, other evidence of the contents may be given.

Section 16-10-106 Summaries

Contents of voluminous writings, recordings, or photographs which cannot conveniently be examined may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, by other parties at a reasonable time and place.

Section 16-10-107 Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Section 16-10-108 Functions of Court and Jury

When the admissibility of other evidence of contents of writings, recordings, or photographs depends upon the fulfillment of a condition, the question whether the condition has been fulfilled is for the Court. However, when an issue is raised (A) whether the writing ever existed, or (B) whether another writing, recording, or photograph produced is the original, or (C) whether

other evidence of contents correctly reflects the contents, the issue is for the trier of fact to determine.

CHAPTER ELEVEN MISCELLANEOUS RULES

Section 16-11-101 Applicability of Rules

- (A) This Act applies generally to actions and proceedings, except those in which the Court may act summarily.
- (B) Privileges apply at all stage of all actions, cases, and proceedings.
- (C) This Act does not apply:
 - (1) When the Court must make preliminary findings of fact to rule on the admissibility of evidence.
 - (2) Proceedings for extradition, preliminary examinations and arraignments in criminal cases, sentencing, granting or revoking parole or probation, issuance of warrants for arrest, criminal summonses, and search warrants, the dispositional phase of juvenile proceedings, and proceedings for release on bail.

Section 16-11-102 Amendments

The Supreme Court shall have the power to prescribe amendments except any rules relating to privileges. Such amendments shall not take effect until they have been reported in writing to the Tribal Legislative Body by the Chief Justice and until the expiration of ninety days after the report; but if the Tribal Legislative Body within that time shall by formal action disapprove it shall not take effect. The effective date of any amendment may be deferred by Tribal Legislative Body. Any provision in force at such time and in conflict with any amendment shall be of no further force or effect. Any proposed amendment creating, abolishing, or modifying a privilege shall have no force or effect unless it shall be approved by the Tribal Legislative Body. Upon becoming effective, all amendments shall be incorporated into this Ordinance.

Section 16-11-103 Title

This Act may be known and cited as the Rules of Evidence, or the Evidence Code of the Tribe.

CITIZEN POTAWATOMI NATION
JUVENILE CODE AND INDIAN CHILD WELFARE
TITLE 17

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PREFACE

Section 17-0-001 Citation

This Act may be cited as The Juvenile Procedure Act.

Section 17-0-002 Purpose

The purposes of this Act are to:

- (A) Secure for each child subject to this Act care and guidance, preferably in their own home, as will best serve their welfare, interest of the Tribe and society;
- (B) Preserve and strengthen the ties between the child and The Tribe;
- (C) Preserve and strengthen families, improve the home and its environment;
- (D) Remove a child from the custody of parents or traditional custodians only when the child's welfare and safety or the protection of the public would be endangered;
- (E) Secure for any removed child the necessary care, guidance and discipline to assist him in becoming a responsible and productive member of The Tribe and society;
- (F) Establish a working relationship between the Juvenile Court and Firelodge Children and Family Services.

To carry out these purposes, the provisions of this Act shall be liberally construed.

Section 17-0-003 Definitions

Unless the context otherwise requires, as used in this Act, the term:

- (A) "Adjudicatory hearing": a hearing to determine whether the allegations of a petition alleging a child to be neglected, deprived, in-need-of-supervision, or delinquent are supported by the evidence.
- (B) "Adult" means a person eighteen years of age or over; except any person alleged to have committed a delinquent act before he became eighteen years of age shall be considered a child for the purpose of adjudication and disposition of the delinquent Act.
- (C) "Aunt" means a person who; by blood or marriage, is:
 - (1) A female sibling of the biological parents, or

- (2) A female first cousin of the biological parents, or
- (3) A female child of a grandparent, or
- (4) Any other female person, who, by virtue of an adoption, either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would come within the terms of subparagraphs (1), (2), or (3) of this subsection.

(D) "Brother":

- (1) Any male sibling, or
- (2) Any other male person, who, by virtue of an adoption either of themselves or of a member of their family pursuant to the laws of any Indian Tribe or state would hold the relationship of a sibling.

(E) "Brother-in-law": the husband of a sister by blood or marriage.

(F) "Child": a person under eighteen years of age.

(G) "Child care center": an institution or facility designed for the care of children licensed or approved pursuant to Tribal law, or by the law of the jurisdiction in which such facility is physically located, or both.

(H) "Child in need of supervision": a child:

- (1) Who has repeatedly disobeyed reasonable and lawful commands or directives of their parent, legal guardian, or other custodian; or
- (2) Who is willfully and voluntarily absent from his home without the consent of his parent, guardian, or legal custodian for a substantial period of time, or without intent to return; or
- (3) Who is willfully, voluntarily, and habitually absent from school.

(I) "Child placement agency": an agency designed for the care or placement of children licensed or approved pursuant to Tribal law, by the law of the jurisdiction in which such facility is physically located or both.

(J) "Commit": to transfer legal custody.

(K) "Cousin": the child of an aunt or uncle.

(L) "Custody": guardianship of the person.

(M) "Delinquent child": a child who has violated any federal, Tribal, or state law, or any lawful order of the Court.

- (N) “Department”: the Tribal Indian Child Welfare Program.
- (O) “Deprivation of custody”: the transfer of legal custody from a parent or a previous legal custodian to another person, agency, or institution.
- (P) “Detention”: the temporary care of a child who requires secure custody in physically restricting facilities or a Court order for placement or commitment.
- (Q) “Dispositional hearing”: a hearing, after adjudication in which the Court must determine what treatment should be ordered for the family and child, and placement of the child should.
- (R) “Foster home”: a facility for the care of not more than six (6) total children in a family type setting, licensed or approved pursuant to Tribal law, or by the law of the jurisdiction in which such facility is physically located or both.
- (S) “Group care facilities”: places other than family care homes or child care centers providing care for small groups of children.
- (T) “Grandparent” means
 - (1) A biological grandparent.
 - (2) The brothers and sisters of a biological grandparent, and their spouses.
 - (3) Any person who, by virtue of an adoption would come within the terms of subparagraphs (1) or (2) of this subsection.
- (U) “Guardianship of the person”: legal custody or the duty and authority vested by law to make major decisions affecting a child including, but not limited to:
 - (1) The authority to consent to marriage, enlistment in the armed forces, and to extraordinary medical and surgical treatment, and
 - (2) The authority to represent a child in legal actions and make decisions of substantial legal significance, and
 - (3) The authority to consent to adoption with express court authorization when the parent-child relationship has been terminated or the parents are deceased, and
 - (4) The rights and responsibilities of physical and legal care, custody, and control of a child.
- (5) The duty to provide food, clothing, shelter, ordinary medical care, education, and discipline for the child.
- (V) “Halfway house”: group care facilities for children who have been placed on probation or parole by being adjudicated delinquent, or in need of supervision.
- (W) “Juvenile Court” or “Court”: the Juvenile Court, Court established for other Indian Tribes and a state Juvenile Court.
- (X) “Neglected child” or “dependent child”: a child:
 - (1) Whose parent, guardian, or legal custodian has subjected them to mistreatment or abuse, or has suffered or allowed another to mistreat or abuse the child without taking lawful means to stop or prevent such mistreatment or abuse; or
 - (2) Who lacks proper parental care through the actions or omissions of the parent, guardian, or legal custodian; or
 - (3) Whose environment is injurious to their welfare; or
 - (4) Whose parent, guardian, or legal custodian fails or refuses to provide proper or necessary subsistence, education, medical care, or any other care necessary for his health, guidance, or well being, whether because of fault or because the lack ability or resources to provide for the child.
 - (5) Who is homeless, without proper care, or not domiciled with his parent, guardian, or legal custodian, or
 - (6) Whose parent, guardian, or legal custodian has abandoned them without apparent intent to return, or
 - (7) Who has placed them informally with any other person, and has not contributed to the support of the child or established personal contact with the child for a period in excess of nine months.
- (Y) “Nephew”: the male child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.
- (Z) “Niece”: the female child of a brother, sister, brother-in-law, or sister-in-law, whether by blood, marriage, or adoption.

- (AA) “Parent”: either a natural parent or a parent by adoption. Parent does not include an unwed father unless he has acknowledged paternity or paternity was established by judicial action.
- (AB) “Protective supervision”: a legal status under which the child is permitted to remain at home under the supervision of the Juvenile Court through the Tribal social services department during the period during treatment provided by the Tribal Social Services Department or other designated agencies.
- (AC) “Residual parental rights and responsibilities”: those rights and responsibilities remaining with the parent after legal custody, or guardianship a child has been vested in another person, agency, or institution, including, but not limited to, the responsibility for support, consent to adoption, inherit from the child, determine the child’s religious affiliation and reasonable visitation.
- (AD) “Shelter”: a facility for the temporary care of a child in physically unrestricting facilities pending court disposition, or execution of a court order for emergency or temporary placement.
- (AE) “Stepparent”: a person married to a biological parent, but who is not a biological parent of the child.
- (AF) “Sister”:
- (1) Any female sibling.
 - (2) Any other female who, by virtue of an adoption would have the relationship of a sibling with the person in question.
- (AG) “Sister-in-law”: the wife of a brother by blood or marriage.
- (AH) “Termination of parental rights” or “termination of the parent-child legal relationship means the permanent elimination of all parental rights and duties, but not including the child’s right to inherit from the parent’s whose rights have been terminated.
- (AI) “Traditional custodian”: those relatives of the child, who, by force of the traditions, customs, and common law of the Tribe have the rights, duties, and responsibilities of assisting the parents in rearing the child and providing support.

(AJ) “Transfer proceeding”: any proceeding in the Juvenile Court to grant, accept, or decline transfer of any children’s case from or to the Courts of any Indian Tribe or state.

(AK) “Tribal Court” shall mean the Tribal District Court.

Section 17-0-004 Place of Sitting

The Juvenile Court shall maintain offices and sit in the same place the District Court sits, provided, that the Juvenile Court, in a transfer proceeding or where otherwise necessary and expedient in the interest of Justice and economy, with the approval of the Chief Judge, may sit anywhere within the territorial limits of the United States.

CHAPTER ONE GENERAL PROVISIONS

Section 17-1-101 Juvenile Court Established

There is hereby created and established within the Tribal Court, a Juvenile Division whose powers and duties are set forth in this Act. Any Tribal Court Judge may be assigned cases in the Juvenile Division by the Chief Judge.

Section 17-1-102 Jurisdiction

(A) Except as otherwise provided by law, the Juvenile Court shall have exclusive jurisdiction in proceedings:

- (1) Concerning any child in need of supervision.
- (2) Concerning any child who is delinquent, neglected or dependent.
- (3) Concerning any transfer proceeding to or from a court of another sovereign.
- (4) To determine the legal custody, appoint a guardian or legal custodian of any child.
- (5) Issue of orders of support.
- (6) To determine parentage and make an order of support.
- (7) For the adoption of a person of any age.
- (8) For judicial consent to the marriage, employment or enlistment of a child.
- (9) For treatment or commitment of a mentally ill or developmentally disabled child.

- (B) The Court may issue temporary orders for protection, support, or medical or surgical treatment prior to adjudication or disposition.
- (C) This section shall not deprive the Tribal District Court of jurisdiction to appoint a guardian or to determine the legal custody of a child upon writ of habeas corpus when the question of legal custody is incidental to the determination of a cause in the Tribal Court except:
 - (1) If a petition is pending or if continuous jurisdiction has been previously acquired by the Juvenile Court, the Tribal Court shall certify the question of legal custody to the Juvenile Court; and
 - (2) The Tribal Court may request the Juvenile Court make recommendations pertaining to guardianship or legal custody.
- (D) Where a custody award has been made in a Tribal District Court Divorce action or another proceeding, The Juvenile Court may take jurisdiction in a case involving the same child if he is dependent or neglected.

Section 17-1-103 Indian Child Welfare Act Transfers from State Courts

- (A) Pursuant to the Indian Child Welfare Act, 25 U.S.C. 1911 (B), any state court may transfer any proceeding for the foster care placement of, or termination of parental rights to, any Indian child who is a member or eligible for membership, if the Juvenile Court finds the transfer would not be detrimental to the best interests of the child.
- (B) The Juvenile Court shall determine whether the transfer would be detrimental to the best interest of the child in a transfer hearing. The Court may consider:
 - (1) Whether the child or family will need special services for physical, mental disease or defect which the Tribe and its resources are unable to provide, and
 - (2) If transfer is tendered prior to adjudication, whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear the Court may decline to accept the transfer until after the adjudication, and
 - (3) Any other matters which may adversely affect

the Tribe's ability to provide treatment or necessary services.

- (C) A Court transferring a case shall transmit all documents and legal and social records, or certified copies. The Juvenile Court shall proceed as if the petition has been originally filed or the adjudication made in this Court. Transfer cases shall be assigned a juvenile division case number.

Section 17-1-104 Indian Child Welfare Transfers From Tribal Courts

- (A) Any other Tribal Court may transfer any children's case concerning any child who is a member or eligible for membership, or, whose parents or guardian reside within the jurisdiction of the Tribe, if the Juvenile Court finds that the transfer would not be detrimental to the best interest of the child.
- (B) The Juvenile Court shall determine whether the transfer would be detrimental to the best interest of the child in a transfer hearing. The Court may consider:
 - (1) Whether the child or family will need special services for physically, mental disease or defect which the Tribe and its resources are unable to provide, and
 - (2) If transfer is tendered prior to adjudication whether the witnesses necessary to adjudicate the case will be available. If the witnesses will probably not appear, the Court may decline to accept the transfer until after the adjudication is completed.
 - (3) Any other matters which may adversely affect the Tribe's ability to provide treatment or necessary services to the family.
- (C) A Tribal Court transferring a case shall transmit all documents and legal and social records, or certified copies. The Juvenile Court shall proceed as if the petition had been originally filed or the adjudication made in the Juvenile Court.

Section 17-1-105 Child Welfare Transfers to Tribal or State Courts

- (A) The Juvenile Court is authorized to transfer any children's case if the child is not a member or eligible for membership, to the Court of the Child's Indian Tribe, or a non-Indian, to the Court of the State where the child is a

resident or domiciled, upon the petition of the Tribal district attorney, either parent, a custodian or guardian, or an appropriate official of the child's state.

(B) The Tribal Court may consider:

- (1) The best interests of the child, and
- (2) Any special needs mental or physical disease and defects of the child and family and the ability of the receiving jurisdiction to meet those needs, and
- (3) If prior to adjudication, whether witnesses can attend in the receiving jurisdiction, and
- (4) Emotional, cultural, and social ties of the child and family
- (5) The likelihood that the same child and family would return to the Tribal jurisdiction and come before the Juvenile Court again.

(C) Upon entering an order, the Court shall serve a certified copy of the Order of Transfer, the legal case file, and any social or police reports concerning the child's case to the Court Clerk of the receiving jurisdiction by certified mail, return receipt requested or personal delivery. The Juvenile Court may retain physical custody of the child pending an order or notice of acceptance and upon receiving such order on notice, may close the case file and dismiss the case subject to any necessary order for the protection of the child until completion of physical transfer.

Section 17-1-106 through 17-1-109 Reserved

Section 17-1-110 Notice of Legal Rights

(A) At the first appearance before the Court, the child and their parents, guardian or other legal custodian shall be fully advised by the Court of their legal rights, including:

- (1) Their right to a jury trial upon demand in juvenile delinquency cases.
- (2) Their right to be represented by an attorney, at their own expense, at every level of the proceeding.
- (3) Their right to see, hear, and cross-examine all witnesses against them.
- (4) Their right to call witnesses and to have court process compel the attendance of witnesses for themselves.

(5) In juvenile delinquency proceedings, the right of the child not to be compelled to testify against them.

(B) The Court may appoint counsel without expense to the Tribe if it deems representation by counsel necessary to protect the interest of the child or other parties.

(C) If the child and their parents, guardian, or other legal custodian were not represented by counsel, the Court shall inform them at the conclusion of the proceedings that they have the right to file a motion for a new trial and that if such motion is denied, they have the right to appeal.

Section 17-1-111 Tribal District Attorney Duties

The Tribal district attorney shall represent the Tribe in the interest of the child in all proceedings. In proceedings in which the Tribe is not a party, the Tribal district attorney, upon request of the Court, shall intervene on behalf of the Tribe in the interest of the child and, thereafter, shall act as the guardian of the child.

Section 17-1-112 through 17-1-119 Reserved

Section 17-1-120 Procedure

(A) The rules of juvenile procedure shall apply in all proceedings under this title. For any procedure not specifically set forth, the general rules of civil procedure shall apply.

(B) In cases involving an allegation of delinquency by means of commission of a criminal offense, the adjudicatory hearing shall be held in conformity with the rules of criminal procedure, and the child shall be entitled to all the rights, privileges, and immunities of an accused in a criminal case, except trial by jury and a burden of proof by clear and convincing evidence.

(C) The Juvenile Court shall have the authority by written Court rule or ruling not inconsistent with this Act or the Rules of Civil Procedure to provide for any procedure or form necessary for the efficient, orderly, and just resolution of cases.

Section 17-1-121 Hearings

(A) Hearings shall be held before the Court without a jury and may be conducted in an informal manner, except an alleged delinquent. The general public shall be excluded unless the Court determines that it is in the best interest of the

child to allow the general public, to attend. The Court shall admit only persons who have an interest in the case, and may admit persons whom the parents or guardian wish to be present.

- (B) A record shall be taken of all proceedings which result in the deprivation of custody, including any hearing conducted by a referee, unless waived by the parties and ordered by the Judge or referee.
- (C) When more than one child is named, the hearings may be consolidated; or heard separately at any stage of the proceeding.
- (D) Children's cases shall be heard separately from adult's cases, and the child or their parents, guardian, or other custodian may be heard separately when deemed necessary by the Court.
- (E) The name, picture, place of residence, or identity of any child, parent, guardian, other custodian, or person appearing as a witness in children's proceedings shall not be published in any newspaper or in any other publication nor given any other publicity unless for good cause it is specifically permitted by order of the Court. Any person who violates this provision is guilty of contempt of court and, upon conviction shall be punished by a fine of not more than Five Hundred Dollars (\$500.00), or by imprisonment for not more than thirty days, or by both.

Section 17-1-122 Home Study

- (A) Unless waived by the Court, the Indian Child Welfare Program or other agency shall make a home study and report in writing in all children's cases, except: If the allegations of a petition filed under Section 102 are denied, the study shall not be made until the Court has entered an order of adjudication

Section 17-1-123 Effect of Proceedings

- (A) No adjudication or disposition in proceedings under Section 102 shall impose any civil disability upon a child or disqualify him from any Tribal personnel system or military service application or appointment or from holding Tribal office.
- (B) No adjudication, disposition, or evidence given in proceedings shall be admissible against a child in any criminal or other action or proceedings, except in subsequent proceedings under this Act concerning the same child.

Section 17-1-124 through 17-1-129 Reserved

Section 17-1-130 through 17-1-139 Reserved

Section 17-1-140 Inspection of Court Records

- (A) Records of court proceedings shall be open to inspection by the parents or guardian, attorneys and other parties. Court proceedings in formal adoption and formal relinquishment shall be confidential and open to inspection only by Court order.
- (B) With consent of the Court, records of court proceedings may be inspected by the child, by persons having a legitimate interest and by persons conducting pertinent research studies, except in formal relinquishment and formal adoptions proceedings.
- (C) Probation counselors' records and all other reports of social and clinical studies shall not be open to inspection, except by consent of Court.

Section 17-1-141 Expungement of Records

- (A) Any person who was the subject of a petition for delinquency or need of supervision may petition the Court for the expungement of his record and shall be so informed at the time of adjudication, or the Court, on its own motion may initiate expungement proceedings. Such petition shall be filed or such court order entered no sooner than two years after the date of termination of the Court's jurisdiction. Only by stipulation of all parties involved may expungement be applied for prior to the expiration of two years.
- (B) Upon a petition or entering of a court order, the Court shall notify the Tribal district attorney and anyone who may have relevant information, including all agencies or officials.
- (C) The Court shall order sealed all records in petitioner's case and any records of any other agency or official, if the Court finds that:
 - (1) The subject of the hearing has not been convicted of a felony, an offense, punishable by banishment or of a misdemeanor involving moral turpitude and has not been adjudicated under this title, or;
 - (2) No proceeding concerning a felony, an offense punishable by banishment, a misdemeanor involving moral turpitude, or a petition under this title is pending or being instituted; and

- (3) The person has been rehabilitated to the Court's satisfaction.
- (D) Upon the entry of an order to seal the records, the proceedings in the case shall be deemed never to have occurred, and all index references shall be deleted, and the person, every agency, and the Court may properly reply to any inquiry that no record exists with respect to such person.
- (E) Copies of the order shall be sent to each agency or official named.
- (F) Inspection of the records may be permitted by the Court only upon petition by the subject of such records and only to those persons named.
- (G) In any proceedings alleging delinquency or in need-of-supervision in which the Court orders the petition dismissed on the merits at adjudication, the Court may order the records expunged. Such order or expungement may be entered without delay upon petition of the child, any party or the Court's own motion.

Section 17-1-142 Law Enforcement Records

- (A) The records of law enforcement officers concerning all children's cases or children taken into temporary custody or issued a summons under this Title shall be maintained separately from the records of arrest. They may not be inspected by or disclosed to the public, except:
 - (1) When the child has escaped from an institution to which he has been committed;
 - (2) By order of the Court;
 - (3) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

Section 17-1-143 Department Records

The records of the Indian Child Welfare Program concerning all children's cases under the provisions of this Title may not be inspected or disclosed to the public.

- (A) To the victim in each case when the child is found guilty of a delinquent act;
- (B) When the child has escaped from an institution to which he has been committed;

- (C) By order of the Court;
- (D) When the Court orders the child to be held for criminal proceedings; or
- (E) When there has been a criminal conviction and a presentence investigation is being made on an application for probation;
- (F) When the disclosure is to a Tribal, federal, or state officer, employee, or agency in their official capacity who show a bonafide need for the information requested to assist in apprehension, to conduct a current investigation, or as otherwise provided by Tribal law.

Section 17-1-144 through 17-1-149 Reserved

Section 17-1-150 Search Warrants for the Protection of Children

- (A) A search warrant may be issued by the Juvenile Court to search any place for the recovery of any child within the territorial jurisdiction of the Court believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child.
- (B) Such warrant shall be issued only on the condition that the application for the warrant shall:
 - (1) Be in writing and supported by affidavit sworn to or affirmed before the Court;
 - (2) Name or describe with particularity the child sought;
 - (3) State that the child is believed to be a delinquent child, a child in need of supervision, or a neglected or dependent child and the reasons upon which such belief is based;
 - (4) State the address or legal description of the place to be searched;
 - (5) State the reasons why it is necessary to proceed pursuant to this Section instead of proceeding by issuance of a summons.

Section 17-1-151 Issuance and Return of Search Warrant

- (A) If the Court is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, it shall issue a search warrant identifying by name or describing with particularity the child sought and the place to be searched for the child.
- (B) The search warrant shall be directed to any law

enforcement officer authorized by law to execute it wherein the place to be searched is located.

- (C) The warrant shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support.
- (D) The warrant shall be served in the daytime unless the application for the warrant alleges that it is necessary to conduct the search at other times.
- (E) A copy of the warrant, the application, and the supporting affidavit shall be served upon the person in possession of the place to be searched and where the child is to be sought, or if no one be home, a copy shall be left in plain sight within the place searched.
- (F) If the child is found, the child shall be taken into custody, transported to and placed in the detention or shelter facility or medical facility.
- (G) The warrant shall be returned, immediately upon service, and the officer shall write on the warrant his name, the date and time of service, the place where the child was delivered by him and his fees. A copy shall be delivered to the Tribal district attorney. If the child was not found, such information should be written on the warrant.

Section 17-1-152 Expiration of Search Warrant

A search warrant for the protection of a child shall be null and void if not served within ten days of the date of issuance and a void warrant should be returned with the reason for non-service.

Section 17-1-153 through 17-1-159 Reserved

Section 17-1-160 Exclusion of Certain Statement by Alleged Delinquent

- (A) No statements or admissions of a child made as a result of interrogation by law enforcement concerning acts alleged to have been committed which would constitute a crime if committed by an adult shall be admissible in evidence against that child, unless a parent, guardian, or legal custodian was present and the child and his parent, guardian, or legal custodian were advised of the child's right to remain silent, that any statements made may be used against him in a court of law, and the right to the presence

of an attorney during interrogation. If legal counsel is present at interrogation, statements or admissions may be admissible even though the child's parent, guardian, or legal custodian was not present.

- (B) Notwithstanding the provisions of subsection (A) above, statements or admissions of a child shall be admissible in evidence by reason of the absence of a parent, guardian, or legal custodian if the child is emancipated or if the child is a runaway and is of sufficient age and understanding.

Section 17-1-161 through 17-1-190 Reserved

**CHAPTER TWO
EMERGENCY CUSTODY**

Section 17-2-101 Taking Children into Custody

- (A) A child may be taken into temporary custody by an Indian Child Welfare Program caseworker and/or law enforcement officer without order of the Court when there are reasonable grounds to believe that:
 - (1) They have committed an act which would be a major crime, misdemeanor, or Tribal law violation if committed by an adult;
 - (2) They are abandoned, lost, or endangered in their surroundings or endanger others and immediate removal appears to be necessary for their protection or the protection of others; or
 - (3) They have run away or escaped from their parents, guardian, or legal custodian.
 - (4) They have violated the conditions of probation, Court Order and are under the continuing jurisdiction of the Juvenile Court.
- (B) A child may be detained temporarily without Court Order by an adult if the child has committed or is committing an act in the presence of the adult which would be a violation of any federal or Tribal law. Any person detaining a child shall notify, without unnecessary delay, a law enforcement officer, who shall assume custody.
- (C) A licensed practitioner of medicine may temporarily detain without Court order, a child brought for treatment whom he reasonably suspects to be the victim of child abuse. Any person detaining a child due to possible child

abuse shall notify, without unnecessary delay, an Indian Child Welfare caseworker and/or law enforcement officer who shall assume custody of the child. The law enforcement officer or case worker shall have authority to consent to the admission of the child to a medical facility and to consent to emergency medical treatment necessary to protect the life or health of the child from danger of imminent harm. The opinion of two or more licensed medical doctors that treatment for a condition could not reasonably be delayed long enough to contact a Judge for an emergency medical treatment order shall create a presumption that the Indian Child Welfare caseworker and/or law enforcement officer properly gave his consent to treatment of the child.

(D) In all other cases, a child may be taken into custody only upon Court order.

(E) The taking of a child into temporary custody is not an arrest and does not constitute a police record.

Section 17-2-102 Notification of Parents

When a child is taken into temporary custody, the officer and/or caseworker shall notify a parent, guardian, or legal custodian without unnecessary delay and inform them, if the child is placed in detention, all parties have a right to a prompt hearing to determine whether the child is to be detained further. Such notification may be made to a person with whom the child is residing if a parent, guardian, or legal custodian cannot be located. If the officer taking the child into custody is unable to make such notification, it may be made by any other law enforcement officer, probation counselor, Indian Child Welfare caseworker, detention center counselor, or jailor in whose physical custody the child is placed.

Section 17-2-103 Notification of Court Officers

Whenever an officer or other person takes a child to a detention or shelter facility, or admits a child to a medical facility pursuant to Section 201(C), and determines not to release the child the officer or other person who took the child to a detention or shelter facility shall notify the Tribal district attorney, the Firelodge Children & Family Services at the earliest opportunity that the child has been taken into custody and where he has been taken. He shall also promptly file a brief written report with the Tribal district attorney, Firelodge Children & Family Services stating the facts which led to the

child being taken into custody and the reason why the child was not released. This report shall be filed within twenty-four hours excluding Saturdays, Sundays, and legal holidays.

Section 17-2-104 through 17-2-109 Reserved

Section 17-2-110 Release of Detained Child

(A) A child shall not be detained any longer than is reasonably necessary to obtain his name, age, residence and other necessary information and to contact his parents, guardian, or legal custodian.

(B) The child shall be released to the care of his parents or other responsible adult, unless his immediate welfare or the protection of the community requires that he be detained. The parent or other person to whom the child is released may be required to sign a written promise, to bring the child to court.

(C) If he is not released, he shall be taken directly to the Court or to the place of detention or shelter without unnecessary delay unless admitted to a facility for medical treatment.

(D) No child shall be detained for a period exceeding seventy-two hours exclusive of Saturdays, Sundays, and legal holidays without an order of the Court. If no Court order is issued within such time, the child must be released.

(E) Notwithstanding the provisions of subsection (D), a child who is alleged to be a runaway from another Tribal jurisdiction or a state may be held in a detention facility or jail up to seven days, during which time arrangements shall be made for returning the child to his parent, legal custodian or Tribe.

Section 17-2-111 Special Release Rule for Major Offenses

(A) No child shall be taken to a detention or shelter facility without a court order, verbal or written, as the result of an allegedly delinquent act which would constitute a major crime. Once such child has been detained he shall not be released from detention except after a hearing, presided over by Tribal Court with the District Attorney present. The hearing to take place within 72 hours of detention.

(B) When, the Court orders further detention, a petition alleging the child to be delinquent shall be

filed with the Court without unnecessary delay, and the child shall be held in detention pending a hearing on the petition.

- (C) Nothing herein shall be construed as depriving a child of the right to bail under the same circumstances as an adult.

Section 17-2-112 Court Ordered Release

At any time prior to the filing of a petition and entry of an emergency custody order on that petition, the Court may order the release of any child, except children being held pursuant to Section 205 of this Title from detention or shelter care without holding a hearing, either without restriction or upon written promise of the parent, guardian, or legal custodian to bring the child to the Court at a time set.

Section 17-2-113 Extension of Detention Period

For good cause shown the Court may extend the time period during which a child may be detained without a petition and court order for a period not exceeding five working days. Such extension shall be in writing or may be made verbally and reduced to writing within seventy-two hours.

Section 17-2-114 through 17-2-119 Reserved

Section 17-2-120 Detention and Shelter

- (A) A child who must be taken from his home but does not require physical restriction shall be given temporary care in an approved shelter facility and shall not be placed in detention.
- (B) A child twelve years or older shall be detained separately from adult offenders.
- (C) The official in charge of a jail or other facility for the detention of adults shall inform the Court and Tribal district attorney immediately when a child who is or appears to be under eighteen is received at the facility.

Section 17-2-121 through 17-2-129 Reserved

Section 17-2-130 Court Ordered Medical Treatment

- (A) At any time after a child is taken into custody with or without a court order and prior to adjudication on the merits:
- (1) When the Court finds that emergency medical, surgical, or dental treatment is required for a child in Tribal custody it may authorize such treatment or care if the parents, guardian, or legal custodian are not immediately

available to give their consent or show cause why such treatment should not be ordered. The power to consent to emergency medical care may be delegated by the Court to the agency or person having physical and/or legal custody of the child.

- (2) After making a reasonable effort to obtain consent of the parent, guardian, or other legal custodian, and after a hearing on notice the Court may authorize or consent to non-emergency medical, surgical, or dental treatment or care for a child in Tribal custody.

- (B) After a child has been taken into custody by the Tribe, the Court may consent to any necessary emergency, preventive, or general medical, surgical, or dental treatment or care, or may delegate the authority to consent thereto to the agency or person having custody of the child.

Section 17-2-131 Court Ordered Commitment for Observation

If it appears that any child being held in detention or shelter may be mentally ill developmentally disabled, or has sustained any trauma which may result in a delayed medical danger or injury, the Court shall place the child in a designated facility for seventy-two hour treatment and evaluation. Upon the advice of a physician the treatment and evaluation period may be extended. Review of placement for treatment shall occur monthly until release.

**CHAPTER THREE
DIVERSION**

Section 17-3-101 Diversion

- (A) Diversion shall be made by contract with the child's parents, guardian, or other custodian whereby they agree to specified treatment, including an agreement to do or refrain from doing certain acts. The Indian Child Welfare officer or district attorney on behalf of the Tribe agrees not to file a petition so long as the parent, guardian, or other custodian comply. The contract may contain:
- (1) The specific facts or allegations, including dates, which gave rise to the condition addressed by the contract.
- (2) The specific treatment programs with du-

ration the parents, guardian, or custodian agree to successfully complete.

- (3) The specific Acts the parents, guardians, or custodian agree to do or not do.
- (4) The specific treatment or other social services to be offered by the Tribe.
- (5) A fixed, limited time for the contract to run.
- (6) That each party has received a copy of the contract.

(B) No diversion contract may place physical custody in any person or agency other than the parents, guardian, or other legal custodian unless it bears the approval in writing of a Judge.

Section 17-3-102 Diversion Contract Inadmissible

The diversion contract and any statements or admissions of the parties made in negotiating or fulfilling the terms of the contract are inadmissible as evidence. Except, the parents, guardian, or custodian may show their compliance with the terms as a defense to a petition filed.

Section 17-3-103 Diversion by Consent Decree

(A) After filing a petition, the district attorney with consent of the case manager, may divert any children's case, if:

- (1) The Court has informed the child and his parents, guardian, or legal custodian of their rights to:
 - (a) Deny the allegations of the petition and require the Tribe to prove each allegation.
 - (b) Confront and cross-examine the witness against them and to call witnesses on their own behalf.
 - (c) Refuse to testify against themselves or each other in delinquency cases.
 - (d) Be represented by counsel at their own expense at each stage of the proceedings.
- (2) Written consent is obtained from the parents, guardian, or legal custodian and the child if of sufficient age and understanding. The consent given for a Consent Decree does not constitute an admission for purposes of adjudication.
- (3) The Indian Child Welfare Program has pre-

pared a treatment plan to be incorporated into the Consent Decree which states:

- (a) The specific treatment programs and duration the parents, guardian, or custodian, or child agree to successfully complete.
- (b) The specific treatment or other social services to be offered by the Tribe or other agencies.
- (c) The specific acts which the parents, guardian, or custodian or child agree to do or not do.
- (d) The person or agency vested with custody of the child if the child cannot remain in its own home, the specific provisions of (i), (ii), and (iii) above which must be completed or accomplished for a specific duration before the child is returned, and the period of supervision of the child in its home.

(B) After all parties have consented, the Court shall review the Treatment Plan and if the Court agrees, shall order all parties to abide by the provisions of the Treatment Plan. The Consent Decree shall be monitored and modified as in other dispositions, provided, if the family fails to comply with the treatment plan, the Court, on motion of the district attorney shall proceed with the adjudication.

(C) A Consent Decree shall not exceed one year, provided, upon notice of hearing the Court may extend the decree for an additional one year with the consent of the parties. The adjudication shall be continued during the term of the Consent Decree and thereafter dismissed if requirements of the Decree is completed.

Section 17-3-104 Limitation on Diversions

No child shall be handled by diversion where the child has had any sustained petition for delinquency in the preceding twelve months or has been handled by diversion for a delinquent act in the preceding twelve months, except for good cause shown.

Section 17-3-105 through 17-3-109 Reserved

**CHAPTER FOUR
ADJUDICATION**

Section 17-4-101 Court Intake

- (A) Whenever it appears to a law enforcement officer or other mandated reporter that a child is a delinquent, in need of supervision, neglected, or deprived, they may refer the matter to the Child Protection Officer or the Indian Child Welfare, who shall determine whether the interests of the child or of the community require further action.
- (B) If an officer determines court action is required, they shall request the Tribal district attorney to file a petition and deliver a copy of the case file.
- (C) If the officer is unable to determine whether court action is required from information available, they may refer the matter to the Tribal law enforcement agency or other agency for a preliminary investigation and recommendations.
- (D) If the officer determines court action is not required, they may make such referrals to other agencies.

Section 17-4-102 District Attorney Intake

Upon a request to file a petition and the accompanying reports and files the district attorney shall review the case file, reports, and any witness statements to determine if there is sufficient evidence to establish the jurisdiction of the Tribal Juvenile Court.

Section 17-4-103 Petition Form

The Tribal district attorney shall sign and file all Indian child welfare petitions alleging a child to be delinquent, in need-of-supervision, or deprived, or neglected. Such petitions and all subsequent court documents shall contain a heading and title in substantially the following form:

**IN THE TRIBAL DISTRICT COURT
JUVENILE DIVISION
CITIZEN POTAWATOMI NATION**

The Citizen Potawatomi Nation)

In The Interest Of:)

)

_____)

Case No. JFJ-

)

An Alleged _____ Child,)

)

)

_____)

_____)

Respondent(s)

Section 17-4-104 Petition Contents

(A) The petition shall set forth plainly the facts which bring the child within the Court's jurisdiction. If petition alleges a delinquent petition, it shall cite the law alleged to have been violated. The petition shall also state the name, age, and residence of the child and the names and residences of his parents, guardian, or other legal custodian, if known, or of his nearest known relative.

(B) All petitions filed alleging the dependency or neglect of a child may include the following statement: "Termination of the parent-child legal relationship is a possible remedy available if this petition is sustained."

Section 17-4-105 through 17-4-119 Reserved

Section 17-4-120 Summons

Upon filing of a petition the Court Clerk shall issue a summons to the respondents and the child as in other civil cases. The summons shall be in substantially the following form:

**IN THE TRIBAL DISTRICT COURT
JUVENILE DIVISION
CITIZEN POTAWATOMI NATION**

The Citizen Potawatomi Nation)

In The Interest Of: _____)

_____)

Case No. JFJ-

An Alleged _____ Child,)

_____)

Respondent(s)

SUMMONS

The Citizen Potawatomi Nation to:

Respondents

YOU ARE HEREBY NOTIFIED, that a petition has been filed in the Juvenile Court alleging the above named _____ is a (delinquent) (deprived or neglected) child (in-need-of-supervision) and that as the (parent) (guardian) (legal custodian) of said child you have been named as the Respondent, in the attached petition.

YOU ARE THEREFORE ORDERED TO APPEAR at the Courtroom of the Tribal District Court, [Address of Court], on the _____ day of _____, 20____, at the hour of _____ o'clock _____.m. and remain subject to the call of the Court until discharged so that you may be advised of the allegations contained in the petition and may answer that you admit or deny the allegations of the petition.

YOU ARE FURTHER ORDERED, if the above named child is in your physical custody or subject to your control, to bring the child to Court with you.

You may appear with an attorney on any matter relating to this action at your own expense.

Court Clerk

[Seal]

(Return as in other civil cases)

Section 17-4-121 When Summons Unnecessary

A summons is unnecessary when a respondent appears voluntarily, or who waives service. Also when they have promised to appear in writing, but any such person shall be entitled to a copy of the petition and summons upon request.

Section 17-4-122 Additional Parties to be Summoned

The Court on its own or on motion of any party may join a respondent or require appearance of any person it deems necessary and authorize the issuance of a summons.

Section 17-4-123 Service of Summons

- (A) Summons shall be served personally, or by certified mail, or by publication or pursuant to any other means authorized by the rules of civil procedure.
- (B) If the parties, guardian, or other legal custodian of the child required to be summoned cannot be found within the Tribal jurisdiction, the fact of the child's presence within the Tribe's jurisdiction shall confer jurisdiction on the Court as to any absent parent, guardian, or legal custodian if due notice has been given in the following manner:
 - (1) When the residence of the person to be served outside the Tribe's jurisdiction is known, a copy of the summons and petition shall be sent by certified mail with postage prepaid to such person at his place of residence with a return receipt requested. Service of summons shall be deemed complete upon return of receipt.
 - (2) When the person to be served has no residence within the Tribe's jurisdiction and his place of residence is not known or when he cannot be found within the Tribe's jurisdiction after due diligence, service may be by publication.

Section 17-4-124 Failure to Appear

- (A) Any person served with a summons who fails to appear without reasonable cause may be proceeded against for contempt of court and a bench warrant may issue.
- (B) If after reasonable effort the summons cannot be served or if the welfare of the child requires

that he be brought immediately into the custody of the Court, a bench warrant may be issued for the parents, guardian, or other legal custodian or for the child, or a search warrant may issue for the child as provided by law.

- (C) When a parent or other person who signed a written promise to appear and bring the child to court, or who has waived or acknowledged service fails to appear with the child, a bench warrant may be issued for the parent or other person, the child, or both.

Section 17-4-125 through 17-4-129 Reserved**Section 17-4-130 Appointment of Guardian Ad Litem**

- (A) The Court may appoint a guardian ad litem to protect the interest of a child in proceedings when:
 - (1) No parent, guardian, legal custodian, or relative of the child appears at the first or any subsequent hearing; or
 - (2) The Court finds that there may be a conflict of interest between the child and his parent, guardian, or other legal custodian; or
 - (3) The Court finds that it is in the child's interest and necessary for thier welfare, whether or not a parent, guardian, or other legal custodian is present.
- (B) The Court may appoint a guardian ad litem for any parent who has been determined to be mentally ill by a Court of competent jurisdiction or is developmentally disabled; except that, if a conservator has been appointed, the conservator may serve as the guardian ad litem. If the conservator does not serve as guardian ad litem, he shall be informed that a guardian ad litem has been appointed.
- (C) All guardian ad litem may, whenever practical, personally visit the place of residence of the child.

Section 17-4-131 through 17-4-139 Reserved**Section 17-4-140 Adjudicatory Hearing**

- (A) The adjudicatory hearing shall be conducted by the rules of civil procedure. Criminal procedure shall apply in delinquency cases. The Court shall consider whether the allegations of the petition are supported by evidence clear

and convincing on cases concerning delinquent children, or by a preponderance of the evidence in cases concerning children in need of supervision, neglected or dependent children. Jurisdictional matters of the age and residence of the child shall be deemed admitted by or on behalf of the child unless specifically denied prior to the adjudicatory hearing.

- (B) When evidence presented discloses issues not raised in the petition, the Court may proceed immediately to consider the additional or different matters raised by the evidence if the parties consent. The Court, on the motion of any interested party or on its own, shall order the petition to be amended to conform to the evidence.
- (C) If the amendment results in a substantial departure from the original allegations the Court shall continue the hearing on the motion of any interested party, or may grant a continuance if it finds it to be in the best interests of the child or any other party.

Section 17-4-141 Mentally Ill and Developmentally Disabled Children

- (A) If the evidence presented indicates mental illness or developmental disability, the Court shall order the child be examined by a physician, psychiatrist, or psychologist and may place the child in a suitable facility for examination.
- (B) A suitable facility shall be designated by the Court for treatment and evaluation. A Tribal, city or county jail or a detention facility shall not be considered a suitable facility for examination. However, the child may be housed in such facility until an examination bed is available.
- (C) If the report of the examination states the child is mentally ill requiring hospitalization, institutional confinement and treatment, the Court may order such hospitalization, institutional confinement, or treatment prior to or after adjudication.
- (D) The court may dismiss the original petition when a child ordered to receive treatment is no longer receiving treatment.
- (E) The Court shall set a time for resuming the hearing on the original petition when:

- (1) The child is found not to be mentally ill;
- (2) The examination states the child is developmentally disabled but not mentally ill.

- (F) “Mentally ill person”: a person who is considered a threat to him/herself or others.
- (G) “Developmental disability”: a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or a neurological impairment, which may have originated during the first eighteen years of life which can be expected to continue indefinitely, and which constitutes a substantial handicap.
- (H) “Mentally retarded person”: a person whose intellectual functions have been deficient since birth or whose intellectual development has been arrested or impaired by disease or physical injury to an extent lack sufficient control, judgment, and discretion to manage their property or affairs or who, by reason of this deficiency for their own welfare or the welfare or safety of others, requires protection supervision, guidance, training, control, or care.

Section 17-4-142 Consent Decree

At any time during the adjudicatory process, prior to the entry of an order sustaining the petition, a consent decree may be entered.

Section 17-4-143 Dismissal of Petition

When the Court finds that the allegations of the petition are not supported by clear and convincing evidence in cases concerning delinquent children or by a preponderance of the evidence in cases concerning children in need of supervision, neglected or dependent children, the Court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. Parents, guardian, or other legal custodian shall also be discharged from any restriction.

Section 17-4-144 Sustaining Petition

When the Court finds that the allegations of the petition are supported by evidence clear and convincing in cases concerning delinquent children or by a preponderance of the evidence in cases concerning neglected or dependent children, and children in need of supervision, the Court shall sustain the petition and make an order of adjudication setting forth whether the child is delinquent, in need of supervision, or neglected or dependent and making the child a ward of the Court. In cases concerning neglected or dependent children,

evidence that child abuse or non-accidental injury has occurred shall constitute prima facie evidence that such child is neglected or dependent and such evidence shall be sufficient to support an adjudication.

Section 17-4-145 Temporary Orders

Upon sustaining a petition the Court shall make such dispositional orders necessary to protect the child prior to the dispositional hearing which shall be held within thirty days of adjudication.

CHAPTER FIVE DISPOSITION

Section 17-5-101 Dispositional Hearing

After making an order of adjudication, the Court shall hear evidence on the question of the proper disposition best serving the interests of the child and the Tribe.

Section 17-5-102 Home Studies and Reports

- (A) The Court may order any agency within its jurisdiction or request any other agency to prepare and submit prior to disposition a home study, family or medical history or other reports which may be helpful in determining proper treatment and disposition.
- (B) The Court may order or request any agency to submit preadjudicatory social studies or reports helpful in determining proper treatment and disposition.
- (C) Such reports shall be filed and a copy delivered to the parties or their attorney three days prior to the dispositional hearing.

Section 17-5-103 Treatment Plan

- (A) In every case the Court shall direct the Indian Child Welfare Program to prepare a detailed treatment plan for the treatment and disposition of the problems identified in the adjudication.
- (B) The treatment plan shall contain at a minimum:
 - (1) A notice to the parents, guardian, legal custodian that failure to successfully complete the treatment plan may result in the involuntary termination of parental rights.
 - (2) The specific treatment programs the family are required to complete, their duration, and what is expected to be accomplished.
 - (3) The specific actions the parents, guardian, legal custodian or child is ordered to do or not do.

- (4) Other social services offered by the Tribe which the family is required to accept.
- (5) A detailed plan describing how and when the child will be returned to its home under supervision.

- (6) A statement of the visitation schedule and its progression if any.

- (C) The treatment plan shall be filed and a copy delivered to the parties or their attorney at least three days prior to the dispositional hearing.

Section 17-5-104 Medical Examination

The Court may have the child examined by a physician, psychiatrist, or psychologist, and the Court may place the child in a hospital or other suitable facility for this purpose.

Section 17-5-105 Hearing Purpose

The purpose of the dispositional hearing is to determine the treatment which should be ordered to correct the problems and to provide for the health, welfare, and safety of the child.

Section 17-5-106 Hearing Informal

The dispositional hearing shall be informal and the general rules of procedure and evidence shall not apply so that all pertinent information may be considered in determining treatment and disposition. However, the Court may order the writer of any report or study to appear and answer questions regarding that report if it be challenged by any party.

Section 17-5-107 Continuance

- (A) The Court may continue the dispositional hearing, either on its own motion or on the motion of any interested party.
- (B) If the hearing is continued, the Court shall make an appropriate order for detention of the child or for his release in the custody of his parents, guardian, or other responsible person or agency under such conditions of supervision as the Court may impose.
- (C) In scheduling investigations and hearings, the Court shall give priority to proceedings concerning a child who is in detention or who has otherwise been removed from his home before an order of disposition has been made.

Section 17-5-108 Order of Protection

- (A) The Court may make an order of protection for

any decree of disposition. The order of protection may set forth reasonable conditions of behavior.

- (B) When such an order of protection is made applicable to a parent or guardian, it may specifically require active participation in the rehabilitation process and may impose specific requirements, subject to the penalty of contempt for failure to comply.
- (C) After notice and opportunity for hearing is given to a person subject to an order of protection, the order may be terminated, modified, or extended for a specified period of time if the Court finds that the best interests of the child and the Tribe will be served.
- (D) A person failing to comply with an order of protection may be found in contempt of court.

Section 17-5-109 Reserved

Section 17-5-110 Placement Preferences for Citizen Potawatomi Nation tribal children

(A) In making a placement of or committing legal custody of a child to some person in the foster care process, the Court shall place each Citizen Potawatomi Indian child, accepted for foster care placement in the least restrictive, most family-like setting appropriate to the child's unique needs. A preference for foster care placement shall be given in the following order:

- (1) The natural parents, adoptive parents, or step-parents as the case may be
- (2) A member of the Citizen Potawatomi Nation over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.
- (3) A member of another Indian Tribe over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.
- (4) Any other person over eighteen years of age who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, and their spouse.

- (5) A foster home licensed by the Citizen Potawatomi Nation.
- (6) The home of a Citizen Potawatomi Nation member licensed as a foster home by any other licensing authority within the State or licensed by another Indian Nation.
- (7) An Indian foster home licensed by any other licensing authority within the State or an Indian foster home licensed by another Indian Nation.
- (8) An institution for children licensed or approved by the Nation's Department of Social Services with a program suitable to meet the needs of the child; (A child attending a BIA boarding school will not be eligible for reimbursement; however, weekend care in a foster home is reimbursable.);
- (9) Non-Indian placement licensed by any other licensing authority within the State.

(B) Where appropriate the Court, may consider the preference of the parents and the proximity of the prospective foster home to the child's home in applying these preferences.

(C) For each possible placement, the Court shall consider the willingness, fitness, ability, suitability, and availability of each person in a placement category before considering the next lower level of placement preference.

(D) The Court may place the child with the Tribal Indian Child Welfare Program or a child placement agency approved by the Court.

Amended by Ordinance #15-01, enacted by the Citizen Potawatomi Legislature on September 16, 2014.

Section 17-5-111 Extended Family Defined

For purposes of state court proceedings pursuant to the Indian Child Welfare Act. A child's extended family is defined to mean the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent or step sibling over eighteen years of age and their spouse as those terms of relation are defined in this Act.

Section 17-5-112 through 17-5-119 Reserved

Section 17-5-120 Neglected or Dependent Child – Disposition

(A) When a child has been adjudicated to be neglected or dependent, the Court shall enter a de-

cree of disposition. It shall include one or more of the following provisions:

- (1) The Court may place the child in the legal custody of one or both parents or the guardian, with or without protective supervision.
- (2) The Court may place the child in the legal custody of a relative or other suitable person, with or without protective supervision.
- (3) The Court may place legal custody in the Tribal Indian Child Welfare Program or a child placement agency for placement in a family care home, or other child care facility.
- (4) The Court may order that the child be examined or treated by a physician, or psychologist and or that he receive other special care and may place the child in a hospital or other suitable facility for such purposes.

(B) In placing the legal custody or guardianship of the person of a child with an individual or a private agency, the Court shall give primary consideration to the welfare of the child, but shall take into consideration the religious preferences of the child or of his parents whenever practicable.

Section 17-5-121 Child in Need of Supervision - Disposition

When a child has been adjudicated in need of supervision, the Court shall enter a decree of disposition containing one or more of the following provisions:

- (A) The Court may place the child on probation or under protective supervision in the legal custody of one or both parents or the guardian under conditions.
- (B) The Court may place the child in the legal custody of a relative or other suitable person under conditions as the Court may impose.
- (C) The Court may require the child report for assignment to a supervised work program, if:
 - (1) The child is not deprived of the schooling which is appropriate to his age, needs, and specific rehabilitative goals;
 - (2) The supervised work program assignment is made for a period of time not to exceed one hundred eighty days.

(D) The Court may place legal custody in the Indian Child Welfare Program or a child placement agency for placement.

(E) The Court may order the child examined or treated by medical personnel or psychologist.

(F) The Court may commit the child to any institution or group care facility.

Section 17-5-122 Delinquent Child - Disposition

(A) If a child has been adjudicated delinquent, the Court shall transmit, with the commitment order, a copy of: the petition; the order of adjudication; the social study; clinical or educational reports, and other pertinent information.

(B) The institution shall provide any information which the Court may require.

(C) Commitment of a child shall be for an indeterminate period not exceeding the child's 18th birthday.

(D) Each commitment shall be reviewed every six months.

Section 17-5-123 Reserved

Section 17-5-124 Legal Custody - Guardianship

(A) Any individual, agency, or institution vested by the Court with legal custody of a child shall have the following rights and duties:

- (1) the rights and responsibilities of physical and legal care, custody and control of a child;
- (2) the duty to provide food, clothing, shelter, ordinary medical care, education and discipline for the child.

(B) Any individual, agency, or institution vested by the Court with guardianship of the person of a child shall have the rights and duties defined above; except no guardian may consent to adoption without express authority.

(C) If legal custody or guardianship is vested in an agency or institution, the Court shall transmit: the court order; copies of the social study; clinical reports, and information concerning the child.

(D) An individual, agency, or institution having legal custody or guardianship shall give the court information which the Court may require.

(E) Any agency other than the Indian Child Welfare

Program vested with legal custody shall have the rights, subject to the approval of the Court, to determine where and with whom the child shall live.

- (F) No individual vested by the Court with legal custody of child shall remove the child from the state for more than fourteen days without Court approval.
- (G) A decree vesting legal custody of a child in an individual, institution, or agency other than the Indian Child Welfare Program shall not exceed two years. Such decree shall be reviewed and extended as necessary.
- (H) The individual, institution, or agency vested with the legal custody of a child may petition for renewal. The Court, after notice and hearing, may renew the decree if it finds such renewal to be in the best interest of the child.
- (I) No legal custodian or guardian may be removed without notice and a hearing.

Section 17-5-125 through 17-5-129 Reserved

Section 17-5-130 Probation for Delinquents and Children in Need of Supervision

- (A) The terms and conditions of probation shall be specified by orders of the Court. The Court, for a child who is fourteen but less than eighteen, may impose a commitment, placement, or detention, whether continuous or at designated intervals, which shall not exceed forty-five days. Each child shall be given a written statement of the terms and conditions of probation and shall have such terms and conditions fully explained.
- (B) The Court shall review the terms and conditions of probation and the progress of each child at least once every six months.
- (C) The Court may release or modify the terms and conditions of probation. Any child who has complied with terms and conditions of probation shall be released from probation.
- (D) Violation of Probation
 - (1) When it is alleged a child has violated the terms and conditions of probation, the Court shall set a hearing and give notice to the child, parents, guardian or other legal custodian, and any other parties.
 - (2) The child, his parents, guardian, or oth-

er legal custodian shall be given a written statement concerning the alleged violation and shall have the right to be represented by counsel, at their own cost, and shall be entitled to the issuance of compulsory process for the attendance of witnesses.

(3) The hearing shall be promptly conducted.

- (E) If the Court finds the child violated probation, it may modify or revoke probation, or take action which is in the best interest of the child and the Tribe.
- (F) If a person reaches majority, and has not complied with probation, he is guilty of contempt and the Court may sentence him to jail not to exceed one hundred eighty days.

Section 17-5-131 through 17-5-139 Reserved

Section 17-5-140 New Hearing Authorized

- (A) A parent, guardian, or custodian, of any child adjudicated may petition the court for a new hearing on the following grounds:
 - (1) That new evidence, which was not known or could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered;
 - (2) That irregularities in the proceedings prevented a fair hearing.
- (B) If the motion is granted. The Court shall order a new hearing.

Section 17-5-141 Continuing Jurisdiction

Except as otherwise provided in this article, the jurisdiction of the Court over any child adjudicated as neglected or dependent, in need of supervision, or delinquent shall continue until he becomes eighteen years of age unless terminated by court order.

Section 17-5-142 through 17-5-149 Reserved

CHAPTER SIX

TERMINATION OF PARENTAL RIGHTS

Section 17-6-101 Petition for Termination of Parental Rights

- (A) Termination of a parent-child legal relationship shall be considered only after the filing of a written Petition alleging the factual grounds for termination, and termination of a parent-child legal relationship shall be considered at a sepa-

rate hearing following an adjudication of a child as dependent or neglected. Such motion shall be filed at least thirty days before such hearing. There shall be no jury trial available.

- (B) In cases of severe neglect, chronic substance abuse, involuntary termination of a previous child, determination of sexual abuse, or for other good cause shown, the Tribal District Attorney may file a petition for instant termination.

Section 17-6-102 Right of Counsel

- (A) After a motion for termination of a parent-child legal relationship is filed, the parent or parents shall be advised of the right of counsel, at their own expense.
- (B) An attorney, who shall be the child's previously appointed guardian ad litem whenever possible, shall be appointed to represent the child's best interest in any hearing determining the involuntary termination of the parent-child legal relationship. Such representation shall continue until an appropriate permanent placement of the child is effected or until the Court's jurisdiction is terminated. If a respondent parent is a minor, a guardian ad litem shall be appointed and shall serve in addition to any counsel requested by the parent.

Section 17-6-103 Reserved

Section 17-6-104 Criteria for Termination

- (A) The Court may order a termination of the parent-child legal relationship upon the finding of either of the following:
- (1) That the child has been abandoned by his parent or parents;
 - (2) That the child is adjudicated dependent or neglected and all of the following exist:
 - (a) That an appropriate treatment plan approved by the Court has not been reasonably complied with by the parent or has not been successful;
 - (b) Efforts to reunite the family unit have been unsuccessful;
 - (c) Termination is in the best interest of the child.
- (B) In determining whether termination is in the best interest of the child, the Court shall consider, but not be limited to, the following:

- (1) Emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs of the child;
 - (2) Conduct towards the child of a physically or sexually abusive nature;
 - (3) History of violent behavior;
 - (4) A single incident of life-threatening or gravely disabling injury or disfigurement of the child;
 - (5) Use of intoxicating liquors or narcotic or dangerous drugs which affect the ability to care and provide for the child;
 - (6) Neglect of the child;
 - (7) Long-term confinement of the parent;
 - (8) Injury or death of a sibling due to proven parental abuse or neglect;
- (C) Reasonable efforts by child-caring agencies which have been unable to rehabilitate the parent or parents.

Section 17-6-105 Criteria for Instant Termination

- (A) The Court may order an instant termination of the parent child legal relationship upon the findings of either of the following:
- (1) Severe neglect
 - (2) Chronic substance abuse
 - (3) Involuntary termination of a previous child
 - (4) Determination of sexual abuse
 - (5) Or for other good cause shown to be defined or any criteria for termination listed in Section 104, above, where such is aggravated or malicious.
- (B) If the Court denies the instant termination, the Tribal District attorney is not barred from using the same evidence in a later proceeding.

Section 17-6-106 Burden of Proof

The Court shall order termination of parental rights if it finds by clear and convincing evidence that termination of parental rights and a permanent placement with another person is in the best interest of the child.

Section 17-6-107 Review of Child's Disposition Following Termination of the Parent-Child Legal Relationship

- (A) When a termination petition is granted, the Court, shall order a review hearing within ninety days. At such hearing, the agency or individual vested with custody of the child shall report what disposition has occurred, and the guardian ad litem shall submit a written report with recommendations to the Court, based upon an independent investigation.
- (B) If no adoption has taken place within a reasonable time and the Court determines adoption is not immediately feasible or appropriate, the Court may order long-term foster placement.

Section 17-6-108 Expert Testimony

- (A) All ordered evaluations shall be made available to counsel at least ten days prior to the hearing.

Section 17-6-109 Effect of Decree

- (A) A termination order of the parent-child legal relationship divests the child and the parent of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, except for the right to inherit from the parent.
- (B) No order or decree shall dis-entitle a child to any benefit from any third person, including, but not limited to any Indian Tribe, agency, state, or the United States.
- (C) After termination, the former parent is not entitled to any notice of adoption proceedings, any right to object or to participate.

Section 17-6-110 Appeals

- (A) Appeals of termination decrees shall be given precedence on the calendar of the appellate court over all other matters.
- (B) Whenever a termination appeal is made an indigent parent, upon request, subject to the availability of funds, may be provided a transcript of the trial proceedings for the appeal at the expense of the Tribe to be paid from the court fund.

Section 17-6-111 Traditional Custodian's and Grandparents Rights

- (A) No dispositional order or decree including termination and adoption shall divest the child's traditional custodians or grandparent of their

right to reasonable visitation and their duty to provide instruction and training regarding Tribal customs and traditions or their duty to provide the necessities of life should the parents be unable, unless those rights and duties have been extinguished in which the individual was a party provided, adoptive traditional custodians shall also succeed to these rights and duties.

- (B) The rights and duties of the traditional custodians and grandparents may be enforced by court order, provided all interested parties shall be given notice and hearing.

Section 17-6-112 Orders for Support

- (A) Whenever a child is removed from the custody of its parent, guardian, or other custodian, the parent or other person may be ordered to contribute a reasonable amount, or to do labor for the Tribe, or take other reasonable action to provide support for the child.
- (B) Of necessity, the Court may order a traditional custodian to assist in providing the necessities of life after a hearing, whether the child has been placed in his own home or elsewhere.
- (C) When the Tribe or other agency is paying for foster care, the contribution of the parent shall be paid to the agency or Tribe. In all cases of placement with a particular family, the contribution shall be paid to that family subject to the oversight of the Court to prevent waste or misuse.

**CHAPTER SEVEN
CHILD ABUSE**

Section 17-7-101 Legislative Purpose

The Tribe hereby declares the complete reporting of child abuse is a matter of Tribal concern and that in enacting this Chapter it is the intent of the Tribe to protect the children of the Tribe and to offer protective services in order to prevent any further harm to a child suffering from abuse. It is the further intent of the Tribe that the various federal, state and Tribal medical, mental health, education and social services agencies find a common purpose through cooperative participation in the child protection teams created in this Chapter.

Section 17-7-102 Definitions

As used in this Chapter, unless the context otherwise requires:

(A) “Abuse” or “child abuse or neglect”: an act or omission in one of the following categories which seriously threatens the health or welfare of a child;

(1) Any case in which a child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling, or death, at variance with the degree or type of such condition, or circumstances indicate that such condition may not be an accidental occurrence;

(2) Any case in which a child is subject to sexual assault or molestation;

(3) Any case in which the child’s parents, legal guardians, or custodians fail to take the same actions to provide for and protect the child that a prudent parent would take.

(4) In all cases, those investigating reports of child abuse shall take into account accepted child-rearing practices of the culture. Nothing shall refer to acts which could be construed to be a reasonable exercise of parental discipline.

(B) “Child-protection team”: a multidisciplinary team consisting, where possible, of a physician, a representative of the Juvenile Court, a representative of the Tribal law enforcement, a representative of a non-Tribal law enforcement agency, a mental health agency representative, a representative of the State social services, an attorney, a representative of the local school district, and one or more representatives of the lay community. Each agency may have more than one participating member on the team; except that, in voting on procedural or policy matters, each agency shall have only one vote. In no event shall an attorney member of the child protection team be appointed as guardian for the child or as counsel for the parents at any subsequent court proceedings, nor shall the child protection team be composed of fewer than three (3) persons. The child protection team shall be advisory only.

(C) “Tribal department”: Firelodge Children and Family Services.

(D) “Law enforcement agency”: a Tribal police department, a police department of incorporated municipalities or the office of the county sheriff.

(E) “Neglect”: acts which can reasonably be construed to fall under the definition of “child or neglect” as defined in subsection (A) of this section.

(F) “Receiving agency”: the department or law enforcement agency first receiving a report of alleged child abuse.

(G) “Responsible person”: a child’s parent, legal guardian, or custodian or any other person responsible for the child’s health and welfare.

(H) “Unfounded report” means any report made pursuant to this article which is not supported by credible evidence.

Section 17-7-103 Persons Required to Report Child Abuse or Neglect

(A) Any person (specified in subsection (B) below who has reasonable cause to know or suspect a child has been subjected to abuse or neglect or who has observed the child being subjected to circumstances or conditions which would reasonably result in abuse or neglect shall immediately report or cause a report to be made of such fact to the Tribal department or Tribal law enforcement agency.

(B) Persons required to report such abuse or neglect or circumstances or conditions shall include any:

- (1) Physician or surgeon, including a physician in training;
- (2) Child health associate or community health representative (CHR);
- (3) Medical examiner or coroner;
- (4) Dentist
- (5) Osteopath
- (6) Optometrist
- (7) Chiropractor;
- (8) Chiropodist or podiatrist;
- (9) Registered nurse or licensed practical nurse;
- (10) Hospital personnel engaged in the admission, care, or treatment of patients;
- (11) School official or employee;
- (12) Social worker or worker in a family care home or child care center;
- (13) Mental health professional;

(14) Any law enforcement personnel;

(15) The Tribal Attorney, District Attorney, or his assistants.

(C) In addition to those persons specifically required to report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result or neglect, any other person may report known or suspected child abuse or neglect and circumstances or conditions which might reasonably result in child abuse or neglect to the Tribal law enforcement agency or the Tribal department.

(D) Any person who willfully violates of this Section shall be subject to a civil penalty not to exceed Five Hundred Dollars (\$500.00).

Section 17-7-104 Required Report of Postmortem Investigation

(A) Any person who is required to report known or suspected child abuse or neglect who has reasonable cause to suspect that a child died as a result of child abuse or neglect shall report such fact immediately to the appropriate law enforcement agency and to the appropriate coroner or medical examiner. The law enforcement agency and the coroner or medical examiner shall accept such report for investigation and shall report their findings to the Tribal law enforcement agency, the Tribal District Attorney, and the Tribal department.

(B) The Tribal department shall forward a copy of such report to the state or tribe.

Section 17-7-105 Evidence of Abuse

(A) Any person required to report abuse who has before him a child he reasonably believes has been abused or neglected may take or cause to be taken color photographs of the areas of trauma visible on the child. If medically indicated, such person may take or cause to be taken X-rays of the child.

(B) Any color photographs or X-rays which show evidence of child abuse shall be immediately forwarded to a receiving agency.

Section 17-7-106 Temporary Protective Custody

The Chief Judge of the Tribal District Court shall be responsible for making available an appointed person, who may be the juvenile Judge, referee, or any other

officer of the Court, to be available by telephone at all times to act with the authorization and authority of the Juvenile Division when no Judicial Officer is present, to issue written or verbal temporary protective custody orders. In the alternative or in addition, the Chief Judge may enter his general order detailing the procedure to be used in taking children into custody on an emergency basis when no Judge is present. These orders may be requested by the Tribal Indian Child Welfare Program, a Tribal law enforcement officer, an administrator of a hospital in which a child reasonably believed to have been abused or neglected is being treated, or any physician who has before him a child he reasonably believes has been abused or neglected, whether or not additional medical treatment is required. If there is good cause to believe circumstances or condition of the child is such that continuing in his place of residence or in the care and custody of the person responsible for his care and custody would present an imminent danger to that child's life or health. The Tribal department shall be notified of such action immediately. Temporary custody under this Section shall not exceed seventy-two hours.

Section 17-7-107 Reporting Procedures

(A) Reports of known or suspected child abuse or neglect shall be made immediately to the Tribal Indian Child Welfare Program or law enforcement agency and shall be followed promptly by a written report prepared by those persons required to report. The receiving agency shall forward a copy of its own report to the state or tribal on forms supplied by the Tribal Indian Child Welfare Program.

(B) Such reports, when possible, shall include the following information:

- (1) The name, address, age, sex, and race of the child;
- (2) The name and address of the responsible person;
- (3) The nature and extent of the child's injuries, including any evidence of previous known or suspected abuse or neglect to the child or the child's siblings;
- (4) The names and addresses of the persons responsible for the suspected abuse or neglect; if known;
- (5) The family composition;

- (6) The source of the report and the name, address, and occupation of the person making the report;
 - (7) Any action taken by the reporting source;
 - (8) Any other information that the person making the report believes may be helpful in furthering the purposes of this Section.
- (C) A copy of the report of known or suspected child abuse or neglect shall be transmitted immediately by the receiving agency to the Tribal district attorney's office and to the Tribal law enforcement agency.
- (D) A written report from persons or officials required to report known or suspected child abuse or neglect shall be admissible as evidence in any proceeding related to child abuse.

Section 17-7-108 Action Upon Receipt of Report

- (A) The receiving agency shall make a thorough investigation immediately upon receipt of any report. The immediate concern shall be the protection of the child.
- (B) The investigation, to the extent that it is reasonably possible, shall include:
- (1) The nature, extent, and cause of the abuse or neglect;
 - (2) The identity of the person responsible;
 - (3) The names and conditions of any other children living in the same place;
 - (4) The environment and the relationship of any children therein to the person responsible for the suspected abuse or neglect;
 - (5) All other data deemed pertinent.
- (C) The investigation shall, include a visit to the child's place of residence or place of custody and to the location of the alleged abuse or neglect and an interview with or observance of the child reportedly having been abused or neglected. If admission to the child's place of residence cannot be obtained, the Juvenile Court shall order the responsible person to allow the interview, examination and investigation. The interview shall be conducted by a certified child abuse forensic interviewer.
- (D) The Indian Child Welfare Program shall be the receiving agency responsible for the coordination of all investigations of all reports of known

or suspected child abuse or neglect. The Program shall arrange for such investigations to be conducted by persons trained to conduct investigations. The Program may conduct the investigation independently or in conjunction with another appropriate agency. The Indian Child Welfare Program shall provide for persons to be continuously available to respond.

- (E) Upon receipt of a report, if the Program reasonably believes abuse or neglect has occurred, it shall immediately offer social services to the child and his family. If, before the investigation is completed, the opinion of the investigators is that assistance of the Tribal law enforcement agency is necessary for the protection of the child or other children under the same care, the Tribal law enforcement agency and the Tribal district attorney shall be notified. If immediate removal is necessary to protect the child or other children from further abuse, the child or children may be placed in protective custody.
- (F) If a local law enforcement agency receives a report of known or suspected child abuse or neglect, it shall first attempt to contact the Indian Child Welfare Child Protection Office to refer the case. If the local law enforcement agency is unable to contact the Program, it shall make a complete investigation and may request the Tribal district attorney to institute appropriate legal proceedings. The Tribal law enforcement agency, upon receipt of a report and upon completion of any investigation shall immediately forward a summary of the investigatory data plus all relevant documents to the Indian Child Welfare Program.

Section 17-7-109 Child Protection Teams

It is the intent of this legislation to encourage the creation of one or more child protection teams. The Director, Firelodge Family & Children Services shall have responsibility for inaugurating the child protection team.

- (A) The child protection team shall review the file and other records of the case, including the diagnostic, prognostic, and treatment services being offered to the family.
- (B) All discussions of cases shall be private.
- (C) At the team's next regularly scheduled meeting, or at the earliest possible time, the team shall

report whether the lapses and inadequacies discovered earlier in the child protection system have been corrected.

- (D) The team shall make a report of its recommendations to the Tribal department with suggestions for further action or stating that the team has no recommendations or suggestions.
- (E) The director of the Tribal department shall appoint the representatives of the child protection team and shall actively recruit all interested individuals and consider their applications for appointment.
- (F) The director of the Tribal department or their designee shall be deemed to be coordinator of the child protection team.
- (G) The coordinator shall provide a copy of the investigatory report and all relevant materials to the child protection team as soon as available. The child protection team shall meet as soon as practical after receipt of a report. The coordinator shall make and complete, within ninety (90) days of an investigation of a case of child abuse, a follow-up report, including services offered and accepted and any recommendations of the child protection team, to the state or tribal on forms supplied by the Tribal department.

Section 17-7-110 Immunity from Liability

Any person participating in good faith in the making of a report or in a judicial proceeding the taking of color photographs or X-rays, or the placing in temporary custody of a child or acting pursuant to this Act shall be immune from any liability, civil or criminal. For the purpose of any proceedings, civil or criminal, the good faith of any person acting or reporting pursuant to this Act shall be presumed.

Section 17-7-111 Evidence Not Privileged

The privileged communication between patient and physician and between husband and wife shall not be a ground for excluding evidence resulting from a report pursuant to this Chapter.

Section 17-7-112 Court Proceedings – Guardian Ad Litem

- (A) The Court shall name as respondents all persons alleged by the petition to be legal, actual physical custodians or guardians of the child. In every case, the responsible person shall be named as respondent. Summons shall be issued for all named respondents.

- (B) The Court may appoint, at no fee, a guardian ad litem. The guardian ad litem shall be provided with all reports relevant to the case. The Court or the Indian Child Welfare caseworkers shall advise the guardian ad litem of significant developments in the case, particularly any further abuse or neglect. The guardian ad litem shall be charged in general with the representation of the child's interest. To that end they shall make such further investigations as necessary to ascertain the facts, talk with or observe the child, interview witnesses and the foster parents, examine and cross-examine witnesses in all hearings and may introduce and examine their own witnesses, make recommendations to the Court and participate further to the degree necessary to adequately represent the child.

- (C) If of the petition is granted, the costs including guardian as litem and expert witness fees, may be charged against respondent.

Section 17-7-113 Central Registry

- (A) There shall be established a central registry of child protection in the Firelodge Children and Family Services for the purposes of maintaining a registry of information concerning each case of child abuse reported.
- (B) The central registry shall be maintained in accordance with Federal law and the Policy and Procedures established by the Firelodge Children and Family Services, Director.

Section 17-7-114 Confidentiality of Records

- (A) Reports of child abuse or neglect and the name and address of any child, family or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.
- (B) Disclosure of the name and address of the child and family and other identifying information shall be permitted only when authorized by a court for good cause. Disclosure shall not be prohibited when there is a death of a suspected victim or child abuse or neglect and the death becomes a matter of public record, the subject of an arrest by a law enforcement agency, or the subject of the filing of a formal charge by an enforcement agency.
- (C) Any person who violates any provision of this

Section shall be subject to a civil penalty of not more than Five Hundred Dollars (\$500.00).

(D) Only the following persons or agencies shall be given access the child abuse or neglect records and reports.

- (1) The law enforcement agency or social services department investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject;
- (2) A physician who has before him a child whom he reasonably suspects to be abused or neglected.
- (3) An agency having the legal responsibility or authorization to care for, treat, or supervise a child who is the subject of a report or record or a parent, guardian, legal custodian, or other person who is responsible for the child's health or welfare;
- (4) Any person named in the report or record who was alleged as a child to be abused or neglected or, if the child named in the report or record is a minor or is otherwise incompetent at the time of the request, his guardian ad litem;
- (5) A parent, guardian, legal custodian, or other person responsible for the health or welfare of a child named in a report, with protection for the identity of reporters and other appropriate persons;
- (6) A Court, upon its finding that access to such records may be necessary for determination of an issue before such Court, but such access shall be limited to in camera inspection unless the Court determines that public disclosure of the information contained therein is necessary for the resolution of an issue;
- (7) The central registry of child protection;
- (8) The district attorney and attorneys for the parties with protection for the identity of reporters and other appropriate persons when necessary.
- (9) Other persons as a Court may determine, for good cause.

CHAPTER EIGHT DEVELOPING FOSTER CARE HOMES

Section 17-8-101 Responsibility

It shall be the responsibility of the Firelodge Children and Family Services (hereinafter the Agency) to recruit, screen, and license foster homes for children in accordance with this Title.

Section 17-8-102 Licensing Foster Homes

The Firelodge Children and Family Services with this shall develop rules and have the authority to license foster care homes.

Section 17-8-103 Basic Standard For Foster Families

In considering Indian foster parents the primary consideration should be the parent's capacity to provide love and understanding to a child or children in distress.

Section 17-8-104 Basic Requirements of Foster Families

Foster families shall meet the following personal criteria:

- (A) The age of foster parent(s) shall be consideration only as it affects their physical capability, flexibility, and ability to care for a specific child.
- (B) A written statement from a physician, regarding the foster parent(s) and their children's general health, specific illnesses, or disabilities shall be routine part of the study-evaluation process. Foster parent(s) and all other adults and the children present in the home shall submit a written report verifying that they have taken tuberculin tests and have been found free of disease; other tests may be required as indicated.
- (C) Physical handicaps of foster parent(s) shall be a consideration only as it affects their ability to provide adequate care to foster children or may affect an individual child's adjustment to the foster family. Cases shall be evaluated on an individual basis with the assistance of a medical consultant when indicated.

Section 17-8-105 Income of Foster Families

- (A) When the foster family does not qualify for assistance. The Agency shall determine that the foster family's income is stable and sufficient for the maintenance of the family and reimbursement for the foster family's own expenses.

(B) Foster homes shall meet required safety and dwelling standards.

(C) Physical standards for the foster home shall be set according to individual living standards for the community in which the foster home is located; these standards shall be sufficient to assure a degree of comfort which will provide for the well-being of the family.

(D) Comfort and privacy:

- (1) It is preferable for no more than two children to share sleeping rooms.
- (2) The sharing of sleeping rooms by children of opposite sexes is undesirable, especially for foster children who may be experiencing difficulties in the development of their sexual identities attitudes, and behavior.
- (3) Children, other than infants and during emergencies (illness), shall not share sleeping quarters with adults in the household.
- (4) Individual space shall be provided for the child's personal possessions.
- (5) In all instances when exceptions are necessary, these shall be for children under two years of age or when special cultural, ethnic, or socio-economic circumstances created a situation in which such exception will not be to the detriment of the child.

(E) Foster family homes shall be accessible to schools, recreation, churches, other community facilities, and special resources (such as medical clinics) as needed.

(F) If the home is otherwise suitable, the foster family shall be provided with all available assistance in meeting the above requirements, standards, and/or codes.

Section 17-8-106 Family Composition

- (A) Two parents shall be selected in most cases; however, single parents shall be selected when they can effectively fulfill the needs of a particular child.
- (B) The presence of other children or other adults shall be taken into consideration in terms of how foster placement may affect the family unit.
- (C) The number and ages of children in a home (both own and foster) shall be considered on an individual basis, taking into account the foster

parent(s) ability to meet the needs of all children present, physical accommodations, and the effect which an additional child would have on the family as a unit. It is preferable that:

- (1) Foster parent(s) shall care for not more than two infants (under two); including the foster parent(s) own children.
- (2) Foster families should not have more than a total of six children, including foster children and foster parent(s) own children, in the foster home. Exceptions should be made to keep siblings together.
- (3) The age range of the children in a foster home shall be similar to that in a "normal" family.

Section 17-8-107 Personal Characteristics

Prospective foster parent(s) shall possess personal qualities of maturity, stability, flexibility, ability to cope with stress, capacity to give and receive love, and good moral character characterized by:

- (A) Role identification and acceptance;
- (B) Education, employment and patterns of interpersonal relationships.

CHAPTER NINE ADOPTIONS

Section 17-9-101 Jurisdiction Over Adoptions

(A) The Juvenile Division of the District Court shall have exclusive jurisdiction regarding the adoption of any person who resides or is domiciled within the jurisdiction, is unmarried, less than eighteen, and either:

- (1) A member of an Indian Tribe, or
- (2) Is eligible for membership in an Indian Tribe, and is the biological child of a member of an Indian Tribe, or
- (3) Whose case has been transferred to the Juvenile Division from the courts of a state, or Tribe,
- (4) The adoption of any adult Indian.

(B) The Juvenile Division shall have concurrent jurisdiction with the courts of any other sovereign having lawful authority regarding the adoption by or of any other child or adult who is:

- (1) A bonafide resident of or domiciled within the jurisdiction of the Court, or

- (2) Between two adults who submit to the jurisdiction of the Court regardless of residence or domicile, or
- (3) A member of the Tribe.

Section 17-9-102 Purpose of Adoptions

The purpose of an adoption is to establish a formal and legal family relationship between two or more persons which after adoption, shall exist as if the parties were born into the adoptive relationship by blood. Adoptions shall be recognized by every agency and level of the Government except in eligibility for enrollment determinations.

Section 17-9-103 Types of Adoptions

There shall be three types of adoptions recognized by this Tribe:

- (A) Statutory adoptions entered into pursuant to Title 17, Section Two.
- (B) Adoptions under the laws of some other Tribe, State, or Nation.
- (C) Traditional adoptions which may be for the purpose of establishing any traditionally allowed family relationship between any persons, and which shall be governed by the Tribal Common Law until the proper procedures for such adoptions are written down at which time traditional adoptions shall be governed by such procedure. Unless specifically provided by Tribal statute, traditional adoptions create a particular stated family relationship for all purposes other than enrollment and probate.

Section 17-9-104 In Camera Determination of Enrollment Eligibility

Whenever a parent, biological or adoptive, has a desire for the name of the parent, the original or adoptive name of the child and the child's relationship to themselves or others remain confidential, and a question arises as to the eligibility of the child for enrollment. The Court is authorized to receive information necessary for a determination of eligibility for enrollment, to review information in camera and to enter its order whether or not the child is eligible for enrollment, blood quantum and other necessary non-identifying enrollment eligibility criteria. The Court shall be provided with a Tribal roll, and shall seal all records received to maintain their confidentiality. If the Court determines the child is eligible for enrollment, enrollment officers shall accept such order as conclusive proof of the eligibility of the

child for enrollment and enroll the child accordingly. If the Court determines the child is not eligible for enrollment, the Tribal enrollment officers shall accept such order as proof of the ineligibility and refuse to enroll the child unless other or further qualifications for enrollment are shown.

SECTION TWO STATUTORY ADOPTIONS

Section 17-9-201 Eligibility for Statutory Adoption

Every child within the jurisdiction of the Juvenile Division of the District Court at the time a petition for adoption is filed may be adopted subject to the terms and conditions of this Subchapter.

Section 17-9-202 Eligibility to Adopt by Statutory Process

The following people are eligible to adopt a child, and subject to the placement preferences of Section 410 of this Act:

- (A) A husband and wife jointly;
- (B) Either the husband or wife if the other spouse is a parent of the child;
- (C) An unmarried person who is at least twenty-one (21) years old;
- (D) A married person who is legally separated from the other spouse and at least twenty-one (21) years old.
- (E) In the case of a child born out-of-wedlock, its unmarried father or mother.

Section 17-9-203 Consent to Statutory Adoption

- (A) Adoption of a child may be decreed only if consent to such adoption has been executed and filed in the Juvenile Division of the District Court by:
 - (1) Both parents, if living, or the surviving parent, unless their parental rights have been terminated.
 - (2) A parent less than sixteen (16) years of age may give their consent only with the written consent of one of that minor parent's parents, legal guardian, or a guardian ad litem.
 - (3) If both parents be deceased, or if their parental rights have been terminated, then the traditional custodian having physical custody of said child for the preceding six (6) month

period, or a person or the executive head of an agency having legal custody with specific court authority to consent to the adoption.

(B) Where any parent or Indian custodian voluntarily consents to an adoption, or termination of parental rights, such consent shall not be valid unless executed before a judge of a court of competent jurisdiction and accompanied by the judge's certificate that the terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall certify that the parent or Indian custodian either fully understood the explanation in English, or that it was interpreted into a language that the parent or Indian custodian understood.

(C) Any consent given prior to or within forty-five (45) days after the birth of a child shall not be valid.

Section 17-9-204 Voluntary Relinquishment

(A) Any parent, legal custodian, traditional custodian, or other guardian may relinquish, any rights they may have to the care, custody, and control of a child. A relinquishment shall be made by filing a petition in the Juvenile Court with notice to the Indian Child Welfare Program, District Attorney, traditional custodians, and the Parent(s) not a petitioner. The traditional custodians may intervene. The petition may relinquish generally in which case the Court shall assume jurisdiction over the child, or specifically to a particular person for adoption. A relinquishment shall be valid only upon approval and decree of the Court.

(B) Any valid consent given for the adoption of, or termination of parental rights to a child may be withdrawn prior to the entry of a final decree of adoption or termination upon the filing of a Petition to withdraw voluntary relinquishment.

Section 17-9-205 Petition to Withdraw Relinquishment

(A) A person who previously voluntarily relinquished parental rights may petition the court to withdraw their relinquishment.

(B) The petition must be filed within 90 days of their voluntary relinquishment.

(C) An evidentiary hearing will be held with notice

to Indian Child Welfare program, District Attorney and petitioners for adoption.

(D) The Court must find by clear and convincing evidence the petition should be granted.

(E) The Court must find:

(1) The petition is in the best interest of the child; and

(2) Petitioner was under duress, or

(3) Petitioner was mentally incapacitated

Section 17-9-206 When Consent of Parents Unnecessary

Adoption of a child may be decreed without consent only if the parents, or the traditional custodians having custody if the parents be deceased, have:

(A) Had their parental or custodial rights terminated by a decree of a Court of competent jurisdiction, or

(B) Been adjudicated incompetent by reason of mental disease, defect, or injury, or by abuse of alcohol or drugs, and it appears by a preponderance of the evidence that such person will be unable to provide the necessary care and control of said child for a significant period of time prior to the child reaching majority, or

(C) For a period of twelve months immediately preceding the filing of the petition for adoption, willfully failed, refused, or neglected to provide and contribute to the support of their child either:

(1) In compliance with any decree ordering support to be contributed, or

(2) If no court ordered support, then within their available means through contribution of financial support, physical necessities such as food, clothing, and shelter contributions, or by performing labor or other services for and at the request of the person or agency having custody.

(D) Been adjudicated guilty of a felony and sentenced to death or to a term of imprisonment which is likely to prevent release of the parent for a period that the parent will be unable to provide the necessary care and control for a significant period of time prior to the child reaching majority.

In such cases, it shall not be necessary to obtain the consent of such parent, or to terminate the parental rights of such parent prior to adoption of the child.

Section 17-9-207 Notice and Hearing for Adoptions Without Consent

Before the Court hears a petition for adoption without consent the person petitioning for the adoption shall file an application for adoption without consent setting out the reason the consent of the other person is not necessary. The application shall be set for hearing. The application shall contain the name of the child, the time, date, and place of the hearing, the reason that the child is eligible for adoption without the consent of the parent, guardian, or custodian, and a notice that the adoption may be ordered if the parent, guardian, or custodian does not appear and show cause why their consent is necessary. The application and notice shall be served on the parent, guardian, or custodian in the same manner that civil summons is served. The hearing on the application shall be at least twenty-four hours prior to the hearing on the adoption, unless good cause to the contrary is shown.

Section 17-9-208 Consent of Child

Whenever a child be a sufficient maturity and understanding the Court may, and in every case of a child over twelve years of age the Court shall, require the consent of the child, expressed in such form as the Court shall direct, prior to the entry of a decree of adoption. Whenever possible, the Court should interview the child in private prior to approving the consent.

Section 17-9-209 Petition

A petition for adoption shall be filed, verified by the petitioners, and shall state:

- (A) The full names, ages, and places of residence of the Petitioners, and, if married, the place and date of their marriage.
- (B) Their relationships with the child, and their Tribal membership.
- (C) When and from whom the petitioners acquired or intend to acquire physical custody.
- (D) The names of the child's biological parents and their tribal membership, including tribal roll number, if known.
- (E) The date and place of birth of the child including the jurisdiction issuing the birth certificate,

the child's sex, race, and tribal membership, including tribal roll number, if known.

- (F) The name used for the child in the proceeding, and, if a name change is desired, the new name.
- (G) The desire of the petitioners the relationship of parent and child be established between them and the child.
- (H) A full description and statement of the value of all property owned or possessed by the child.
- (I) The fact, which excuses the consent of the parents or either of them to the adoption.
- (J) Any required consents to the adoption may be attached to the petition.
- (K) The facts which bring the child within the jurisdiction of the Court.

Section 17-9-210 Investigation

- (A) Upon the filing of a petition, the Court shall order an investigation to be made:
 - (1) By the agency having custody or legal guardianship of the child, or
 - (2) In other cases by the Indian Child Welfare program, State, or
 - (3) By a person qualified, designated by the Court, and shall order a report shall be filed and in no event more than sixty (60) days, unless time is extended.
- (B) The investigation shall include why the child is eligible for adoption; whether the proposed home is a suitable one; and any other circumstances and conditions which may have bearing on the adoption.
- (C) The Court may order agencies to make separate investigations on separate parts of the inquiry.
- (D) Where the adopting parent is the spouse of a parent, or a report, has been made within six months, the Court, may waive the investigation and the filing of a report.

Section 17-9-211 Adoption Hearing

After the investigation report has been filed, the Court, upon motion, request, or upon its own motion, shall set the adoption for hearing. The adoptive parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary and who have not filed their written consents shall be duly notified and may appear or be represented by counsel. The

Judge shall examine all persons appearing separately concerning the financial ability and moral and physical fitness and responsibility of the adoptive parents, and the best interest of the child may enter a final decree of adoption. Or, may place the child in the legal custody of the petitioners for not more than six months prior to entering a final decree of adoption. If the petition is denied, the Court may direct the Tribal Indian Child Welfare program, or other agencies to provide services to assist in the placement and the care of the child, or, in case of need, refer the matter to the Indian Child Welfare program and District Attorney for the purpose of determining whether a juvenile petition should be filed.

Section 17-9-212 Report and Final Decree of Adoption

If the Court does not enter a final decree of adoption, and places the child in the legal custody of the petitioners. Within six months, the Court shall request a supplementary report as to the welfare of the child, the current situation and conditions of the adoptive home. If the Court is satisfied the interests of the child are best served, a final Decree of Adoption may be entered. Where the Court finds that the best interest of the child will not be served by the adoption, a guardian shall be appointed or the Court may direct tribal Indian Child Welfare program or other agencies to provide services to assist in the placement and the care of the child.

Section 17-9-213 Contents of Adoption Order

The final order of adoption shall include facts necessary to establish the child is within the jurisdiction of the Court, eligible for adoption and that the adoptive parents and home are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Court upon, the new name of the child, if any, and that the relationship of parent and child exists between the petitioners and the child.

Section 17-9-214 Effect of Final Decree of Statutory Adoption

- (A) After a final decree of adoption entered, the relationship of parent and child, and all the rights, duties and other legal consequences of the natural relation of a child and parent shall thereafter exist between adopted child, the adopting parents, and the kindred of the adopting parents.
- (B) After a final decree of adoption is entered, the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an

adoptive parent, shall be relieved and terminated from all parental rights and responsibilities for said child, including the right to inherit from the child, provided that the child shall remain eligible to inherit from said natural parents, and retain all rights to tribal membership.

- (C) Unless the traditional custodians and grandparents of a child have given their consent to adoption, or have had their custodial rights terminated, the Court, after the final decree of adoption or refusal of the adoptive parents to allow visitation, may, upon application of a natural traditional custodian or a natural grandparent, order reasonable visitation rights. Notice of such application shall be served upon the adoptive parents.

Section 17-9-215 Records and Hearings Confidential

Unless the Court shall otherwise order:

- (A) All hearings shall be confidential and held in closed court. The Court will determine who may be present.
- (B) All adoption papers, records, and files shall be kept as a permanent record and withheld from inspection. No person shall have access except:
 - (1) Upon order of the Court for good cause shown.
 - (2) Upon the adopted person reaching the age of eighteen, the adopted person may review the records unless the natural parents have by affidavit requested anonymity. In which case their names and identifying characteristics, not including tribal membership and degree of blood, shall be deleted.
 - (3) For the purposes of obtaining enrollment with another Indian Tribe, the Court may upon request of an enrollment officer of that Tribe, certify pertinent facts to enable that officer to determine the eligibility of the child for membership subject to the written guarantee, if deemed necessary, such facts will remain confidential and divulged only to those persons who must know to obtain enrollment. The Court may certify a copy of the record to a Judge of the Court of the other Tribe for an in camera, review for the purpose of certifying to his Tribe the child is eligible for membership.

Section 17-9-216 Certificates of Adoption

- (A) For each adoption or annulment of adoption, the Court will prepare, within thirty days after the decree becomes final, a certificate of such decree on a form furnished by the registrar of vital statistics of the State or other jurisdiction having issued the birth certificate of said child, and shall attach thereto certified copies of the petition and decree of adoption, and any other information required by law by the registrar.
- (B) Such form and certified copies, along with any other pertinent information requested by the jurisdiction having issued the birth certificate shall be forwarded forthwith to the registrar of vital statistics of the jurisdiction.
- (C) One certified copy of the form certificate, petition, and decree of adoption shall be forwarded to the Secretary of the Interior. The material forwarded to the Secretary shall also contain a Judges certificate showing:
 - (1) The original and adoptive name and tribal affiliation of the child,
 - (2) The names, addresses, tribal affiliation and degree of blood when known of the biological parents,
 - (3) The names and addresses of the adoptive parents,
 - (4) The identity of any agency having files or information relating to the adoptive placement,
 - (5) Any affidavit of the biological parent requesting that their identity remain confidential.

Section 17-9-217 Foreign Decree

When the relationship of parent and child has been created by a decree of adoption of any Court of competent jurisdiction of any other nation, or its political subdivisions the rights and obligations of the parties shall be determined by section 17-9-214.

Section 17-9-218 Adoption of Adults

- (A) An adult person may be adopted by any other adult person with the consent of the person to be adopted, or his guardian, if the Court shall approve, and with the consent of the spouse of the adopting parent. The consent of the adopted adult's parents shall not be necessary unless the

adult has been adjudicated incompetent. No investigation shall be made. Such adoption shall follow the procedure set forth. Such adoption shall create the relationship of parent and child between the parties, but shall not destroy the parent-child relationship with the biological parents, unless specifically requested by the adopted adult in writing. Unless otherwise requested, the legal effect of such decree, for all purposes, including inheritance, but not including tribal enrollment eligibility, shall be that the adopted person is the child of both sets of parents equally.

- (B) Proceedings and records relating to the adoption of an adult shall be open to the public as are civil case records.

Section 17-9-219 Appeals

An appeal to the Supreme Court may be taken from any final order, judgment, or decree by any person aggrieved as in civil appeals.

CITIZEN POTAWATOMI NATION
MENTAL HEALTH ADJUDICATION AND TREATMENT
TITLE 18

CHAPTER

SECTION

1. MENTAL HEALTH

ADJUDICATION AND TREATMENT

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CHAPTER ONE MENTAL HEALTH ADJUDICATION AND TREATMENT

Section 18-1-1

Policy, Purpose, and Enforcement

(A) Policy: It is the traditional way of The Citizen Potawatomi Nation to honor and respect Tribal Elders. The Elders of The Citizen Potawatomi Nation are valuable resources as they are our custodians of Tribal history, culture and tradition. Thus, it is in the best interest of and serves the welfare of The Citizen Potawatomi Nation to protect Tribal Elders, Elders from other Indian Tribes and Non-Indian Elders. It is also in the best interest of the Tribe to protect vulnerable adult Tribal Members, vulnerable adults from other Tribes and vulnerable adult Non-Indians that are within the Jurisdiction of the District Court of the Citizen Potawatomi Nation.

(B) Purpose: The purpose of this Code is to protect Elders and vulnerable adults within the jurisdiction of The Citizen Potawatomi Nation and for Tribal Members and Indians that reside in the original treaty boundaries of the Citizen Potawatomi Nation from abuse as defined in this Code. This Code shall be liberally interpreted in order to achieve its purpose. This Code provides for:

- (1) Reporting abuse or neglect to the Tribal Court;
- (2) Receiving reports of and investigating suspected abuse or neglect;
- (3) Delivering Elder protection services and protection services to any other vulnerable adult.

(C) Enforcement: The Citizen Potawatomi Nation District Court shall be the primary enforcer of this Code, and provided that the Citizen Potawatomi Nation District Court may enter into agreements with State agencies and other courts of competent jurisdiction for enforcement when circumstances warrant such cooperation.

(D) Jurisdiction: Citizen Potawatomi Nation Adult Protective Services may investigate reports of suspected abuse, neglect, self-neglect or exploitation of elders or vulnerable adults who

are “Indian” or Non-Indian that reside on Tribal lands and for Tribal Members and Indians that reside within the original treaty boundaries of the Citizen Potawatomi Nation.

Section 18-1-2 Application of this Code

This Code is civil in nature. This Code applies to Tribal Elders, Elders; both Indian and non-Indian, vulnerable adults and to any Adult Tribal member of the Citizen Potawatomi Nation should circumstances as defined by this Code warrant. Any section or portion thereof containing the word “Elder” shall be liberally construed to include and mean or other “vulnerable adult” as defined by Section 3 of this Code.

Section 18-1-3 Definitions

In this Code the following words shall have these meanings:

“Abuse” is intentional or negligent infliction of bodily injury, sexual or emotional abuse, unauthorized and/or improper use of funds, property or other resources of an Elder, neglect, unreasonable confinement, intimidation or cruel punishment of an Elder resulting in physical harm or pain or mental anguish by any person, including anyone who has a special relationship with the Elder such as a spouse, a child, or other relative recognized by the Tribal Council as a caretaker. Abuse is also interfering with delivery of necessary services and resources, failing to report abuse or neglect of an Elder by any person, and failing to provide services or resources essential to the Elder’s practice of his customs, traditions, or religion.

“Adult in need of protective services” or **“Adult”** means a vulnerable person not less than 18 years of age who is suspected of being or believed to be abused, neglected, self-neglected or exploited.

“Elder” Is a senior citizen of the Citizen Potawatomi Nation or a senior citizen of another Indian Tribe or a senior citizen who is Non-Indian and who is a valued and respected member of the community.

“Exploitation” means an action that involves the misuse of an adult’s funds, property, or personal dignity by another person.

“Guardian” or **“Caretaker”** means someone lawfully appointed by the District Court of the Citizen Potawatomi Nation and invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another person,

who, for defect of age, understanding, or self-control, is considered incapable of administering his or her own affairs. A guardian is appointed by the Court with a filing of a Petition for Guardianship.

“Incapacity” is the current inability or functional inability of a person to sufficiently understand, make, and communicate responsible decisions about himself or herself as a result of mental illness, mental deficiency, physical illness or disability, or chronic use of drugs or liquor, and to understand the consequences of any such decision. Incapacity may vary in degree and duration and shall not be determined solely on the basis of age.

“Indian” means any person who is a member of a federally-recognized Indian tribe, or who is an Alaska Native and a member of a regional corporation as defined in Title 43 of the United States Code, Section 1606.

“Investigator” or **“Adult Protective Services Investigator”** means someone that has been assigned by the Citizen Potawatomi Nation or The District Court of the Citizen Potawatomi Nation to make an examination and recommendation that an elder or vulnerable adult is abused, neglected, self-neglected or exploited.

“Neglect” means harm to an adult’s health or welfare caused by inability of the adult to respond to a harmful situation or by the conduct of a person who assumes responsibility for a significant aspect of the adult’s health or welfare. Neglect includes the failure to provide adequate food, clothing, shelter or medical care. A person shall not be considered to be abused, neglected or, in need of emergency or protective services for the sole reason that the person is receiving or relying upon treatment by spiritual means through prayer alone, and this Section shall not require any medical care or treatment in contravention of the stated or implied objection of that person.

“Protective Placement” is the placement of an Elder in a hospital, nursing home, residential care facility, with a different Native family or person in the Community, or transfer of the Elder from one such institution to another with the Elder’s consent or appropriate legal authority.

“Protective Services” are services provided to an Elder with the Elder’s consent or with appropriate legal authority and include, but are not limited to, social case work, psychiatric and health evaluation, home care, day

care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other services consistent with this Code. It does not include protective placement.

“Reporter” is someone who notifies either an investigator or the District Court of a suspected abuse of an Elder or vulnerable adult.

“Retaliation” is threatening a reporter of Elder abuse or the reporter’s family in any way, causing bodily harm to the reporter or the reporter’s family, causing the reporter or any of the reporter’s family to be reprimanded by an employer, terminated from a job, suspended from general assistance, or damaging the reporter’s or the reporter’s family’s real or personal property in any way.

“Self Neglect” is a significant threat to an elder or vulnerable adult’s physical or mental health because the individual is responsible for his or her own care but is unable to provide adequate food, clothing, shelter or medical care.

“Tribal Lands” means all lands within the Citizen Potawatomi Nation’s original Treaty boundaries including Citizen Potawatomi Nation’s Trust land, Fee Land, rights of way and any Dependent Indian Communities within original Tribal boundaries of the Citizen Potawatomi Nation.

“Vulnerable” means a condition in which an elder or an adult is unable to protect himself or herself from abuse, neglect, self-neglect or exploitation because of a mental or physical impairment or because of advance age.

Section 18-1-4 Duty to Report

Any person who has reasonable cause to suspect that an Elder or vulnerable adult is in need of protective services shall immediately report the abuse, neglect, self-neglect or exploitation to the Citizen Potawatomi Nation Adult Protective Service Investigators or to Citizen Potawatomi Nation Law Enforcement or other Law Enforcement or State Agencies.

The following people are required to report cases of suspected abuse or neglect of an Elder or vulnerable adult to the Citizen Potawatomi Nation Adult Protective Services Investigators or Citizen Potawatomi Nation Law Enforcement or other Law Enforcement or State Agencies or they may petition directly to the District Court of the Citizen Potawatomi Nation:

- (1) The Elder's or vulnerable adult's family, Guardian or Caretaker;
- (2) Any person employed, licensed, registered or certified to provide health care, educational, social welfare, mental health or other human services;
- (3) Any employee of an agency licensed to provide health care, educational, social welfare, mental health or other human services;
- (4) Any law enforcement officers including probation officers;
- (5) Any person who has good reason to suspect that an Elder or vulnerable adult had been or is being abused or neglected.
- (4) The name, address or location, telephone number of witnesses.
- (5) The name, address or location, telephone number of the Elder's caretaker.
- (6) A description of the acts which are complained of as abusive.
- (7) Any other information that the investigators believe might be helpful in establishing abuse.

(B) Driver review referral: Investigators may also make Requests for Driver Reviews to the State Department of Public Safety or other Agencies based on the observations of the investigator of the Elder or Vulnerable Adult.

(C) Reporting of criminal activity: Citizen Potawatomi Nation Adult Protective Services Investigators shall report to Citizen Potawatomi Nation Law Enforcement any criminal activity it believes to be occurring, upon receipt of a report of abuse or that they may uncover during the course of their investigation.

(D) Law Enforcement: This Code shall not be construed as limiting the responsibilities of Citizen Potawatomi Nation Law Enforcement or other Law Enforcement agencies to enforce applicable laws or to preclude a Law Enforcement Agency from reporting and investigating, as appropriate, alleged criminal conduct

Section 18-1-5

Immunity for Reporting and Confidentiality

A person who in good faith reports suspected abuse or neglect of an Elder is immune from any civil or criminal suit based on that person's report. The name of a reporter who reports abuse as required by this Code is confidential and shall not be released to any person unless the reporter consents to the release because it would be necessary to protect the Elder or vulnerable adult.

No evidentiary privilege except for the attorney-client privilege may be raised as a justifiable defense or reason for failing to report suspected Elder abuse or abuse of a vulnerable adult or for testifying as required by this Code.

Reports of suspected Elder or vulnerable adult abuse, neglect, self-neglect or exploitation are presumed to be made in good faith.

Section 18-1-6 Investigation Procedure

(A) Investigation: Investigators, who are assigned by the Citizen Potawatomi Nation or The District Court of the Citizen Potawatomi Nation shall gather information and file a report with the Court containing the following information:

- (1) The Elder's name, address or location, telephone number.
- (2) The name, address or location, telephone number of the person(s) who is suspected of abusing the Elder.
- (3) The nature and degree of incapacity of the Elder.

Section 18-1-7

Procedures for Petition, Notice and Hearing

A determination that abuse of an Elder or vulnerable adult shall be made only after petition of suspected abuse is filed, an investigation takes place, Notice of a hearing is given to all Parties, a Citizen Potawatomi Nation District Court hearing is held, and the Court finds proof that is beyond a preponderance of the evidence. However, the Court may act in emergency situations to protect the Elder without a petition, investigation, Notice, and hearing when it receives enough probable cause evidence that an Elder is in immediate danger either in writing or orally.

(A) Petition: The District Court of the Citizen Potawatomi Nation shall receive reports of Elder abuse by the filing of a petition and shall assign investigators to work with the reporter within a reasonable time. Investigators, Family

Members, Guardians, or Caretakers shall file a petition to the Citizen Potawatomi Nation District Court containing the following information:

- (1) The name of the Investigator, Family Member, Guardian or Caretaker;
- (2) The name and location of the Elder;
- (3) The suspected conditions of abuse or vulnerability;
- (4) Any other facts the petitioner believes will assist the Court.

(B) Notice and Hearing: Notice and hearing procedures shall be the same for suspected Elder abuse cases as they are for other Citizen Potawatomi Nation District Court Cases.

Section 18-1-8

Elder Protective Services and Placements

(A) Funding of Protective Placements and Services: Protective services or protective placements shall be provided on either a voluntary or involuntary basis. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by the Citizen Potawatomi Nation District Court. The Elder, and where appropriate the Elder's family, if able to do so, shall pay for all or part of the costs of services or placement provided to them.

(B) Voluntary Placements and Protective Services: Protective services or placements may be provided on a voluntary basis by the Citizen Potawatomi Nation District Court when requested by any abused Elder or vulnerable adult and the Court finds the Elder or vulnerable adult to be in need of such services or placement after an investigation has been conducted. The Court shall act on such petitions within 20 days. These services or placements shall be provided in the manner least restrictive to the Elder's or vulnerable adult's liberty and rights consistent with the Elder's or vulnerable adult's welfare and needs. Such services and placements shall be provided, subject to available funding and resources, and only as determined necessary by a preponderance of the evidence by the Citizen Potawatomi Nation District Court.

(C) Involuntary Protective Placement and Services: Upon an Order of the Citizen Potawatomi Nation District Court, involuntary protective services or placement shall be provided to any Elder or vulnerable adult who is incapacitated or who is abused.

Section 18-1-9 Emergencies

(A) Emergency Action: The Citizen Potawatomi Nation District Court may act without going through the process outlined in Section 18-1-7 when emergency circumstances exist. The Court shall issue an Emergency Protection or Guardianship Order authorizing protective services or protective placement on an emergency basis upon receiving proof beyond a preponderance of the evidence that an Elder:

- (1) Is at risk of immediate physical harm,
- (2) Is incapacitated and cannot consent to protective services,
- (3) An emergency exists.

(B) Show Cause Hearing: The Citizen Potawatomi Nation shall hold a show cause hearing if it issues an Emergency Protection or Guardianship Order as outlined above and at this show cause hearing investigators with the Citizen Potawatomi Nation's Adult Protective Services program may provide statements to the Judge of the Citizen Potawatomi Nation District Court based on their investigations and these statements are exempt from the hearsay rules.

(C) Maximum length of time for Emergency or Guardianship Order: The Emergency Protection or Guardianship order shall be issued for a maximum of 20 days and shall specify the emergency services to be provided, by whom the services shall be provided and any other relevant information to the existing emergency.

(D) Forcible entry: The Citizen Potawatomi Nation District Court may authorize a forcible entry to enforce the Emergency Protection or Guardianship order after attempts to gain voluntary access to the Elder have failed. Officials and Officers of the Citizen Potawatomi Nation are immune from liability for lawful actions taken pursuant to an Order of the Citizen Potawatomi District Court under this Act.

Section 18-1-10 Rights of Elders, Their Families, Guardians and Caretakers

Elders and family of Elders have the following rights:

- (1) An Elder, the Elder's family, Guardians and caretakers shall be informed about an Elder abuse investigation before the Petition is filed unless an emergency exists or the investigation warrants confidentiality.
- (2) The Elder, Elder's family, Guardian and caretaker have the right to attend any proceeding pertaining to the determination of the Elder's situation.
- (3) The Elder, Elder's family, Guardian and caretaker have the right, at their own expense, to seek independent medical, psychological, or psychiatric evaluation of the Elder. These records shall be released to the Tribal Court if the Elder, Elder's family, Guardian or caretaker wants the Court to consider such evaluations.

Enacted by Ordinance #18-01, by the Citizen Potawatomi Legislature on May 31, 2018.

CITIZEN POTAWATOMI NATION
TRAFFIC OFFENSES
TITLE 19

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CHAPTER ONE TRAFFIC OFFENSES

Section 19-1-101 Definitions

- (A) "Motor vehicle" every device in, upon, or by which any person or property is or may be drawn or transported and is self-propelled, but not including any vehicle which is an implement of husbandry and designed principally for agricultural purposes, or any mechanical device designed for use principally for construction or maintenance excepting trucks.
- (B) "Public Road" the entire width between the boundary lines of every right of way within the exterior boundaries of Tribal jurisdiction maintained by any governmental agency, and, when open is for travel by motor vehicles.

Section 19-1-102 Driving While License Is Suspended Or Revoked

- (A) It is unlawful to drive any motor vehicle upon any public road at a time one's driver's license, permit or driving privilege has been denied, suspended, cancelled or revoked by any State or Tribe, or when suspended by the Tribal Court.
- (B) Section 19-1-102 is punishable by fine up to One Thousand Dollars (\$1,000.00); or imprisonment up to three months, or supervision or revocation of driver's license, or any above combination.

Section 19-1-103 Careless Driving

- (A) It is unlawful to operate any motor vehicle upon any public road in a careless or imprudent manner, without regard for the width, grade, curves, corner, traffic, or existing weather conditions, and the use being made of such road or other attendant circumstances.
- (B) Section 19-1-103 is punishable by fine up to One Thousand Dollars (\$1,000.00) or imprisonment up to six months, or both.

Section 19-1-104 Reckless Driving

- (A) It is unlawful to drive any motor vehicle upon any public road with a wanton or willful disregard for the safety of person or property.
- (B) Section 19-1-104 is punishable by fine up to Two Thousand Dollars (\$2,000.00); or imprisonment up to six months, or suspension of driving privileges up to one year or any above combination.

Section 19-1-105 Driving While Intoxicated

- (A) It is unlawful to drive or be in physical control of any motor vehicle upon any private or public road while under the influence of intoxicating liquor, or controlled dangerous substances, or drugs which impair the ability to control or operate a vehicle.
- (B) A person is presumed under the influence of intoxicating liquor if there is 0.08% or more of alcohol and not under the influence if less than 0.05% of alcohol. Between such percentages, results of tests may be received in evidence, with other tests or observations, for consideration by Court or jury. A breath or blood tests must be administered with consent by a qualified operator provided, if any person refuses such test when requested by an Officer, the person's driving privileges within Tribal jurisdiction shall be suspended for six months whether or not such person is convicted. Such suspension is mandatory.
- (C) Section 19-1-105 is punishable by fine up to Three Thousand Dollars (\$3,000.00); or imprisonment up to six months, or suspension of driving privileges up to two years or any above combination. For subsequent conviction or violation resulting in serious injury, banishment may be imposed more than one year less than five years, additionally.

Section 19-1-106 Duties Of Drivers Involved In Accidents Involving Deaths Or Personal Injuries

- (A) It is unlawful for the driver of any motor vehicle directly involved in an accident resulting in injury or death of any person or damage to any other moving or attended vehicle to fail to immediately stop his vehicle at the scene or as close as possible; or fail to return and remain at the scene and render such aid and assistance as may be necessary or fail to give his name, address and the registration number of his motor vehicle and his operator's or chauffeur's license number and security verification information to all other drivers involved or to fail to render to any injured person such assistance as may be necessary or to fail to notify, or have another notify, the Tribal Police as soon as possible.
- (B) Section 19-1-106 is punishable by fine up to Three Thousand Dollars (\$3,000.00), or imprisonment up to six months, or both.

onment up to six months, or suspension of driving privileges up to one year.

Section 19-1-107 Duty Upon Striking Unattended Vehicle

- (A) It is unlawful for the driver of any vehicle which collides with any unattended vehicle to fail to immediately stop and attempt to locate and notify the operator or owner of both the name, address of the driver and owner of the vehicle or fail to leave where it may be easily seen a written notice giving the name, address of the driver and the circumstances or fail to inform the Tribal Police of the accident and its location as soon as possible.
- (B) Section 19-1-107 is punishable by fine up to Five Hundred Dollars (\$500.00) or imprisonment up to three months, or suspension of driving privileges up to one year.

Section 19-1-108 Duty Upon Striking Highway Fixtures

- (A) It is unlawful for the driver of any vehicle involved in damage to fixtures upon or adjacent to a highway to fail to take reasonable steps to locate and notify the owner or person in charge of such property of his name and address and the registered number of his vehicle or fail to report such accident to the Tribal Police as soon as possible.
- (B) Section 19-1-108 is punishable by fine not to exceed One Thousand Dollars (\$1,000.00), or by a term of imprisonment in the Tribal jail not to exceed three months, or both.

Section 19-1-109 When Driver Unable To Report

- (A) It is unlawful for vehicle occupant who is capable of making the report to fail when the driver is physically unable to make a required accident report to the Tribal Police.
- (B) Section 19-1-109 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-110 Drivers License In Possession

- (A) It is unlawful to operate a vehicle upon any private or public road without possession of a valid Federal, Tribal, or State operator's license, chauffeur's license, or permit, which must be exhibited upon demand by an authorized person.

- (B) Section 19-1-110 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-111 Permitting Unauthorized Person To Drive

- (A) It is unlawful to knowingly cause or permit any unauthorized person to operate a vehicle upon any public road.
- (B) Section 19-1-111 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-112 Traffic Control And Signal Devices

- (A) It is unlawful to turn a vehicle from a direct course on a public road until such movement can be made with safety, and then only after giving an appropriate signal, either by arm or directional signal device.
- (B) It is further unlawful to disobey the command or instruction of any law enforcement officer.
- (C) Section 19-1-112 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-113 Following Too Closely

- (A) It is unlawful to follow more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic condition of the highway.
- (B) Section 19-1-113 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-114 Stopping For School Bus

- (A) It is unlawful when meeting or overtaking any school bus which has stopped for passengers, to fail to stop immediately and not proceed until all passengers are received or discharged and the bus is in motion.
- (B) Section 19-1-114 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-115 Entering Public Road From Private Road

- (A) It is unlawful for the driver about to enter or pass a public road from a private road or driveway to fail to yield to all vehicles approaching on said public road.
- (B) Section 19-1-115 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-116 Right-Of-Way At Intersection

(A) It is unlawful for the driver approaching an intersection to fail to yield to any vehicle approaching from the right, unless otherwise directed by sign, traffic light, or official directing traffic.

(B) Section 19-1-116 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-117 Failure To Stop At Stop Sign And Yielding Right-Of- Way

(A) It is unlawful for the driver to fail to completely stop at all intersections marked by a stop sign before entering an intersection, unless otherwise directed by an officer.

(B) It is unlawful for the driver approaching an intersection marked by a sign requiring him to yield to fail to decrease speed and yield to any traffic proceeding given the right of way by such sign.

(C) Section 19-1-117 is punishable by fine not to exceed Five Hundred Dollars (\$500.00).

Section 19-1-118. Driving On Right Side

(A) It is unlawful to fail to drive on the right half of the roadway, except when passing another vehicle.

(B) Section 19-1-118 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-119 Passing On-Coming Vehicles

(A) It is unlawful for drivers proceeding in opposite directions to fail to pass each other to the right and to give at least half of the roadway.

(B) Section 19-1-119 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-120 Passing And Turning On Curve Or Crest

(A) It is unlawful to pass a vehicle unless the driver can see the road for a sufficient distance ahead and such passing can be accomplished safely.

(B) It is unlawful for driver to pass or turn in any direction on a curve or crest or approach to a crest or on a bridge or approach to a bridge unless such vehicle can pass or be turned safely and seen by approaching traffic.

(C) Section 19-1-120 is punishable by fine up to Two Hundred Fifty Dollars (\$250.00)

Section 19-1-121 Unsafe Vehicles

(A) It is unlawful to drive or cause or knowingly permit to be driven on any public road any vehicle in unsafe condition or is not equipped with the following:

(1) HEADLIGHTS: Multibeam lights one on each side front lights must be in proper working order to be seen for a reasonable distance during darkness or when light conditions require.

(2) REAR LAMPS: One lighted red lamp on each back side plainly visible for a reasonable distance and in proper working order.

(3) STOP LIGHTS: A stop light in good working order automatically controlled by brake.

(4) BRAKES: Adequate to control movement and to stop and hold.

(5) HANDBRAKE:

(6) HORN: In good working order.

(7) WINDOWS UNOBSTRUCTED – WIPERS: No sign or other nontransparent material upon the windshield, side wings, side or rear windows that obstruct the driver's view. The windshield shall have a device for cleaning rain, snow, or other obstructions and must be in proper working order.

(8) LICENSE TAG LIGHT: A rear tag light in good working order.

(B) Section 19-1-121 is punishable by fine up to Two Hundred Fifty Dollars (\$250.00).

Section 19-1-122 Speed Limits

(A) Speed limits on any public road shall be set by the governing body. Speed limits may be posted at such places as deemed necessary by the governing body.

(B) In any area where the speed limit is not posted and where no special hazard exists, the following speeds shall be lawful, but any speed in excess shall be prima facie evidence the speed is unlawful.

(1) School Zones, grounds, and crossings, designated areas - 20 MPH

(2) Residential areas - 30 MPH

(3) Open highway - 55MPH

(4) It is unlawful to exceed the above limits,

limits posted by the Tribe, or a speed which is reasonable and proper under the prevailing conditions.

(C) Speed lower than the foregoing limits does not relieve the driver from the duty to use due care.

(D) Section 19-1-122 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-123 When Lights Are Required To Be On

(A) It is unlawful for a vehicle to be on a public roadway from a half hour after sunset to a half hour before sunrise or when objects cannot be seen clearly at five hundred feet because of light conditions without displaying lighted lamps.

(B) Every vehicle stopped or parked on the side of any road or highway during the hours set forth above, shall burn lamps, flares, or alert other drivers of danger, unless the vehicle is positioned as least thirty inches from the main roadway portion such that no part of the main traveled roadway nor the thirty inch safety zone is impeded.

(C) Section 19-1-123 is punishable by fine up to Two Hundred Fifty Dollars (\$250.00).

Section 19-1-124 Pedestrians

(A) It is unlawful for a pedestrian to cross a roadway other than a marked crosswalk or within an unmarked intersection crosswalk to fail to yield to all vehicles.

(B) Section 19-1-124 is punishable by fine up to One Hundred Dollars (\$100.00).

Section 19-1-125 Throwing Trash On Roads And Roadways

(A) It is unlawful to discard trash or refuse on a roadway, public highway or right-of-way within the Tribal jurisdiction.

(B) Section 19-1-125 is punishable by fine up to Five Hundred Dollars (\$500.00).

Section 19-1-126 Illegal Parking

(A) It is unlawful to stop, park, or leave standing any vehicle, attended or unattended, upon the paved, improved or main traveled part of a public roadway when it is practical to stop, park, or leave such vehicle off of said roadway, in every event a clear and unobstructed width of at least twenty feet opposite such standing vehicle shall

be left for free passage of other vehicles, a clear view shall be available from two hundred feet and must be positioned at least thirty inches outside the main traveled roadway portion.

(B) This Section shall not apply to a disabled vehicle while on the paved, improved or main traveled portion of a roadway that it is impossible to avoid stopping and temporarily leaving the vehicle in such position, provided that reasonable provision is made for the warning and safety of other vehicles.

(C) It is unlawful to stop, park, or leave a vehicle except when necessary to avoid collision or with the directions of an officer or traffic control sign, in any of the following places:

- (1) A sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection;
- (4) Within twenty-five feet of a fire hydrant;
- (5) On a crosswalk;
- (6) In a designated handicap or accessible parking space unless the vehicle has authorized license plates, hangtags or placards issued to the driver or passenger by any Indian Tribal Tag Agency, State Department of Public Safety or State Tag Agency permitting the driver or passenger of the vehicle to park their vehicle in a designated handicap or accessible parking space.

(D) Section 19-1-126 is punishable by fine up to Two Hundred Fifty Dollars (\$250.00).

Amended by Ordinance #13-07, enacted by the Citizen Potawatomi Legislature on May 30, 2013.

Section 19-1-127 Motor Vehicle Restraints

(A) The operator of a motor vehicle operated on a public roadway shall:

- (1) Wear a properly adjusted and fastened safety belt.
- (2) Provide for the protection of each person eight (8) years of age up to sixteen (16) years of age by securing or causing to be secured a properly adjusted and fastened safety belt on each person.
- (3) When transporting a child eight (8) years of age or younger, in a non-commercial motor

vehicle operated on any public roadway, properly secure the child in a child passenger restraint system. The restraint system shall meet Federal Motor Vehicle Safety Standards.

- (B) Violation of this Section is punishable by a fine of up to Two Hundred and Fifty Dollars (\$250.00).

Enacted by Ordinance #13-07, by the Citizen Potawatomi Legislature on May 30, 2013.

Section 19-1-128 Insurance

- (A) It is unlawful to drive any motor vehicle upon any roadway without proper insurance as required by any State or Tribal law.
- (B) It is unlawful to refuse or fail to produce for inspection, a current and valid insurance security verification form upon the request of Citizen Potawatomi Nation law Enforcement Officers or any peace officer.
- (C) Violation of this Section is punishable by a fine up to Two Hundred and Fifty Dollars (\$250.00).

Enacted by Ordinance #13-07, by the Citizen Potawatomi Legislature on May 30, 2013.

CITIZEN POTAWATOMI NATION
ALCOHOL AND TOBACCO
TITLE 20

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CHAPTER ONE TOBACCO AND LIQUOR REGULATIONS

Section 20-1-101 Title and Purpose

This document shall be known as the Citizen Potawatomi Nation Tobacco and Liquor Regulations. These regulations are enacted to regulate the sale and distribution of tobacco products and/or liquor and beer products on Tribal Trust Lands of the Citizen Potawatomi Nation, and to generate revenue to fund needed tribal programs and services.

Section 20-1-102 Definitions

Unless otherwise required by the context the following words and phrases shall have the designated meanings:

- (A) "Tribe" shall mean the Citizen Potawatomi Nation.
- (B) "Legislature" shall mean the Citizen Potawatomi Nation Legislature as constituted by Article V of the Constitution and By-laws of the Citizen Potawatomi Nation.
- (C) "Tribal Trust Lands" shall mean the lands and waters lying within the boundaries of the property described below:

Tract Numbered 1

The northeast quarter northeast quarter, southeast quarter northeast quarter, southwest quarter northeast quarter Section 31, township 10 north, range 4 east, Indian Meridian, Pottawatomie County, Oklahoma, containing 120.00 acres, more or less.

Tract Numbered 2

That part of the northwest quarter southeast quarter Section 31, township 10 north, range 4 east, Indian meridian, Pottawatomie County, Oklahoma, described as: Beginning at the southwest corner of said northwest quarter southeast quarter; thence east 1,320 feet; thence north 1,320 feet; thence west 1,320 feet to the center of said section; thence south 167 feet; thence east 183 to the intersection with the west line of the Atchison, Topeka, and Santa Fe Railroad right-of-way; thence southwesterly along the west right-of-way line a distance of 856 feet to the intersection with a point in the west line of the northwest quarter southeast quarter, said point being 983 feet south of the center of Section 31; thence south along the west line of the northwest quarter southeast quarter, a distance of 337 feet, to the point of beginning; containing 38.29 acres, more or less.

Tract Numbered 3

That part of the southeast quarter northwest quarter Section 31, township 10 north, range 4 east, Indian meridian, Pottawatomie County, Oklahoma, described as: Beginning at the northeast corner of said southeast quarter northwest quarter; thence south 1,320 feet to the center of said Section 31; thence west along the south line of said southeast quarter northwest quarter a distance of 1,255.4 feet to the intersection with the centerline of Oklahoma State Highway Numbered 18; thence northwesterly along the centerline of the highway a distance of 660.58 feet to a point on the south line of the northwest quarter southeast quarter northwest quarter; thence east 38 feet to the intersection with the east right-of-way line of Oklahoma State Highway Numbered 18; thence northwesterly along the east right-of-way line to a point in the north line of said southeast quarter northwest quarter, said point being 58 feet east of the northwest corner of said southeast quarter northwest quarter; thence east a distance of 1,262 feet to the point of beginning; containing 38.63 acres more or less.

Tract Numbered 4

That part of the northeast quarter southwest quarter Section 31, township 10 north, range 4 east, Indian meridian, Pottawatomie County, Oklahoma, described as: Beginning at the northeast corner of said northeast quarter southwest quarter, said point being the center of Section 31; thence south 167 feet; thence west 1,302 feet to the intersection with the west line of the right-of-way of Oklahoma State Highway Numbered 18; thence northeasterly along the west right-of-way line a distance of 167 feet to the north line of said northeast quarter southeast quarter; thence east along said north line a distance of 1,297.4 feet to the point of beginning; containing 4.678 acres, more or less.

Tract Numbered 5

That part of the northeast quarter southwest quarter Section 31, township 10 north, range 4 east, Indian Meridian, Pottawatomie County, Oklahoma, described as: Beginning at the southeast corner of said northeast quarter southwest quarter; thence north along the east line of said northeast quarter southwest quarter a distance of 337 feet to the intersection with the west right-of-way line of the Atchison, Topeka, and Santa Fe Railroad right-of-way; thence southwesterly along said west right-of-way line a distance of 367 feet to the intersection with the south line of said northeast

quarter southwest quarter; thence east along the south line a distance of 129 feet to the point of beginning; containing .498 acre, more or less.

Tract Numbered 7

That part of lot 1 (northwest quarter of northwest quarter) and north half of lot 2 (north half of southwest quarter of northwest quarter) and the part of the north half of the southeast quarter of the northwest quarter lying west of the east right-of-way line of Oklahoma State Highway Numbered 18, all in Section 31, township 10 north, range 4 east, Indian Meridian, Pottawatomie County, Oklahoma, containing 57.99 acres, more or less, subject to the right of the Absentee Shawnee Tribe of Indians of Oklahoma, the Sac and Fox Tribe of Indians of Oklahoma, the Kickapoo Tribe of Indians of Oklahoma, and the Iowa Tribe of Indians of Oklahoma to use the Pottawatomie community house that may be constructed and maintained thereon.

- (A) "Member" shall mean any person whose name appears on the official roll of the Citizen Potawatomi Nation.
- (B) "Commercial Sale" shall mean the transfer, exchange or barter, in any or by any means whatsoever for a consideration by any person, association, partnership, or corporation, of cigarettes, tobacco products and/or liquor and beer products.
- (C) "Wholesale Price" shall mean the established price for which cigarettes, tobacco products and/or liquor and beer products are sold to the Citizen Potawatomi Nation or any licensed operator by the manufacturer or distributor, exclusive of any discount or other reduction.
- (D) "Tobacco Products" shall mean cigars, cheroots, stogies, granulated, plug cut, crim cut, ready rubbed, and other smoking tobacco, snuff, cavendish, snuff flour, plug and twist tobacco, five cut and other chewing tobacco shorts and other kinds and forms of tobacco prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for smoking and chewing. Tobacco products shall include cigarettes.
- (E) "Cigarette" shall mean any roll for smoking made wholly or in part of tobacco being flavored, adulterated, or mixed with any other ingredient where such wrapper is wholly or in any part made of paper or any material except where

such is wholly or in the greater part made of natural leaf tobacco in its natural state.

- (F) "Tobacco Outlet" shall mean a tribally licensed retail sales business selling tobacco products on tribal trust lands of the Citizen Potawatomi Nation.
- (G) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.
- (H) "Beer" means any beverage obtained by the alcohol fermentation of an infusion or decoction of pure hops, or pure extract of hops, and malt and sugar in pure water containing not more than 6% of alcohol by weight.
- (I) "Liquor Outlet" shall mean a tribally licensed retail sale business selling liquor or beer on tribal trust lands.
- (J) "Operator" shall mean all enrolled members of twenty-one years of age and over, of the Citizen Potawatomi Nation or enrolled members of twenty-one years of age and over, of another federally recognized Tribe of American Indians licensed by the Citizen Potawatomi Nation to operate a tobacco and/or liquor and beer outlet.

Section 20-1-103 Licensing of Tobacco or Liquor and Beer Outlets

The Citizen Potawatomi Nation Legislature shall be the Citizen Potawatomi Nation Tobacco, Liquor and Beer Control Commission. The Commission is empowered to:

- (A) Administer these regulations by exercising general control, management, and supervision of all tobacco and/or liquor and beer sales, places of sale and sales outlets as well as exercising all powers necessary to accomplish the purposes of these regulations.
- (B) Adopt and enforce rules and regulations in furtherance of the purpose of these regulations and in the performance of its administrative functions.

Section 20-1-104 Nature of Outlet

Nature of Outlet. Each tobacco and/or liquor and beer outlet, license granted by the Commission, hereunder,

shall be managed pursuant to a Federal Indian Trader's License provided in Section 20-1-101 through 20-1-107 hereof.

Section 20-1-105 Application for Tobacco Outlet License or Liquor and Beer Outlet License

- (A) Application. Any enrolled member, twenty-one years of age and older, of the Citizen Potawatomi Nation or an enrolled member, twenty-one years of age and older, of a federally recognized Tribe may apply to the Commission for a tobacco outlet license and/or a liquor and beer outlet license.
- (B) Processing of Application. The Tribal Secretary-Treasurer shall receive and process applications and be the official representative of the Tribe and Commission in matters relating to tobacco and/or liquor and beer excise tax collections and related matters. The Commission or its authorized representative shall obtain additional information as deemed appropriate. If the Commission or its authorized representative is satisfied that the applicant is a suitable and respectable person, the Commission or its authorized representative may issue a license for the sale of tobacco products and/or liquor and beer products.
- (C) Application Fee. Each application shall be accompanied by an application charge or fee of twenty-five dollars (\$25.00). An application for both a tobacco outlet license and a liquor and beer outlet license shall be considered to be two applications with an application charge of twenty-five dollars (\$25.00) each.

Section 20-1-106 Tobacco Outlet Licenses. Liquor and Beer Licenses

- (A) Upon approval of an application, the Commission shall issue the applicant a tobacco outlet license and/or a liquor and beer outlet license, whichever the case may be, for one year from the date of issuance, which shall entitle the operator to establish and maintain only the type outlet being permitted. This license shall not be transferable. It shall be renewable at the discretion of the Commission by submission of the licensee of subsequent application form and payment of application fee as provided in Section 20-1-105.

Section 20-1-107 Trader's License

- (A) Trader's License. No tobacco outlet license or liquor and beer outlet license shall be issued to any operator unless he/she has obtained a Federal Indian Trader's License from the Superintendent of the Shawnee Agency, Bureau of Indian Affairs. Revocation of the Federal Indian Trader's License shall be grounds for the revocation of their operator's tobacco outlet license and/or liquor and beer outlet license by the Commission.

Section 20-1-108 Regarding Sales by Liquor Wholesales and Transport of Liquors Upon Tribal Trust Lands

- (A) Right of Commission Scrutinize Suppliers. The operator of any licensed outlet shall keep the Commission informed in writing of the identity of suppliers and/or wholesalers who supply or are expected to supply tobacco or liquor stocks to the outlet(s). The Commission may, at its discretion, for any reasonable cause limit or prohibit the purchase of said stock from a supplier or wholesaler.
- (B) Freedom of Information From Suppliers. Operators shall in their purchase of stock and in their business relations with suppliers cooperate with and assist the free flow of information and data to the Commission from suppliers relating to the sales and business arrangements between the suppliers and operators. The Commission may, at its discretion, require the receipts from the supplies of all invoices, bills of lading, billings or other documentary receipts of sales to the operator.

Section 20-1-109 Sales by Retail Operators

- (A) Commission Regulations. The Commission shall adopt procedures which shall supplement these Regulations and facilitate their enforcement. These procedures shall include limitations on sales to minors, where liquor may be consumed, persons not allowed to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.
- (B) Sales to Minors. No Tribal operator shall give, sell, or otherwise supply liquor to any person under twenty-one (21) years of age either for his or her own use or for the use of his or her

parents or for the use of any other person.

- (C) Consumption of Liquor Upon Licensed Premises. No Tribal operator shall permit any person to open or consume liquor on his or her premises or any premises adjacent thereto and in his or her control; Provided, the Commission will identify specific locations upon Tribal Trust Lands where beer and/or alcohol may be consumed.

Section 20-1-110 Conduct on Licensed Premises

- (A) No Tribal operator shall be disorderly, boisterous or intoxicated on the licensed premises or on any public premises adjacent thereto which are under his or her control, nor shall he or she permit any disorderly, boisterous or intoxicated person to be thereon: nor shall he or she use or allow the use of profane or vulgar language thereon.
- (B) No operator shall permit suggestive, lewd, or obscene conduct or acts on his or her premises. For the purpose of this section, suggestive, lewd, or obscene acts or conduct shall be those acts or conduct identified as such by the laws of the State of Oklahoma.
- (C) Employment of Minors. No person under the age of twenty-one (21) years of age shall be employed in any service in connection with the sale or handling of liquor, either on a paid or voluntary basis, except as otherwise provided herein. Employees eighteen (18) years or older may sell or handle beer or wine provided that there is direct supervision by an adult twenty-one (21) years of age or older.
- (D) Operator's Premises Open to Commission Inspection. The premises of all operators, including vehicles used in connection with liquor sales, shall be open at all times to inspection by the Citizen Potawatomi Nation Tobacco, Liquor and Beer Control Commission or its designated representative.
- (E) Operator's Records. The originals or copies of all sales slips, invoices, and other memoranda covering all purchases of liquor by operators shall be kept in file in the retail premises of the operator purchasing the same for at least five (5) years after each purchase, and shall be filed separately and kept apart from all other records, and as nearly as possible shall be filed

in consecutive order and each month's records kept separate so as to render the same readily available for inspection and checking. All cancelled checks, band statements and books of accounting covering or involving the purchase of liquor, and all memoranda, if any, showing payment of money for liquor other than by check, shall be likewise preserved for availability for inspection and checking.

- (F) Records Confidential. All records of the Citizen Potawatomi Nation Tobacco, Liquor and Beer Control Commission showing purchase of liquor by any individual or group shall be confidential and shall not be inspected except by members of the Commission or its authorized representative.
- (G) Conformity With State Law. Operators shall comply with State of Oklahoma liquor standards to the extent required by 18 USC 1161. However, total jurisdiction over the sale of liquor and beer products is reserved to and exercised by the Citizen Potawatomi Nation Tobacco, Liquor and Beer Control Commission within the boundaries of Tribal Trust Lands.

Section 20-1-111 Tribal Excise Tax Imposed Upon Distribution of Tobacco and Liquor

- (A) Tribal Excise Taxes. The Commission shall by resolution include a provision for the taxing of sales of cigarettes, tobacco and liquor and beer products to the consumer or purchaser. Such tax shall be in amounts equal to at least 5% of all retail sales prices, but the Commission may establish tax rates in excess of that 5% for any given class of merchandise.
- (B) Added to Retail Price. The excise tax levied hereunder shall be added to the retail selling price of tobacco products and/or liquor and beer products sold to the ultimate consumer.

Section 20-1-112 Liability for Bills

Liability for Bills. The Tribe shall have no legal responsibility for any unpaid bills owed by a tobacco outlet and/or liquor and beer outlet to a wholesale supplier or any other person.

Section 20-1-113 Other Business By Operator

Other Business by Operator. An operator may conduct another business simultaneously with managing a tobacco outlet and/or liquor and beer outlet,

PROVIDED, such other business must be approved prior to initiation by majority vote of the Citizen Potawatomi Nation Legislature. Said other business may be conducted on the same premises as a tobacco outlet and/or liquor and beer outlet, but the operator shall be required to maintain separate books of account for the other business.

Section 20-1-114 Tribal Liability and Credit

(A) Operators are forbidden to represent or give the impression to any supplier or person with whom he or she does business that he or she is an official representative of the Tribe or the Commission authorized to pledge tribal credit or financial responsibility for any of the expenses of his or her business operation. The operator shall hold the Citizen Potawatomi Nation harmless from all claims and liability of whatever nature. The Commission shall revoke an operator's outlet license(s) if said outlet(s) is not operated in a businesslike manner or if it does not remain financially solvent or does not pay its operating expenses and bills before they become delinquent.

(B) Insurance. The operator shall maintain at his or her expense adequate insurance covering liability, fire, theft, vandalism, and other insurable risks. The Commission or the Legislature may establish, as a condition of any license, the required insurance limits and any additional coverages deemed advisable.

Section 20-1-115 Audit and Inspection

(A) All of the books and other business records of the outlet shall be available for inspection and audit by the Commission or its authorized representative for any reasonable time.

(B) Bond For Excise Tax. The excise tax together with reports on forms to be supplied by the Commission shall be remitted to the Tribal office monthly unless otherwise specified in writing by the Commission. The operator shall furnish a satisfactory bond to the Tribe in an amount to be specified by the Commission guaranteeing his or her payment of excise taxes.

Section 20-1-116 Revocation of Operator's License

Revocation of Operator's License. Failure of an operator to abide by the provision of these regulations and any

additional regulations or requirements imposed by the Commission will constitute grounds for revocation of the operator's license as well as enforcement of the penalties provided in 1-16.

Section 20-1-117 Violation--Penalties

Any Indian violating these Regulations shall be guilty of an offense and subject to a fine of not less than fifty dollars (\$50.00) and not to exceed a maximum of two hundred-fifty dollars (\$250.00). Any operator who violates the provisions set forth herein shall forfeit all of the remaining stock in the outlet(s). The Tribe shall be empowered to seize forfeited products.

Section 20-1-118 Severability

If any provision of the Regulations in its application to any person or circumstance is held invalid, the remainder of the Regulations and their application to other persons or circumstances is not affected.

CITIZEN POTAWATOMI NATION
ANIMAL CONTROL
TITLE 21

RESERVED

CITIZEN POTAWATOMI NATION
BANKS AND BANKING
TITLE 22

RESERVED

CITIZEN POTAWATOMI NATION
BUSINESS AND CORPORATION REGULATION
TITLE 23

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CHAPTER ONE BINGO ORDINANCE

Section 23-1-101 Citation

This ordinance shall be known as the “Potawatomi Bingo Ordinance” and shall apply to all games of bingo conducted within the jurisdiction of the Citizen Potawatomi Nation.

Section 23-1-102 Purposes

The purpose of this ordinance are to promote the public order, peace, safety and welfare of all persons coming within the jurisdiction of the Citizen Potawatomi Nation, to provide a safe and wholesome means of recreational activity in a community setting, and to provide a source of revenue for the operation of the programs and departments of the tribal government by ensuring that any bingo game conducted therein is fair, reasonable, and complete with federal law including the Bureau of Indian Affairs regulations and guidelines. This ordinance shall be liberally constructed to promote these purposes.

Section 23-1-103 Definitions

Unless the context clearly indicates a different meaning, the following words are defined as:

- (A) “**Tribe**” and any of its derivatives means the Citizen Potawatomi Nation.
- (B) “**Bingo**” means a game in which each participant received one or more cards each of which is marked into 25 squares arranged in five horizontal rows of each and five vertical rows of five squares each or a similar arrangement of squares and spaces with each square being designated by number, letter, symbol, or combination of numbers, letters, and symbols, and a center square designated with the word “free”, with no two cards being identical. The game is played by players covering squares as the operator of such game announces a number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing number, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and publicly-announced pattern of squares upon the card being used by him or them.

(C) “**Grossed proceeds**” means the total receipts less cash prizes from the operation of bingo games including, among other things, entry fees, special session fees, proceeds from the sale or rental of bingo cards, sale of food or drink and similar items.

(D) “**Net proceeds**” means the total gross receipts less cash from the operation of bingo games less all reasonable and necessary expenses.

(E) “**Expenses**” means all sums actually expended for bingo supplies, equipment, non-cash prizes, facilities, security services, license fees, rent, employees and other personal services.

(F) “**Court**” means the court of the Citizen Potawatomi Nation.

Section 23-1-104 Bingo Prohibited

No person shall conduct any game of bingo within tribal Indian Country for which a charge is made or other consideration requested or required for participation, or to the winner of which any prize is awarded except as provided herein.

Section 23-1-105 Bingo Allowed

The only game of bingo allowed within the tribal Indian Country is that operated by the tribe.

Section 23-1-106 Bingo Operations

The tribal Business Committee is charged with administering the tribal bingo operation which shall be consistent with this ordinance. The Tribal Administrator, or in his absence, the Chairman of the Business Committee contact with those hired to manage the bingo operation.

Section 23-1-107 Management Of Bingo Operation

The bingo operation shall be divided into a cash operation and a management operation. The Business Committee shall hire two distinct, unrelated, and different persons or firms to manage these operations.

Section 23-1-108 Qualifications Of Operations Manager

The operations manager must:

- (A) Never been convicted of a felony, gaming offense or crime involving dishonesty or moral turpitude,
- (B) Not have been convicted of any offense except traffic violations within two years from the date of the contract,

(C) Be a tribal employee, not a member of the Business Committee or Grievance Committee or related to any member of the Business Committee or Grievance Committee by blood or marriage within second degree,

(D) Not have had his surety bond forfeited or been criminally convicted of or found civilly liable for any breach of fiduciary duty to the tribe or have been impeached and removed from tribal office.

(E) Be bendable in the necessary amounts.

Section 23-1-109 Qualifications Of Cash Manager

The cash manager must have the same qualifications as the operations manager.

Section 23-1-110 Duties Of Operations Manager

The operations manager shall have the duties to:

(A) Manage and conduct all bingo games and concessions of the tribal bingo operation,

(B) Cause to be prepared and timely submitted all reports required by any applicable law,

(C) Account for all monies and properties entrusted to him,

(D) Perform any other duties as may be required by any applicable law or the Business Committee.

Section 23-1-111 Duties Of Cash Manager

The cash manager shall:

(A) Be responsible for all cash generated by the tribal bingo game,

(B) Deposit all gross proceeds of any bingo game daily into the tribal bingo account.

(C) Promptly provide the operations manager and the Tribal Administrator with copies of the deposit slip, and

(D) Keep and submit to the Business Committee monthly records memorializing the performance of his duties. The cash manager cannot be or be related in second degree to the Tribal Administrator or an elected Tribal Officer.

Section 23-1-112 Conduct Of Bingo Operations

The operations manager shall conduct every bingo session consistent with the following:

(A) Any number of cards may be rented or sold to players at any bingo session. Each card in use at any bingo session shall be different from all

others in use with respect to the distribution of playing numbers.

(B) One of the following methods shall be used to select the numbers to be called in the conduct of operation:

(1) A machine which blows balls containing the numbers to be called which permits the operator to catch one ball at random while the machine is operating or permit the machine itself to automatically catch one ball at a time, or

(2) A mechanically-operated cage with an automatic catching devise for catching one ball or number at a time by random.

(C) All bingo cards eligible to win the same prize shall be purchased at a uniform price announced before the start of the game.

(D) The price of the cards may differ for different games, and the price for cards used in the same game may differ if the higher-priced cards carry a prize of greater value if declared the winner.

(E) Each game shall be conducted so that each player has an equal opportunity to win.

(F) All 75 numbers shall be in the receptacle at the beginning of each game, and as the game proceeds one shall be drawn at a time as provided above. Each number selected limited to 75 shall be announced to the audience in a clearly audible fashion.

(G) No object or number drawn from the receptacle shall be returned until the game is finished.

(H) The selection of objects or numbers from the receptacle shall be visible to the players.

(I) The method of winning and the prize or prizes for each game should be clearly announced before each game begins.

(J) The winner or winners of each game shall be verified in a manner that all present may hear.

(K) If more than one person is a winner, the prize shall be equally divided to the nearest dollar but not less than between or among the winners.

(L) No person who is conducting or assisting the conduct of the bingo operation shall play bingo during the session.

(M) No person under the age of eighteen (18) shall be permitted to play without being accompanied by an adult with authority over such person.

- (N) All prizes shall be paid to the winner or winners at the conclusion of the game at which they were a winner.
- (O) No alcoholic beverages or drugs of any kind shall be permitted in the building during the time that the building is being used for the bingo operation.
- (P) No person under the influence of intoxicants or drugs shall be permitted to engage in any bingo nor to remain in the building when bingo is being conducted.

Section 23-1-113 Records

The cash manager and the operations manager shall keep and maintain records concerning their operations the audit report of which records shall be open for inspection by any tribal member.

Section 23-1-114 Preference

The management contract for the operations manager shall include a clause that the manager shall employ qualified tribal members in preference to other equally qualified applicants for work but shall not be required to employ or retain in employment unqualified tribal members.

Section 23-1-115 Name Tags

All persons employed by the operations manager and the cash manager shall wear legible tags showing their name and employment title. The tags must be visible and worn or otherwise affixed on the persons operating or assisting in the operation of the bingo games.

Section 23-1-116 Bingo Account

The Tribe by Business Committee resolution shall designate one banking account as the tribal "bingo account". The account shall be maintained in a financial institution located in Pottawatomie County or an adjacent county. All gross proceeds derived from the conduct of the tribal bingo games shall be deposited in the tribal bingo account. No other tribal or other monies shall be commingled with the tribal bingo account. Disbursement from the tribal bingo account shall be as necessary to pay reasonable and necessary expenses and shall be monthly for the purpose of paying any management fees or for disbursing any tribal portion of the bingo proceeds. Except as may be needed for cash reserve, all tribal bingo revenue account and shall be disbursed to no other account and shall not be used for anything other than a tribal purpose.

Section 23-1-117 Publication

The Business Committee shall cause the tribal newspaper to publish monthly financial reports from the tribal bingo account.

Section 23-1-118 Supplies And Equipment

All reasonable and necessary expenses of the operations manager must be approved by the Business Committee. Prior approval of the Business Committee may be obtained by the operations manager by submitting an annual or monthly budget. All equipment purchases and materials purchased in concessions and food and any other item purchased as an expense shall become and be the property of the Tribe.

Section 23-1-119 Location Of Bingo Sessions

All games and sessions of bingo authorized herein shall be conducted at a place approved by the Business Committee within the tribal jurisdictional territory.

Section 23-1-120 Time Of Bingo Sessions

All games and sessions of bingo shall be conducted on such days and at such times as may from time to time be approved by the Business Committee.

Section 23-1-121 Discrimination Prohibited

No person shall be discriminated against because of his race, color, creed, sex or natural origin in any game of bingo.

Section 23-1-122 Report Of Winners

The operations manager shall file weekly with the tribal administrator a list of all winners of any game of bingo for each session of bingo to comply with Internal Revenue Service regulations.

Section 23-1-123 Requirements To Receive Prize

In addition to being the first player to properly cover a predetermined and publicly-announced pattern of squares upon the card being used by him or them, a player, in order to qualify to receive a prize, must furnish to the operations manager:

- (A) Acceptable proof of said winner's name and address, and his social security number if the value of the prize exceeds Internal Revenue Services limits. Acceptable proof may be a driver's license. An oral statement of a winner's social security number may be acceptable in the discretion of the operations manager when accompanied by two forms of identification, one of which a photo identification.

(B) A signed receipt acknowledging acceptance and receipt of the prize awarded.

(C) No prize shall be awarded unless the winner has fairly won without any collusion with the operations manager or any of its employees or agents.

Section 23-1-124 Bond Required

As necessary, the Business Committee by resolution may require the operations manager to be bonded in the amount not less than Fifty Thousand Dollars (\$50,000.00) payable to the tribe.

Section 23-1-125 Criminal Penalties

Any person or firm violating the provisions of this chapter shall be guilty of an offense and shall, upon conviction thereof, be punished as provided by law. If a person is convicted in a tribal court, he may be punished by confinement in the tribal jail for a period of not less than ten (10) days and no more than six (6) months or by a fine of not less than Five Hundred Dollars (\$500.00) and no more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment.

CHAPTER TWO CORPORATION ACT SECTION ONE AMENDMENT OF ARTICLES OF INCORPORATION

Section 23-2-101 Right to Amend Articles of Incorporation

A corporation may amend its articles of incorporation from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made. Such provisions as may be necessary to effect such change, exchange, reclassification or cancellation. In particular, and without limitation upon such general power, of amendment, a corporation may amend its articles of incorporation, from time to time so as:

(A) To change its corporate name.

(B) To change its period of duration.

(C) To change, enlarge or diminish its corporate purposes.

(D) To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue.

(E) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.

(F) To exchange, classify, reclassify or cancel all or any part of its shares whether issued or unissued.

(G) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued.

(H) To change shares having the par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.

(I) To change the shares of all class whether issued or unissued and whether with or without par value into a different number of shares of the same class or into the same or a different number of shares either with or without par value of other classes.

(J) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized whether issued or unissued.

(K) To cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declare.

(L) To divide any preferred or special class of shares, whether issued or unissued. into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series.

(M) To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established.

(N) To authorize the board of directors to fix and

determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed.

(O) To revoke, diminish, or enlarge the authority of the board of directors; to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established.

(P) To limit deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

Section 23-2-102 Procedure to Amend Articles of Incorporation

Amendments to the articles of incorporation shall be made in the following manner:

(A) The board of directors shall adopt a resolution setting forth the proposed amendment and, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders which may be either the annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporations as theretofore amended and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

(B) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If the meeting will be an annual meeting, the

proposed amendment of such summary may be included in the notice of such annual meeting.

(C) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon. Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

Section 23-2-103 Class Voting on Amendments

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

- (A) Increase or decrease the aggregate number of authorized shares of such class.
- (B) Increase or decrease the par value of the shares of such class.
- (C) Effect an exchange; reclassification or cancellation of all or part of the shares of such class.
- (D) Effect and exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class.
- (E) Change the designations, preferences, limitations, or relative rights of the shares of such class.
- (F) Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes.
- (G) Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences or the number of authorized shares, of any class having the rights and preferences prior or superior to the shares of such class.
- (H) In the case of a preferred or special class of shares, divide the shares of such class into series

and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series, or authorize the board of directors to do so.

- (I) Limit or deny any existing preemptive rights of the shares of such class.
- (J) Cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

Section 23-2-104 Articles of Amendment

The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or art assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- (A) The name of the corporation.
- (B) The amendments so adopted.
- (C) The date of the adoption of the amendment by the shareholders or by the board of directors where no shares have been issued.
- (D) The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon at a class, the designation and number of outstanding shares entitled to vote thereon of each, such class.
- (E) The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or if no shares have been issued, a statement to that effect.
- (F) If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.
- (G) If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

Section 23-2-105 Filing of Articles of Amendment

Duplicate originals of the articles of amendment shall

be delivered to the Secretary. If the Secretary finds that the articles of amendment conform to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office.
- (C) Issue a certificate of amendment to which he shall affix the other duplicate original. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Secretary, shall be returned to the corporation or its representative.

Section 23-2-106 Effect of Certificate of Amendment

Upon the issuance of the certificate of amendment by the Secretary the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly. No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders; and in the event the corporate name shall be changed by amendment no suit brought by or against such corporation under its former name shall abate for that reason.

Section 23-2-107 Restated Articles of Incorporation

A domestic corporation may at any time restate its articles of incorporation as theretofore amended by a resolution adopted by the board of directors. Upon the adoption of such resolution restated articles of incorporation by its president or a vice president and by its secretary or assistant secretary and verified by one of the officers signing such articles and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto. Duplicate originals of the restated articles of incorporation shall be delivered to the Secretary. If the secretary finds that such restated articles of incorporation conform to law he shall when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate, originals the word “Filed” and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office
- (C) Issue a restated certificate of incorporation, to which he shall affix the other duplicate original. The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the Secretary shall be returned to the corporation or its representative. Upon the issuance of the restated certificate of incorporation by the Secretary, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.
- (E) Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not, convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and,
- (F) Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
- (G) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:
 - (1) Endorse on each of such duplicate originals the word “Filed,” and the month, day and year of the filing thereof.
 - (2) File one of such duplicate originals in his office with the certified copy of the decree.
 - (3) Issue a certificate of amendment to which he shall affix the other duplicate original. The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the Secretary, shall be returned to the corporation or its representative. Upon the issuance of the certificate of amendment by the Secretary, the amendments shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

Section 23-2-108 Amendment of Articles of Incorporation in Reorganization Proceedings

Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings of the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations the articles of incorporation of the corporation may be amended in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment. In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- (A) Change the corporate name, period of duration or corporate purposes of the corporation;
- (B) Repeal, alter or amend the by-laws of the corporation;
- (C) Change the aggregate number of shares or any class, which the corporation has authority to issue;
- (D) Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued.

Section 23-2-109 Restriction on Redemption or Purchase of Redeemable Shares

No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

Section 23-2-110 Cancellation of Redeemable Shares by Redemption or Purchase

When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so cancelled which the corporation is authorized to issue by the number of shares so cancelled.

The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (A) The name of the corporation.
- (B) The number of redeemable shares cancelled through redemption or purchase, itemized by classes and series.
- (C) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.
- (D) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.
- (E) If the articles of incorporation provide that the cancelled shares shall not be reissued, the number of shares shall not be reissued, the number of shares which the corporation will have authority to issue itemized by classes and series, after giving effect to such cancellation. Duplicate originals of such statement shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:
 - (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
 - (2) File one of such duplicate originals in his office.
 - (3) Return the other duplicate original to the

corporation or its representative. Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by the shares so cancelled. Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Act.

Section 23-2-111 Cancellation of Other Reacquired Shares

A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (A) The name of the corporation.
- (B) The number of reacquired shares cancelled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption.
- (C) The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation.
- (D) The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation. Duplicate originals of such statement shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:
 - (1) Endorse on each of such duplicate originals the word "File" and the month, day and year of the filing thereof.
 - (2) File one of such duplicate originals in his office.
 - (3) Return the other duplicate original to the corporation or its representative. Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so

cancelled, and the shares so cancelled shall be restored to the status of authorized but unissued shares. Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Act.

Section 23-2-112 Reduction of Stated Capital in Certain Cases

A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

- (A) The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.
- (B) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders.
- (C) At such meeting a vote of the shareholder entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- (1) The name of the corporation.
- (2) A copy of the resolution of the shareholders approving such reduction, and the date of its adoption.

- (3) The number of shares outstanding, and the number of shares entitled to vote thereon.
- (4) The number of shares voted for and against such reduction, respectively.
- (5) A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction. Duplicate originals of such statement shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (a) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (b) File one of such duplicate originals in his office.
- (c) Return the other duplicate original to the corporation or its representative. Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth. No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

Section 23-2-113 Special Provisions Relating to Surplus and Reserves

The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus. The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus. A corporation may, by resolution of its

board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this Act.

SECTION TWO SUBSTANTIVE PROVISIONS

Section 23-2-201 Purposes

Corporation may be organized under this Act for any lawful purpose or purposes, except for the purpose of banking insurance, or the rendering of professional personal services for which a license is required.

Section 23-2-202 General Powers

Each corporation shall have power:

- (A) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
- (B) To sue and be sued, complain and defend, in its corporate name.
- (C) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
- (D) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated, provided, that title to any real property acquired by such corporation within the exterior boundaries of the Citizen Potawatomi Nation shall be taken in the name of the United States of America in trust for the Citizen Potawatomi Nation. Such acquisition shall be made with the prior notice to the Business Committee. At the time of such acquisition, the Citizen Potawatomi Na-

tion shall lease such real property to the Corporation for business purposes for a period of twenty-five (25) years with an option to renew such lease for an additional period of twenty-five (25) years for such other maximum period as may be authorized by federal law. The consideration received for such lease shall be the transfer of title to the Tribe. The consideration for exercising the option for the additional twenty-five (25) year term shall be One Dollar (\$1.00). In the alternative, or in addition to such leasehold, the corporation may receive at its request an assignment from the tribe of the right to the use of such land which assignment may be perpetual and shall carry the power to sell, mortgage, convey, pledge, lease, exchange, transfer, or otherwise dispose of such assignment pursuant to tribal laws. The rights created by such assignment shall be enforceable in the Tribal Court against the tribe notwithstanding the defense of sovereign immunity, and the assignment shall be considered a contract and property right which may not be abridged by the tribe without just compensation.

- (E) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
- (F) To lend money and use its credit to assist its employees.
- (G) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with shares or other interests in, or obligations of other domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.
- (H) To make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgages or pledge of all or any of its property, franchises or investments.
- (I) To conduct its business, carry on its operations

and have offices and exercise the powers granted by this Act, within or without this jurisdiction.

- (J) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
- (K) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.
- (L) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of the Citizen Potawatomi Nation for the administration and regulation of the affairs of the corporation.
- (M) To make donations for the public welfare or for charitable, scientific or education purposes.
- (N) To transact any lawful business which the board of directors shall find will be in aid of governmental policy.
- (O) To pay pensions and establish pension plans, pension trusts, profit sharing plans, stock bonus plans, stock option plans and other incentive plans for any or all of its directors, officers and employees.
- (P) To be a promoter, partner, members, associate, or manager of any partnership, joint venture, trust or other enterprise.
- (Q) To have and exercise all powers necessary or convenient to effect its purpose.

Section 23-2-203 Indemnification of Officers, Directors, Employees and Agents

- (A) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection

with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

- (B) A corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation. Partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnify for such expenses which such court shall deem proper.
- (C) To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action,

suit or proceeding referred to in subsections (A) or (B), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys fees) actually and reasonably incurred by him in connection (therewith).

(D) Any indemnification under subsections (A) or (B) (unless ordered by a court) shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsections (A) or (B). Such determination shall be made:

- (1) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or
- (2) If such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs by independent legal counsel in a written opinion, or
- (3) By the shareholders.

(E) Expenses (including attorneys fees) incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in subsection (D) upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

(F) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of shareholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(G) A corporation shall have power to purchase and maintain insurance on behalf of any person who

is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

Section 23-2-204 Right of Corporation to Acquire and Dispose of Its Own Shares

A corporation shall have the right to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of unreserved and unrestricted earned surplus available therefore, and, if the articles of incorporation so permit or with the affirmative vote of the holders of a majority of all shares entitled to vote thereon, to the extent of unreserved and unrestricted capital surplus available therefore.

To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed to that extent.

Notwithstanding the foregoing limitation, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- (A) Eliminating fractional shares.
- (B) Collecting or compromising indebtedness to the corporation.
- (C) Paying dissenting shareholders entitled to payment for their shares under the provisions of this Act.
- (D) Effecting, subject to the other provisions of this Act, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price. No purchase of or payment for its own shares shall be made at a time when the corporation is insolvent or when such purchase or payment would make it insolvent.

Section 23-2-205 Defense of Ultra Vires

No act of a corporation and no conveyance or transfer

of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

- (A) In a proceeding by a shareholder against the corporation to enjoin the doing of any act or the transfer of real or personal property by or to the corporation. If the unauthorized act or transfer sought to be enjoined is being, or is to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
- (B) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders, in a representative suit, against the incumbent or former officers or directors of the corporation.
- (C) In a proceeding by the Prosecutor as provided in this Act, to dissolve, the corporation, or in a proceeding by the Prosecutor to enjoin the corporation from the transaction of unauthorized business.

Section 23-2-206 Corporate Names

The corporate name:

- (A) Shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or shall contain an abbreviation of one of such words.
- (B) Shall not contain any word or phrases which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
- (C) Shall not be the same as, or deceptively similar to, the name of any domestic corporation exist-

ing under the laws of this Tribe or any foreign corporation authorized to transact business in this jurisdiction, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its corporate name as provided in this Act, except that this provision shall not apply if the applicant files with the Secretary either of the following:

- (1) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar name to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name, or
 - (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this jurisdiction.
- (D) Shall not be the same as, or deceptively similar to, the name of any corporation organized, domesticated, or reserved under the laws of the State of Oklahoma subject to the exceptions (1) and (2) of subparagraph (C) of this Section.

A corporation with which another corporation domestic or foreign, is merged, or which is formed by the reorganization or consolidation of one or more domestic or foreign corporations or upon a sale, lease or other disposition to or exchange with, a domestic corporation of all or substantially all the assets of another corporation domestic or foreign, including its name, may have the same name as that used in this jurisdiction by any of such corporations if such other corporation was organized under the laws of, or is authorized to transact business in this jurisdiction.

Section 23-2-207 Reserved Name

The exclusive right to the use of a corporate name may be reserved by:

- (A) Any person intending to organize a corporation under this Act.
- (B) Any domestic corporation intending to change its name.
- (C) Any foreign corporation intending to make application for a certificate of authority to transact business in this jurisdiction.
- (D) Any foreign corporation authorized to transact

business in this jurisdiction and intending to change its name.

- (E) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this jurisdiction.

The reservation shall be made by filing with the Secretary an application to reserve a specified corporate name, executed by the applicant. If the Secretary finds that the name is available for corporate use, he shall reserve the name for the exclusive use of the applicant for a period of one hundred and twenty days. The right to the exclusive use of a specified corporate name so reserved may be transferred to any person or corporation by filing in the office of the Secretary a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

Section 23-2-208 Registered Name

Any corporation organized and existing under the laws of any state, Tribe, or territory of the United States may register its corporate name under this Act, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Citizen Band Potawatomi Tribe, or the name of any foreign corporation authorized to transact business in this jurisdiction, or any corporate name reserved or registered under this Act.

Such registration shall be made by:

- (A) Filing with the Secretary:
- (1) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation; the state, Tribe, or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engages, and,
 - (2) A certificate setting forth that such corporation is in good standing under the laws of the state, Tribe, or territory wherein it is organized, executed by the Secretary of State of such state, Tribe, or territory or by such other official as may have custody of the records pertaining to corporations, and,
- (B) Paying to the Secretary a registration fee in the amount of Five Dollars (\$5.00), for each

month, or fraction thereof, between the date of filing such application and December 31st of the calendar year in which such application is filed. Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

Section 23-2-209 Renewal of Registered Name

A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of Twenty Five Dollars (\$25.00).

A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year.

Section 23-3-210 Registered Office and Registered Agent

Each corporation shall have and continuously maintain within the Citizen Potawatomi Nation:

- (A) A registered office which may be, but need not be, the same as its place of business.
- (B) A registered agent, which agent may be either an individual resident of this reservation whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to transact business in this jurisdiction having a business office identical with such registered office.

Section 23-3-211 Change of Registered Office or Registered Agent

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary a statement setting forth:

- (A) The name of the corporation.
- (B) The address of its then registered office.
- (C) If the address of its registered office is to be changed, the address to which the registered office is to be changed.
- (D) The name of its then registered agent.
- (E) If its registered agent is to be changed, the name and address of its successor registered agent.
- (F) That the address of its registered office and the

address of the business office of its registered agent, as changed, will be identical.

- (G) That such change was authorized by resolution duly adopted by its board of directors. Such statement shall be executed by the corporation by its president, or vice president, and verified by him, and delivered to the Secretary. If the Secretary finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Secretary. If a registered agent changes his or its business address to another place within the reservation, he or it may change such address and the address of the registered office of the registered office of any corporation of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (E) or (G) and must recite that a copy of the statement has been mailed to the corporation.

Section 23-2-212 Service of Process

The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Whenever a corporation shall fail to appoint or maintain a registered agent within the reservation, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the Secretary shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk or other tribal employee having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary, he shall immediately cause one of the copies

thereof addressed to the corporation at its registered office. Any service so had on the Secretary shall be returnable in not less than thirty days. The Secretary shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Section 23-3-213 Authorized Shares

Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the share of any class to the extent not inconsistent with the provisions of this Act. Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

- (A) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles or incorporation for the redemption thereof.
- (B) Entitling the holders thereof to cumulative, non-cumulative or partially cumulative dividends.
- (C) Having preference over any other class or classes of shares as to the payment of dividends.
- (D) Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation.
- (E) Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares with-

out par value are to be converted or the amount of such deficiency is transferred from surplus to stated capital.

Section 23-2-214 Issuance of Shares of Preferred or Special Classes in Series

If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as the following relative rights and preferences, as to which there may be variations between different series:

- (A) The rate of dividend.
- (B) Whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption.
- (C) The amount payable upon shares in the event of voluntary and involuntary liquidation.
- (D) Sinking fund provisions, if any, for the redemption or purchase of shares.
- (E) The terms and conditions, if any, on which shares may be converted.
- (F) Voting rights if any.

If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation. Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the

corporation shall file in the office of the Secretary a statement setting forth:

- (A) The name of the corporation.
- (B) A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof.
- (C) The date of adoption of such resolution.
- (D) That such resolution was duly adopted by the board of directors.

Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary and verified by one of the officers signing such statement, and shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all franchise taxes and fees have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.
- (B) File one of such duplicate originals in his office.
- (C) Return the other duplicate original to this corporation or its representative.

Upon the filing of such statement by the Secretary, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

Section 23-2-215 Subscriptions for Shares

A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription. Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The by-laws may

prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefore. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

Section 23-2-216 Consideration for Shares

Shares having a par value may be issued for such consideration expressed in dollars not less than the par value thereof, as shall be fixed from time to time by the board of directors. Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon. Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors. That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares. In the event of the issuance of shares upon the conversion or exchange of indebtedness or shares,

- (A) The principal sum of, and accrued interest on, the indebtedness so exchanged or converted or the stated capital then represented by the shares so exchanged or converted and
- (B) That part of surplus, if any transferred to stated capital upon the issuance of shares for the shares so exchanged or converted and
- (C) Any additional consideration paid to the corporation upon the issuance of shares for the indebtedness or shares so exchanged or converted.

Section 23-2-217 Payment for Shares

The consideration for the issuance of shares may be paid, in whole or in part, in cash, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation such shares shall be deemed to be fully paid and non-assessable. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of a corporation. In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders as the case may be as to the value of the consideration received for shares shall be conclusive.

Section 23-2-218 Stock Rights and Options

Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to directors, officers or employees as such of the corporation or of any subsidiary thereof, and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan approved Or ratified by such a vote of shareholders. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

Section 23-2-219 Determination of Amount of Stated Capital

In case of the issuance by a corporation of shares having a par value, the consideration received therefore shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such

consideration shall constitute capital surplus. In case of the issuance by a corporation of shares without par value, the entire consideration received therefore shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus any portion of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the allocation received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference. If shares have been or shall be issued by a corporation in merger or consolidation or in acquisition of all or substantially all of the outstanding shares or of the property and assets of another corporation, whether domestic or foreign, any amount that would otherwise constitute capital surplus under the foregoing provisions of this section may instead be allocated to earned surplus by the board of directors of the issuing corporation except that its aggregate earned surplus shall not exceed the sum of the earned surpluses as defined in this Act of the issuing corporation and of all other corporations, domestic or foreign, that were merged or consolidated or of which the shares or assets were acquired. The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

**Section 23-2-220 Expenses of Organization
Reorganization and Financing**

The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

Section 23-2-221 Certificates Representing Shares

The shares of a corporation shall be represented by certificates signed by the president or a vice president

and the secretary or an assistant secretary of the corporation, or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations and relative rights of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares shall state upon the face thereof:

- (A) That the corporation is organized under the laws of the Citizen Potawatomi Nation.
- (B) The name of the person to whom issued.
- (C) The number and class of shares, and the designation of the series, if any, which such certificate represents.
- (D) The par value of each share represented by such certificate, or a statement that the shares are without par value. No certificate shall be issued for any share until such share is fully paid.

Section 23-2-222 Fractional Shares

A corporation may:

- (A) Issue fractions of a share,
- (B) Arrange for the disposition of fractional interests by those entitled thereto,
- (C) Pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or
- (D) Issue scrip in registered or bearer form which shall entitle the holder to receive a certificate

for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of the scrip, or subject to any other conditions which the board of directors may deem advisable.

Section 23-2-223 Liability of Subscribers and Shareholders

A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued, or were to be issued. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration. An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable. No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

Section 23-2-224 Shareholder's Preemptive Rights

The shareholders of a corporation shall have no preemptive right to acquire unissued or treasury shares of the corporation, or securities of the corporation convertible into or carrying a right to subscribe to or acquire shares, except to the extent, if any, that such right is provided in the articles of incorporation.

Section 23-2-225 By-Laws

The initial by-laws of a corporation shall be adopted by its board of directors. The power to alter, amend

or repeal the by-laws or adopt new by-laws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The by-laws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

The corporate by-laws, and any alteration, amendments, or repeal thereof, shall be filed in duplicate with the Secretary who shall, upon payment of the filing fee, endorse thereon the word "Filed" and the month, day, and year of the filing thereof. The Secretary shall file one of the duplicate originals in his office and return the other duplicate original to the corporation or its representative. The by-laws, and any alteration, amendment, or repeal thereof shall be effective from and after the date of filing unless a later effective date is conspicuously and expressly stated in the instrument filed.

Section 23-2-226 Meetings of Shareholders

Meetings of shareholders may be held at such place within or without this jurisdiction as may be stated in or fixed in accordance with the by-laws. If no other place is stated or so fixed, meetings shall be held at the registered office of the corporation. An annual meeting of the shareholders shall be held at such time as may be stated in or fixed in accordance with the by-laws. If the annual meeting is not held within any thirteen month period the Tribal Court may, on the application of any shareholder, summarily order a meeting to be held. A special meeting of the shareholders may be called by the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other persons as may be authorized in the articles of incorporation or the by-laws.

Section 23-2-227 Notice of Shareholders' Meetings

Written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock

transfer books of the corporation, with postage thereon prepaid.

Section 23-2-228 Closing of Transfer Books and Fixing Record Date

For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any meeting of or any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty (50) days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the by-laws, or in the absence of an applicable by-law the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty (50) days and, in case of a meeting of shareholders, not less than ten (10) days prior to the date on which particular action, requiring such determination of shareholders, is to be taken. If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section such determination shall apply to any adjournment thereof.

Section 23-2-229 Voting Record

The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete record of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each. Such record shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof. Failure to comply with the requirements of this section shall not affect the validity of any action taken

at such meeting. An officer or agent having charge of the stock transfer books who shall fail to prepare the record of shareholders or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

Section 23-2-230 Quorum of Shareholders

Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders but in no even shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this Act or the articles of incorporation or by-laws.

Section 23-2-231 Voting of Shares

Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except as may be otherwise provided in the articles of incorporation. If the articles of incorporation provide for more or less than one vote for any share, on any matter, every reference in this Act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast. Neither treasury shares, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time. A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

Unless the articles of incorporation otherwise provide, at each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by the distributing such votes on the same principle among any number

of such candidates. Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the by-laws of such other corporation may prescribe or, in the absence of such provision, as the board of directors of such other corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him either in person or by proxy, but no trustee shall be entitled to vote shares held by him without transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefore, such shares shall not be entitled to vote on any matter and' shall not be deemed to be outstanding shares.

Section 23-2-232 Voting Trusts and Agreements Among Shareholders

Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares in respect of which the voting trust certificates held by each are

issued, and shall deposit a copy of such record with the corporation at its registered office. The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose. Agreements among shareholders regarding the voting of their shares shall be valid and enforceable in accordance with their terms. Such agreements shall not be subject to the provisions of this section regarding voting trusts.

Section 23-2-233 Board of Directors

The business and affairs of a corporation shall be managed by a board of directors except as may be otherwise provided in the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this Act shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this jurisdiction or the reservation or shareholders of the corporation unless the articles of incorporation or by-laws so require. The articles of incorporation or by-laws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

Section 23-2-234 Number and Election of Directors

The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided in. the articles of incorporation or the by-laws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the by-laws but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a by-law providing for the number of directors, the number shall be the same as that provided for the articles of incorporation. The names and addresses of the members

of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting except in case of the classification of directors as permitted by this Act. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

Section 23-2-235 Classification of Directors

When the board of directors shall consist of nine or more members in lieu of election the whole number of directors annually, the articles of incorporation may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible. The term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

Section 23-2-236 Vacancies

Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

Section 23-2-237 Removal of Directors

At a meeting of shareholders called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire board of directors may be removed, without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. In the case of

a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Section 23-2-238 Quorum of Directors

A majority of the number of directors fixed by or in the manner provided in the by-laws or in the absence of a by-law fixing or providing for the number of directors, then of the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the by-laws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the by-laws.

Section 23-2-239 Director Conflicts of Interest

No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association or entity in which one or more of its directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction or because his or their votes are counted for such purpose, if:

- (A) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors; or
- (B) The fact of such relationship or interest is disclosed or known to the shareholders entitled to

vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or

- (C) The contract or transaction is fair and reasonable to the corporation.

Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies such contract or transaction.

Section 23-2-240 Executive and Other Committees

If the articles of incorporation or the by-laws so provide, the board of directors, by resolution and adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the by-laws of the corporation, shall have and may exercise all the authority of the board of directors, but no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, adopting a plan of merger or consolidation, recommending to the shareholders the sale, lease, exchange or other disposition of all or substantially all the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, or amending the by-laws of the corporation. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

Section 23-2-241 Place and Notice of Directors Meetings, Committee Meetings

Meetings of the board of directors, regular or special may be held either within or without this jurisdiction. Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the by-laws. Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the by-laws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of

any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated, thereby need be specified in the notice of waiver of notice of such meeting unless required by the by-laws.

Except as may be otherwise restricted by the articles of incorporation or by-laws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee designated thereby by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

Section 23-2-242 Action by Directors Without a Meeting

Unless otherwise provided by the articles of incorporation or by-laws, any action required by this Act to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent shall have the same effect as a unanimous vote.

Section 23-2-243 Dividends

The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restriction contained in the articles of incorporation, subject to the following provisions:

- (A) Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, or out of the unreserved and unrestricted net earnings of the current fiscal year and the next preceding fiscal year taken as a single period, except as otherwise provided in this section.
- (B) If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves,

but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(C) Dividends may be declared and paid in its own treasury shares.

(D) Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

(1) If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend.

(2) If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof.

(E) No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made. A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

Section 23-2-244 Distributions from Capital Surplus

The board of directors of a corporation may, from time to time, distribute to its shareholders out of capital surplus of the corporation a portion of its assets, in cash or property, subject to the following provisions:

(A) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(B) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(C) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(D) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of involuntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(E) Each such distribution, when made, shall be identified as a distribution from capital surplus and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof. The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution when made, shall be identified as a payment of cumulative dividends out of capital surplus.

Section 23-2-245 Loans to Employees and Directors

A corporation shall not lend money to or use its corporation to assist its directors without authorization in the particular case by its shareholders, but may lend money to and use its credit to assist any employee of the corporation or of a subsidiary, including any such employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

Section 23-2-246 Liability of Directors in Certain Cases

In addition to any other liabilities imposed by law upon directors of a corporation:

- (A) Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Act or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Act or the restrictions in the articles of incorporation.
- (B) Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefore without a violation of the provisions of this Act.
- (C) The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations and liabilities of the corporation are to thereafter paid and discharged. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted

in favor of such action. A director shall not be liable under (A), (B), or (C) of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value. Any director against whom a claim be asserted under or pursuant to this section for the payment of dividend or other distribution of assets of a corporation and who shall be held liable thereon; shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this Act, in proportion to the amount received by them. Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

Section 23-2-247 Provisions Relating to Actions by Shareholders

No action shall be brought in this jurisdiction by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefore at the time of the transaction of which he complains, or his shares of voting trust certificate thereafter devolved upon him by operation of law from a person who was a holder of record at such time. In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefore, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

In any action instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding

shares of any class of such corporation or of voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause.

Section 23-2-248 Officers

The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the by-laws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the by-laws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the by-laws. Any two or more offices may be held by the same person, except the offices of president and secretary. All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the by-laws, or as may be determined by resolution of the board of directors not inconsistent with the by-laws.

Section 23-2-249 Removal of Officers

Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

Section 23-2-250 Books and Records

Each corporation shall keep correct and complete books

and records of account and shall keep minutes of the proceedings of its shareholders and board of directors and shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each. Any books, records and minutes may be in written form or in any other form capable of being converted into written form within a reasonable time. Any person who shall have been a holder of record of shares or of voting trust certificates therefore at least six months immediately preceding his demand or shall be the holder of record of, or the holder of record of voting trust certificates for, at least five percent of all the outstanding shares of the corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose its relevant books and records of accounts, minutes, and record of shareholders and to make extracts there from. Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder or holder of voting trust certificates, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder or holder of voting trust certificates in a penalty of ten percent of the value of the shares owned by such shareholder, or in respect of which such voting shareholder or in respect of which such voting trust certificates are issued, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefore has within two years sold or offered for sale any list of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders or of holders of voting trust certificates for any such purpose or has improperly used any information secured through any prior examination of the books and records of account or minutes or record of shareholders or of holders of voting trust certificates for shares of such corporation or any other corporation or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction. upon proof by a shareholder or holder of voting trust certificates or proper purpose, irrespective of the period of time during which such shareholder or holder of voting trust certificates

shall have been a shareholder of record or a holder of record of voting trust certificates and irrespective of the number of shares held by him or represented by voting trust certificates held by him to compel the production for examination by such shareholder or holder of voting trust certificates of the books and records of account, minutes and record of shareholders of a corporation. Upon the written request of any shareholder or holder of voting trust certificates for shares of a corporation the corporation shall mail to such shareholder or holder of voting trust certificates its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

SECTION THREE MERGER AND CONSOLIDATION

Section 23-2-301 Procedure for Merger

Any two or more domestic corporations may merge into one of such corporation pursuant to a plan of a merger approved in the manner provided in this Act. The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

- (A) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (B) The terms and conditions of the proposed merger.
- (C) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.
- (D) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger deemed necessary or desirable.

Section 23-2-302 Procedure for Consolidation

Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act. The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

- (A) The names of the corporations proposing to consolidate, and the name of the new corporation

into which they propose to consolidate, which is hereinafter designated as the new corporation.

- (B) The terms and conditions of the proposed consolidation.
- (C) The manner and basis of converting the shares of each corporation into shares, obligations or other securities of the new corporation or of any corporation or, in whole or in part, into cash or other property.
- (D) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act
- (E) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

Section 23-2-303 Approval by Shareholders

The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than twenty days before such meeting, in the matter provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger or consolidation. A copy or a summary of the plan of merger or consolidation, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan of merger, or consolidation shall be approved upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if

contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class. After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefore, if any, set forth in the plan of merger or consolidation.

Section 23-2-304 Articles of Merger or Consolidation

Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

- (A) The plan of merger or the plan of consolidation.
- (B) As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
- (C) As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class the number of shares of each class voted for and against such plan, respectively. Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the Secretary. If the Secretary finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:
 - (1) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
 - (2) File one of such duplicate originals in his office.
 - (3) Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original. The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the Secretary, shall be returned to the surviving or new corporation, as the case may be, or its representative.

Section 23-2-305 Merger of Subsidiary Corporation

Any corporation owning at least ninety percent of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

- (A) The name of the subsidiary corporation and the name of the corporation owning at least ninety percent of its shares; which is hereinafter designated as the surviving corporation.
- (B) The manner and basis of converting the shares of the subsidiary corporation into shares, obligations or other securities of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property. A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

- (1) The plan of merger;
- (2) The number of outstanding shares of each class of the: subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and
- (3) The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares duplicate originals of the articles of merger shall be delivered to the Secretary. If the Secretary finds that such articles conform to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office, and

- (C) Issue a certificate of merger to which he shall affix the other duplicate original. The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the Secretary, shall be returned to the surviving corporation or its representative.

Section 23-2-306 Effect of Merger of Consolidation

Upon the issuance of the certificate of merger or the certificate of consolidation by the Secretary, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

- (A) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.
- (B) The separate existence of all corporations, parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.
- (C) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.
- (D) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choices in action, and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.
- (E) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stat-

ed in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the original articles of incorporation of the new corporation.

Section 23-2-307 Merger or Consolidation of Domestic and Foreign Corporations

One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state, tribe, or country under which each such foreign corporation is organized:

- (A) Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.
- (B) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state, tribe, or country other than the Potawatomi Tribe of Oklahoma, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this jurisdiction, and in every case it shall file with the Secretary of this Tribe:
 - (1) An agreement that it may be served with process in this jurisdiction in any proceeding for the enforcement of any obligations of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;
 - (2) An irrevocable appointment of the Secretary of this Tribe as its agent to accept service of process in any proceeding; and
 - (3) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders. The effect of such merger or consolidation shall be the same as in the

case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this jurisdiction. If the surviving or new corporation is to be governed by the laws of any state, tribe, or country other than the Potawatomi Tribe of Oklahoma, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state, tribe, or country provide otherwise. At any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefore, if any, set forth in the plan of merger or consolidation.

SECTION FOUR SALE OF ASSETS

Section 23-2-401 Sale of Assets in Regular Course of Business and Mortgage or Pledge of Assets

The sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of, its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in any such case no authorization or consent of the shareholders shall be required.

Section 23-2-402 Sale of Assets Other Than In Regular Course of Business

A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation; if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of cash or other property, including shares, obligations or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

- (A) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission

thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

- (B) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, in the manner provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.
- (C) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefore. Such authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.
- (D) After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

Section 23-2-403 Right of Shareholder to Dissent

Any shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

- (A) Any plan of merger or consolidation to which the corporation is a party; or
- (B) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale. A shareholder may dissent as to less

than all of the shares registered in his name. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

This section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger. Nor shall it apply to the holders of shares of any class or series if the shares of such class or series were registered on a national securities exchange on the date fixed to determine the shareholders entitled to vote at the meeting of shareholders at which a plan of merger or consolidation or a proposed sale or exchange of property and assets is to be acted upon unless the articles of incorporation of the corporation shall otherwise provide.

Section 23-2-404 Rights of Dissenting Shareholders

Any shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such shareholder may, within ten days after the date on which the vote was taken or if a corporation is to be merged without a vote of its shareholders into another corporation, any of its shareholders may, within fifteen days after the plan of such merger shall have been mailed to such shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such shareholders shares, and, if such proposed corporate action is effected, such corporation shall pay to such shareholder, upon surrender of the certificate or certificates representing such shares, in the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any shareholder failing to make demand within the applicable ten-day or fifteen-day period shall be bound by the terms of the proposed corporate action. Any shareholder making such demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a shareholder.

No such demand may be withdrawn unless the

corporation shall consent thereto. If, however, such demand shall be withdrawn upon consent, or if the proposed corporate action shall be abandoned or rescinded or the shareholders shall revoke the authority to effect such action, or if, in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger, or if no demand or petition for the determination of fair value by the court shall have been made or filed within the time provided in this section, or if the court shall determine that such shareholder is not entitled to the relief provided by this section, then the right of such shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim. Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided, and shall make a written offer to each such shareholder to pay for such shares at a specified price deemed by such corporation to be fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months period ended on the date of such balance sheet. If within thirty days after the date on which such corporate action was effected the fair value of such shares is agreed upon between any such dissenting shareholder and the corporation, payment therefore shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the certificate or certificates representing such shares. Upon payment of' the agreed value the dissenting shareholder shall cease to have any interest in such shares.

If within such period of thirty days a dissenting shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in the Tribal Court requesting that the fair value of such shares be found and determined. If the corporation

shall fail to institute the proceeding as herein provided, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action against their shares quasi in rem. A copy of the petition shall be served on each dissenting shareholder who is a resident of this jurisdiction and shall be served by registered or certified mail on each dissenting shareholder who is a non-resident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares. The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment. The costs and expense of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for the shares if the court shall find that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefore, or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding. Within twenty days after demanding payment for his shares,

each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless the court, for good and sufficient cause shown, shall otherwise direct.

If shares represented by a certificate on which notation has been so made shall be transferred, each new certificate issued therefore shall bear similar notation, together with the name of the original dissenting holder of such shares, and a transferee of such shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof. Shares acquired by a corporation as in the case of other treasury shares, except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.

SECTION FIVE DISSOLUTION

Section 23-2-501 Voluntary Dissolution by Incorporators

A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time in the following manner:

- (A) Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:
 - (1) The name of the corporation.
 - (2) The date of issuance of its certificate of incorporation.
 - (3) That none of its shares has been issued.
 - (4) That the corporation has not commenced business.
 - (5) That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto.
 - (6) That no debts of the corporation remain unpaid.
 - (7) That a majority of the incorporators elect that the corporation be dissolved.

(B) Duplicate originals of the articles of dissolution shall be delivered to the Secretary. If the Secretary finds that the articles of dissolution conform to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed, and the month, day and year of the filing thereof.
- (2) File one of such duplicate originals in his office.
- (3) Issue a certificate of dissolution to which he shall affix the other duplicate original. The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the Secretary, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the Secretary, the existence of the corporation shall cease.

Section 23-2-502 Voluntary Dissolution by Consent of Shareholders

A corporation may be voluntarily dissolved by the written consent of all of its shareholders. Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its, president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall be set forth:

- (A) The name of the corporation.
- (B) The names and respective addresses of its officers.
- (C) The names and respective addresses of its directors.
- (D) A copy of the written consent signed by all shareholders of the corporation.
- (E) A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

Section 23-2-503 Voluntary Dissolution by Act of Corporation

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

- (A) The board of directors shall adopt a resolution recommending that the corporation be dis-

solved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

- (B) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided by this Act for the giving of notice of meetings of shareholders, and whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation.
- (C) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon.
- (D) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:
 - (1) The name of the corporation.
 - (2) The names and respective addresses of its officers.
 - (3) The names and respective addresses of its directors.
 - (4) A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation.
 - (5) The number of the shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class.
 - (6) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such

class voted for and against the resolution, respectively.

Section 23-2-504 Filing of Statement of Intent to Dissolve

Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office.
- (C) Return the other duplicate original to the corporation or its representative.

Section 23-2-505 Effect of Statement of Intent to Dissolve

Upon the filing by the Secretary of State of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the Secretary or until a decree dissolving the corporation has been entered by the Tribal Court as in this Act provided.

Section 23-2-506 Procedure After Filing of Statement of Intent to Dissolve

After the filing by the Secretary of a statement of intent to dissolve;

- (A) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.
- (B) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.
- (C) The corporation, at any time during the liquidation of its business and affairs, may make

application to the court to have the liquidation continued under the supervision of the court as provided in this Act.

Section 23-2-507 Revocation of Voluntary Dissolution Proceedings by Consent of Shareholders

By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceeding, shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (A) The name of the corporation.
- (B) The names and respective addresses of its officers.
- (C) The names and respective addresses of its directors.
- (D) A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings.
- (E) That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

Section 23-2-508 Revocation of Voluntary Dissolution Proceedings by Act of Corporation

By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the Secretary, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

- (A) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.
- (B) Written notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking this voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in

this Act for the giving of notice of special meetings of shareholders.

(C) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon.

(D) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (1) The name of the corporation.
- (2) The names and respective addresses of its officers.
- (3) The names and respective addresses of its directors.
- (4) A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings.
- (5) The number of shares outstanding.
- (6) The number of shares voted for and against the resolution, respectively.

Section 23-2-509 Filing of Statement of Revocation of Voluntary Dissolution Proceedings

Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by an act of the corporation, shall be delivered to the Secretary. If the Secretary finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in the office.
- (C) Return the other duplicate original to the corporation or its representative.

Section 23-2-510 Effect of Statement of Revocation of Voluntary Dissolution Proceedings

Upon the filing by the Secretary of a statement of revocation of voluntary dissolution proceedings,

whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

Section 23-2-511 Articles of Dissolution

If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefore, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

- (A) The name of the corporation.
- (B) That the Secretary has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed.
- (C) That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefore.
- (D) That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests.
- (E) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

Section 23-2-512 Filing of Articles of Dissolution

Duplicate originals of such articles of dissolution shall be delivered to the Secretary. If the Secretary finds that such articles of dissolution conform to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office.
- (C) Issue a certificate of dissolution to which he shall affix the other duplicate original. The certificate of dissolution, together with the du-

plicate original of the articles of dissolution affixed thereto by the Secretary, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this Act.

Section 23-2-513 Involuntary Dissolution

A corporation may be dissolved involuntarily by a decree of the court in an action filed by the Tribal Prosecutor when it is established that:

- (A) The corporation has failed to file its annual report within time required by this Act or has failed to pay its franchise tax on or before the first day of August of the year in which such franchise tax becomes due or payable; or
- (B) The corporation procured its articles of incorporation through fraud; or
- (C) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
- (D) The corporation has failed for thirty days to appoint and maintain a registered agent within the reservation; or
- (E) The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the Secretary a statement of such change.

Section 23-2-514 Notification to Prosecutor

The secretary, on or before the last day of December of each year, shall certify to the Prosecutor, the names of all Corporations which have failed to file their annual reports or to pay franchise taxes in accordance with the provisions of this Act, together with the facts pertinent thereto. He shall also certify from time to time, the names of all corporations which have given other cause for dissolution as provided in this Act together with the facts pertinent thereto. Whenever the Secretary shall certify the name of a corporation to the Prosecutor as having given any cause for dissolution, the Secretary shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the Prosecutor shall file an action in the name of the Tribe against such corporation for its dissolution. Every such certificate from the Secretary to the Prosecutor pertaining to the

failure of a corporation to file an annual report or pay a franchise tax shall be taken and received in all courts as prima facie evidence of the facts therein stated.

If, before action is filed, the corporation shall file its annual report or pay its franchise tax, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the Secretary the required statement of change of registered office or registered agent such fact shall be forthwith certified by the Secretary to the Prosecutor and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report or pay its franchise tax, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the Secretary, the required statement of change of registered office or registered agent, and shall pay the costs of such action, the action for such cause shall abate.

Section 23-2-515 Venue and Process

Every action for the involuntary dissolution of a corporation shall be commenced by the Prosecutor in the Tribal court. Summons shall issue and be served as in other civil actions. If process is returned not found, the Prosecutor shall cause publication to be made as in other civil cases in some newspaper published in Kay County or Osage County, State of Oklahoma, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The Prosecutor may include in one notice the names of any number of corporations against which actions are then pending in the same court. The Prosecutor shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Prosecutor of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published once, and publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the publication of such notice.

Section 23-2-516 Jurisdiction of Court to Liquidate Assets and Business of Corporation

The Tribal courts shall have full power to liquidate the assets and business of a corporation;

- (A) In an action by a shareholder when it is established:

- (1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
 - (2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 - (3) That the shareholder's are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
 - (4) That the corporate assets are being misapplied or wasted.
- (B) In an action by a creditor:
- (1) When the claim of the creditor has been reduced to judgment and in execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
 - (2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.
- (C) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Act, to have its liquidation continued under the supervision of the court.
- (D) When an action has been filed, by the Prosecutor to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution. It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

Section 23-2-517 Procedure in Liquidation of Corporation by Court

In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite, which such power and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the

corporation until a full hearing can be had. After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation, by subscribers on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings. The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets. A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation the court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

Section 23-2-518 Qualifications of Receivers

A receiver shall in all cases be a natural person or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this jurisdiction, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

Section 23-2-519 Filing of Claims in Liquidation Proceedings

In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the

court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court from participating in the distribution of the assets of the corporation.

Section 23-2-520 Discontinuance of Liquidation Proceedings

The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

Section 23-2-521 Decree of Involuntary Dissolution

In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

Section 23-2-522 Filing of Decree of Dissolution

In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the Secretary for the filing thereof.

Section 23-2-523 Deposit with Tribal Treasurer of Amount Due Certain Shareholders

Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the Tribal Treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof

satisfactory to the Tribal Treasurer of his right thereto. The Tribal Treasurer shall, in such cases, open and maintain a trust account at any federal bank within this reservation or within the counties adjacent to this reservation and hold such funds in the name of the Citizen Potawatomi Nation in trust for such creditor or shareholder until payment. Bank charges shall be paid from the assets in the account.

Section 23-2-524 Survival of Remedy After Dissolution

The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the Secretary, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

**SECTION SIX
FOREIGN CORPORATIONS**

Section 23-2-601 Admission of Foreign Corporation

No foreign corporation shall have the right to transact business in this jurisdiction until it shall have procured a certificate of authority so to do from the Secretary. No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this jurisdiction any business which a corporation organized under this Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the tribe, state, or country under which such corporation is organized governing its organization and internal affairs differ from the laws of the Citizen Potawatomi Nation, and nothing in this Act contained shall be construed to

authorize the Citizen Potawatomi Nation to regulate the organization or the internal affairs of such corporation. Without excluding other activities which may not constitute transacting business in this jurisdiction of foreign corporation shall not be considered to be transacting business in this jurisdiction, for the purposes of this Act, by reason of carrying on this jurisdiction anyone or more of the following activities:

- (A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
- (B) Holding meetings of its directors and shareholders or carrying on other activities concerning its internal affairs.
- (C) Maintaining bank accounts.
- (D) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
- (E) Effecting sales through independent contractors.
- (F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without jurisdiction before becoming binding contracts.
- (G) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.
- (H) Securing or collecting debts or enforcing any rights in property securing the same.
- (I) Transacting any business in interstate, international, or intertribal commerce. When such business does not begin, end, or contain any separate transaction in this jurisdiction.
- (J) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

Section 23-2-602 Powers of Foreign Corporation

A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application

pursuant to which such certificate of authority is issued; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

Section 23-2-603 Corporate Name of Foreign Corporation

No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

- (A) Shall contain the word “corporation,” “company,” “incorporated,” or “limited,” or shall contain an abbreviation of one of such words, or such corporation shall, for use in this jurisdiction, add at the end of its name one of such words or an abbreviation thereof.
- (B) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance, or professional services prohibited to corporation by this Act.
- (C) Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of the Citizen Potawatomi Nation or any foreign corporation authorized to transact business in this jurisdiction, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its name as provided in this Act except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the Secretary anyone of the following:
 - (1) A resolution of its board of directors adopting a fictitious name for use in transacting business in this jurisdiction which fictitious name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this jurisdiction or to any name reserved or registered as provided in this Act, or
 - (2) The written consent of such other corporation or holder of a reserved or registered name to use the same or deceptively similar

name and one or more words are added to make such name distinguishable from such other name, or

- (3) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foregoing corporation to the use of such name of jurisdiction.

Section 23-2-604 Change of Name by Foreign Corporation

Whenever a foreign corporation which is authorized to transact business in this jurisdiction shall change its name to one under which a certificate of authority would not be granted to it on application therefore, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this jurisdiction until it has changed its name to a name which is available to it under the laws of this jurisdiction or has otherwise complied with the provisions of this Act.

Section 23-2-605 Application for Certificate of Authority

A foreign corporation, in order to procure a certificate of authority to transact business in this jurisdiction, shall make application therefore to the Secretary, which application shall set forth:

- (A) The name of the corporation and the state, tribe, or country under the laws of which it is incorporated.
- (B) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this jurisdiction.
- (C) The date of incorporation and the period of duration of the corporation.
- (D) The address of the principal office of the corporation in the state, tribe, or country under the laws of which it is incorporated.
- (E) The address of the proposed registered office of the corporation in this reservation, and the name of its proposed registered agent in this reservation at such address.
- (F) The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this jurisdiction.

(G) The names and respective addresses of the directors and officers of the corporation.

(H) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(I) A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

(J) A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act.

(K) An estimate expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this jurisdiction during such year, and an estimate expressed in dollars, of the gross amount of business which will be transacted by the corporation during

(L) Such additional information as may be necessary as appropriate in order to enable the Secretary to determine whether such corporation is entitled to a certificate of authority to transact business in this jurisdiction and to determine and assess the fees and franchise taxes payable as in this Act prescribed. Such application shall be made on forms prescribed and furnished by the Secretary and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such application.

Section 23-2-606 Filing of Application for Certificate of Authority

Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the Secretary, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state, tribe, or country under the laws of which it is incorporated.

If the Secretary finds that such application conforms to law, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such documents the word

“Filed,” and the month, day and year of the filing thereof.

- (B) File in his office one of such duplicate originals of the Application and the copy of the articles of incorporation and amendments thereto.
- (C) Issue a certificate of authority to transact business in this; jurisdiction to which he shall affix the other duplicate original application. The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary, shall be returned to the corporation or its representative.

Section 23-2-607 Effect of Certificate of Authority

Upon the issuance of a certificate of authority by the Secretary, the corporation shall be authorized to transact business in this jurisdiction, for those purposes set forth in its application, subject, however, to the right of the Citizen Potawatomi Nation to suspend or to revoke such authority as provided in this Act.

Section 23-2-608 Registered Office and Registered Agent of Foreign Corporation

Each foreign corporation authorized to transact business in this jurisdiction shall have and continuously maintain in this reservation:

- (A) A registered office which may be, but need not be the same as its place of business in this jurisdiction, or
- (B) A registered agent, which agent may be either an individual resident in this jurisdiction whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this jurisdiction, having a business office identical with such registered office.

Section 23-2-609 Change of Registered Office or Registered Agent of Corporation

A foreign corporation authorized to transact business in this jurisdiction may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary a statement setting forth:

- (A) The name of the corporation.
- (B) The address of its then registered office.
- (C) If the address of its then registered office be changed, the address to which the registered office is to be changed.
- (D) The name of its then registered agent.

(E) If its registered agent be changed, the name of its successor registered agent.

(F) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.

(G) That such change was authorized by resolution duly adopted by its board of directors. Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the Secretary. If the Secretary finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective. Any registered agent of foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary, who shall forthwith mail a copy thereof to the corporation at its principal office in the state, tribe, or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Secretary. If a registered agent changes his or its business address to another place within this reservation he or it may change such address and the address of the registered office of any corporation of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (E) or (G) and must recite that a copy of the statement has been mailed to the corporation.

Section 23-2-610 Service of Process on Foreign Corporation

The registered agent so appointed by a foreign corporation authorized to transact business in this jurisdiction shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Whenever a foreign corporation authorized to transact business in this jurisdiction shall fail to appoint or maintain a registered agent in this jurisdiction, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign

corporation shall be suspended or revoked, then the Secretary shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the Secretary of any such process, notice or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the Secretary, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state, tribe, or country. Any service so had on the Secretary shall be returnable in not less than thirty days. The Secretary shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto. Nothing contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

Section 23-2-611 Amendment to Articles of Incorporation of Foreign Corporation

Whenever the articles of incorporation of a foreign corporation authorized to transact business in this jurisdiction are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the Secretary a copy of such amendment duly authenticated by the proper officer of the state, or tribe, or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this jurisdiction, nor authorize such corporation to transact business in this jurisdiction under any other name than the name set forth in its certificate of authority.

Section 23-2-612 Merger of Foreign Corporation Authorized to Transact Business in This Jurisdiction

Whenever a foreign corporation authorized to transact business in this jurisdiction shall be a party to a statutory merger permitted by the laws of the state, tribe, or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the Secretary a copy of the articles of merger duly authenticated by the proper officer of

the state, tribe, or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this jurisdiction unless the name of such corporation desires to pursue in this jurisdiction other or additional purposes than those which it is then authorized to transact in this jurisdiction.

Section 23-2-613 Amended Certificate of Authority

A foreign corporation authorized to transact business in this jurisdiction shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this jurisdiction other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefore to the Secretary. The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the Secretary, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

Section 23-2-614 Withdrawal of Foreign Corporation

A foreign corporation authorized to transact business in this jurisdiction may withdraw from this jurisdiction upon procuring from the Secretary a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the Secretary an application for withdrawal, which shall set forth:

- (A) The name of the corporation and the state, tribe, or country under the laws of which it is incorporated.
- (B) That the corporation is not transacting business in this jurisdiction.
- (C) That the corporation surrenders its authority to transact business in this jurisdiction.
- (D) That the corporation revokes the authority of its registered agent in this jurisdiction to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this jurisdiction during the time the corporation was authorized to transact business in this jurisdiction may thereafter to be made on such corporation by service thereof on the Secretary.

- (E) A post office address to which the Secretary may mail a copy of any process against the corporation that may be served on him.
- (F) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value shares, shares without par value, and series, if any, within a class, as of the date of such application.
- (G) A statement of the aggregate number of issued shares, itemized by class, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.
- (H) A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application.
- (I) Such additional information as may be necessary or appropriate in order to enable the Secretary to determine and assess any unpaid fees or franchise taxes payable by such foreign corporation as in this Act prescribed. The application for withdrawal shall be made on forms prescribed and furnished by the Secretary and shall be executed by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

Section 23-2-615 Filing of Application for Withdrawal

Duplicate originals of such application for withdrawal shall be delivered to the Secretary. If the Secretary finds that such application conforms to the provisions of this Act, he shall, when all fees and franchise taxes have been paid as in this Act prescribed:

- (A) Endorse on each of such duplicate originals the word "Filed," and the month, day and year of the filing thereof.
- (B) File one of such duplicate originals in his office.
- (C) Issue a certificate of withdrawal to which he shall affix the other duplicate original. The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the Secretary, shall be returned to the corporation or its representative. Upon the issuance of such certificate of with-

drawal, the authority of the corporation to transact business in this jurisdiction shall cease.

Section 23-2-616 Revocation of Certificate of Authority

The certificate of authority of a foreign corporation to transact business in this jurisdiction may be revoked by the Secretary upon the conditions prescribed in this section when:

- (A) The corporation has failed to file its annual report within the time required by this Act, or has failed to pay any fees, franchise taxes or penalties prescribed by this Act when they have become due and payable; or
- (B) The corporation has failed to appoint and maintain a registered agent in this reservation as required by this Act; or
- (C) The corporation has failed, after change of its registered office or registered agent, file in the office of the Secretary a statement of such change as required by this Act; or
- (D) The corporation has failed to file in the office of the Secretary any amendment to its articles of incorporation or any articles of merger within the time prescribed by this Act; or
- (E) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act. No certificate of authority of a foreign corporation shall be revoked by the Secretary unless:

- (1) He shall have given the corporation not less than sixty days notice thereof by mail addressed to its registered office in this jurisdiction, and
- (2) The corporation shall fail prior to revocation to file such annual report, or pay such fees, franchise taxes or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

Section 23-2-617 Issuance of Certificate of Revocation

Upon revoking any such certificate of authority, the Secretary shall:

- (A) Issue a certificate of revocation in duplicate.

- (B) File one of such certificate in his office.
- (C) Mail to such corporation at its registered office in this jurisdiction a not ice of such revocation accompanied by one of such certificates. Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this jurisdiction shall cease.

Section 23-2-618 Transacting Business Without Certificate of Authority

No foreign corporation transacting business in this jurisdiction without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this jurisdiction, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this jurisdiction by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this jurisdiction, until a certificate or authority shall have obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this jurisdiction, shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this jurisdiction. A foreign corporation which transacts business in this jurisdiction without a certificate or authority shall be liable to the Citizen Potawatomi Nation, for the years or parts thereof during which it transacted business in this jurisdiction without a certificate of authority, in an amount equal to all fees and franchise taxes which would have been imposed by this Act upon such corporation had it duly applied for and received a certificate of authority to transact business in this jurisdiction as required by this Act and thereafter filed all reports required by this Act, plus all penalties imposed by this Act for failure to pay such fees and franchise taxes. The Prosecutor or the Tribal Attorney shall bring proceedings to recover all amounts due the Citizen Potawatomi Nation under the provisions of this section, and to enjoin any further transaction of business by such foreign corporation within this jurisdiction until such corporation complies with the laws of the Citizen Potawatomi Nation. The Tribe shall have a first lien upon any property of a corporation which transacts business in this jurisdiction without a certificate of authority to guarantee payment of all fees, taxes, and penalties due to the Tribe, and upon the order

of the court may seize and impound any property or assets of such corporation which may be found within the Tribal jurisdiction. Upon reduction of the Tribe's claims for fees, taxes, and penalties due to judgment, the Tribe may take title to such property or assets as have been seized and impounded in full liquidation of its claims, or may execute upon such property and conduct a public sale thereof as in other execution sales under the laws of the Citizen Potawatomi Nation, provided that within ten days of the date judgment is entered such corporation may redeem and secure the release of any property so seized or impounded by paying into court the full amount of the judgment.

**SECTION SEVEN
PENALTIES**

Section 23-2-701 Penalties Imposed Upon Corporations

Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this Act shall be subject to a penalty of ten percent of the amount of the franchise tax assessed against it for the period beginning July 1 of the year in which such report should have been filed. Such penalty shall be assessed by the Secretary at the time of the assessment of the franchise tax. If the amount of the franchise tax as originally assessed against such corporation be thereafter adjusted in accordance with the provisions of this Act, the amount of the penalty shall be likewise adjusted to ten percent of the amount of the adjusted franchise tax. The amount of the franchise tax and the amount of the penalty shall be separately stated in any notice to the corporation with respect thereto. If the franchise tax assessed in accordance with the provisions of this Act shall not be paid on or before the 31st day of July, it shall be deemed to be delinquent, and there shall be added a penalty of two (2) percent for each month or part of month of August. Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this Act, any interrogatories propounded by the Secretary in accordance with the provisions of this Act, shall be deemed guilty of an offense and upon conviction thereof may be fined for each such refusal in any amount not exceeding Five Hundred Dollars (\$500.00).

Section 23-2-702 Penalties Imposed Upon Officers and Directors

- (A) Each officer and director of a corporation, do-

mestic or foreign, who fans or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him by the Secretary in accordance with the provisions of this Act, or who signs any articles, statement, report, application, or other document filed with the Secretary which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a offense and upon conviction thereof may be fined in any amount not exceeding Five Hundred Dollars (\$500.00) and imprisoned for a term of six months in the tribal jail or both.

- (B) Any person described in subsection (A) of this section who is not personally subject to the criminal jurisdiction of the Tribal Court shall be deemed to have created a public nuisance and on judgment thereof, shall be liable for a civil penalty in an amount not exceeding Five Hundred Dollars (\$500.00).
- (C) The fines and penalties imposed by subsections (A) and (B) of this section shall be personal and not subject to indemnification by the corporation.

CHAPTER EIGHT MISCELLANEOUS PROVISIONS

Section 23-2-801 Interrogatories by Secretary

The Secretary may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and, to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the Secretary and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The Secretary need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The Secretary shall certify to the Prosecutor

for such action as the Prosecutor may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Act.

Section 23-2-802 Information Disclosed by Interrogatories

Interrogatories propounded by the Secretary and the answers thereto shall not be open to public inspection nor shall the Secretary disclose any facts or information obtained there from except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal or civil proceedings or in any other action by the Potawatomi Tribe.

Section 23-2-803 Powers of Secretary

The Secretary shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

Section 23-2-804 Appeal from Secretary

If the Secretary shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this Act to be approved by the Secretary before the same shall be filed in his office, he shall, within twenty days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefore. From such disapproval such person or corporation may appeal to the Tribal Court by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Secretary; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary or direct him to take such action as the court may deem proper. If the Secretary shall revoke the certificate of authority to transact business in this jurisdiction of any foreign corporation, pursuant to the provisions of this Act, such foreign corporation may likewise appeal to the Tribal Court, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this jurisdiction and a copy of the notice or revocation given by the Secretary; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Secretary or direct him to take such action as the court may deem proper. Appeals from all final

orders and judgments entered by the Tribal Court under this section is review of any ruling or decision of the Secretary may be taken as in other civil actions.

Section 23-2-805 Certificates and Certified Copies to be Received in Evidence

All certificates issued by the Secretary in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary under the great seal of the Potawatomi Tribe, as to the existence or non-existence of the facts relating to corporations shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or non-existence of the facts therein stated.

Section 23-2-806 Forms to be Furnished by Secretary

All reports required by this act to be filed in the office of the Secretary shall be made on forms which shall be prescribed and furnished by the Secretary. Forms for all other documents to be filed in the office of the Secretary shall be furnished by the Secretary on request therefore, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

Section 23-2-807 Greater Voting Requirements

Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by the Act with respect to such action, the provisions of the articles of incorporation shall control.

Section 23-2-808 Waiver of Notice

Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of the articles of incorporation or by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 23-2-809 Action By Shareholder Without A Meeting

Any action required by this Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the

shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the Secretary under this Act.

Section 23-2-810 Unauthorized Assumption of Corporate Powers

All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

Section 23-2-811 Application to Foreign and Interstate Commerce

The provisions of this Act shall apply to commerce with foreign nations, with the United States, and with the several states only insofar as the same may be permitted under the provisions of the several Treaties and Agreements between the Citizen Potawatomi Nation and the United States.

Section 23-2-812 Reservation of Power

The Citizen Potawatomi Nation shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the Citizen Potawatomi Nation shall have power to amend, repeal or modify this Act at pleasure

Section 23-2-813 Effect of Invalidity of Part of This Act

If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.

Section 23-2-814 Consent to Tribal Court Jurisdiction

Every corporation, whether domestic or foreign, and every officer, director, stockholder, and employee of such corporation which is authorized to do business within the Tribal jurisdiction pursuant to this Act and which avails itself of the privilege of doing business within the jurisdiction of the Citizen Potawatomi Nation,

shall be conclusively deemed to have consented to the jurisdiction of the Courts of the Potawatomi Tribe.

Section 23-2-815 Securities Act of 1933

Applicable

The provisions of the United States Securities Act of 1933, as amended, 15 U.S.C. §77(A) et. seq. and all rules and regulations of the United States in regard thereto, shall apply to any securities issued by any domestic corporation created by this Act.

Section 23-2-816 Corporations Doing Business at Effective Date of This Act

Every foreign corporation doing business within the jurisdiction of the Citizen Potawatomi Nation on the effective date of this Act shall be permitted one-hundred and twenty days (120) from the effective date of this Act in which to bring themselves into compliance with this Act. During such period of one-hundred twenty (120) days, no such corporation shall be liable for any fine, penalty, seizure or impoundment of property or assets, and may not be enjoined by reason of failure to comply with this Act, provided, that if such compliance is not achieved within such time, all fines and penalties shall be figured from the effective date of this Act.

Section 23-2-817 Exemption of Public Service Utility Companies

(A) The provisions of this Act shall not apply to any public service utility company organized or domesticated pursuant to the laws of the State of Oklahoma and subject to regulation by the Corporation Commission of the State of Oklahoma when such Corporations' business activities within this jurisdiction consists exclusively of providing one or more of the following services to residents, businesses, the Tribal Government, or other persons lawfully within this jurisdiction:

- (1) Telephone, telegraph, and other consumer communications.
- (2) Electric service for consumer use.
- (3) Natural gas service for consumer use.
- (4) Water service for consumer use.
- (5) Sewage and trash removal and disposal.

(B) In order to qualify for this exemption, such foreign corporation shall file with the Secretary duplicate originals of an affidavit stating facts sufficient to inform the Secretary that such cor-

poration is entitled to the exemption created by this Section. If the Secretary finds that such corporation is entitled to this exemption, he shall:

- (1) Endorse on each affidavit the word "filed," and the month, day, and year of the filing thereof.
- (2) File in his office one duplicate original of the affidavit.
- (3) Issue a Certificate of Exemption to which he shall affix the other duplicate original affidavit. Thereafter such foreign corporation shall be entitled and authorized to conduct exclusively, those exempt business operations described in subsection (A) of this section.

(C) If such corporation wishes to also conduct non-exempt business within the jurisdiction, such corporation shall comply with all the provisions of this Act to the extent that it conducts nonexempt business within this jurisdiction.

(D) Nothing in this section contained shall be construed as preventing any public service utility company defined in subsection (A) of this section from, at its option, refusing or failing to obtain a certificate of exemption authorized by this section and electing to comply with the provisions of this Act as if no exemption were provided.

**SECTION NINE
NONPROFIT CORPORATIONS**

Section 23-2-901 Definitions

For the purpose of this Chapter, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them as follows:

- (A) "Corporation" means a nonprofit corporation formed for a purpose not involving pecuniary gain to its shareholders or members, paying no dividends or other pecuniary remuneration, directly or indirectly, to its shareholders or members as such, and having no capital stock.
- (B) "Notice" means written notification of a meeting
 - (1) stating time, place, and, in the case of a special meeting, purpose,
 - (2) properly addressed according to the last available corporate records,

- (3) sent or delivered by a duly authorized person to each director or member entitled to vote at the meeting, and
- (4) delivered or mailed not less than five (5) nor more than thirty (30) days before the meeting, excluding the day of the meeting, or a published notification of a meeting of a corporation having at least one hundred members, if its board of directors should elect to give such notification thereof in lieu of written notification, to be made by publication in a newspaper of general circulation published in the reservation two (2) successive weeks previous to the date of the meeting, stating the time, place, and, in the case of a special meeting its purpose.
- (C) “Articles” means the original articles of incorporation as amended, articles of merger, or articles of consolidation and incorporation, as the case may be.
- (D) “Bylaws” means the code adopted for the regulation or management of the internal affairs of the corporation, regardless of how designated.
- (E) “Member” means an entity, either corporate or natural, having any membership or shareholder rights in a corporation in accordance with its articles, bylaws, or both.
- (F) “Directors” means the persons vested with the general management of the affairs of the corporation, regardless of how they are designated.

Section 23-2-902 Purposes of a Nonprofit Corporation

A nonprofit corporation may be formed under this Chapter for any lawful purpose or purposes.

Section 23-2-903 Incorporators

Three or more natural persons legally competent to enter into contracts may form a nonprofit corporation under this Chapter.

Section 23-2-904 Articles of Incorporation

The articles shall be signed by each of the incorporators and acknowledged by at least three of them. The articles of the corporation organized under this Chapter shall state:

- (A) The Name of the corporation;
- (B) The purpose of the corporation;
- (C) That the corporation does not afford pecuniary gain, incidentally or otherwise, to its members;

- (D) The period of duration of corporate existence which may be perpetual;
- (E) The location, by city, town, or other community, and the name of its registered agent and registered office in this reservation;
- (F) The name and address of each incorporator;
- (G) The number of directors constituting the first board of directors, the name and address of each such director, and the tenure in office of the first directors.

The Articles of Incorporation may contain any other provision, consistent with the law of the Citizen Potawatomi Nation for regulating the business of the corporation or the conduct of the corporate affairs.

Section 23-2-905 Corporate Name

A corporation organized pursuant to this Chapter may use any corporate name authorized for use pursuant to Section 306 of this Act, provided, that it shall not be necessary for a nonprofit corporation to use the word “corporation,” “company,” “incorporated,” or “limited” or an abbreviation of one of those words in its corporate name.

Section 23-2-906 Corporate Capacity and Powers

A nonprofit corporation incorporated under this Chapter shall have general corporate capacity, and shall have and possess all of the general powers of a domestic corporation incorporated under this Act.

Section 23-2-907 Filing of Articles

The articles of incorporation shall be filed in the Office of the Secretary. If the articles conform to law, and upon the payment of a fee of Ten Dollars (\$10.00), the Secretary shall record the articles and issue and record a certificate of incorporation. The certificate shall state the name of the corporation and the fact and date of incorporation. Corporate existence shall begin upon the issuance by the Secretary of the certificate of incorporation.

Section 23-2-908 Amendment of Articles

Every nonprofit corporation wishing to change its name or otherwise amend its articles of incorporation shall pay a fee of Ten Dollars (\$10.00) and shall make such change or amendment in the following manner: The board of directors shall pass a resolution reciting that such change of name or amendment is advisable, and a certified copy of said resolution under the corporate seal shall be filed in the office of the Secretary. In

addition, in the event of a change in the name of such corporation, a notice of such change of name shall be published once in a newspaper having general circulation in the reservation. The text and application of the amendment shall be set out in the resolution upon filing of the resolution, and proof of publication, if necessary, in the office of the Secretary, the Articles of Incorporation shall be deemed amended.

Section 23-2-909 Organizational Meeting

After commencement of corporate existence, the first meeting of the board of directors shall be held at the call of the incorporators or the directors, after notice, for the purpose of adopting the initial bylaws, electing officers, performing other acts in the internal organization of the corporation, and for such other purposes as shall be stated in the notice of the meeting. Such meeting shall be held within thirty (30) days after the issuance of a Certificate of Incorporation by the Secretary. The first meeting of the members shall be held at the call of an officer or of the initial board of directors, after notice. The initial bylaws adopted by the board of directors shall remain effective until legally amended or repealed at a membership meeting duly called for the specific purpose of amending or repealing the bylaws.

Section 23-2-910 Disposition of Assets

Notwithstanding any provision of Tribal law or in the Articles of Incorporation to the contrary, the Articles of Incorporation of each nonprofit corporation which is an exempt charitable, religious, literary, educational, or scientific organization as described in Section 501(C)(3) of the Federal Internal Revenue Code of 1954, as amended, shall be conclusively deemed to contain the following provisions: Upon the dissolution of the corporation, the board of trustees shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, literary or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(C)(3) of the Internal Revenue Code of 1954, as amended, or the corresponding provision of any future United States Internal Revenue Law, as the board of trustees shall determine. Any such assets not so disposed of shall be disposed of by the Tribal Court, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

Section 23-2-911 General Corporate Laws Applicable

The provisions of this Act shall generally apply to corporations organized pursuant to this Chapter except where a different rule is provided in this Chapter, provided, that nonprofit corporations formed exclusively for charitable, religious, literary, educational, or scientific purposes which qualify as a corporation exempt from federal taxation pursuant to Section 501(C)(3) of Title 26 of the United States Code, as amended, or any successor provision to this section, shall be exempt from payment of any franchise taxes or license fees. In no case shall any filing fee required by this Act exceed Ten Dollars (\$10.00) for such exempt corporations. An exempt nonprofit corporation may, but is not required, to file, an annual report with the Secretary.

Section 23-2-912 Effective Date

This Act shall be in full force and effect according to its terms from and after the date of enactment by the Business Committee.

CHAPTER THREE GAMING ORDINANCE

Section 23-3-101 Citation

This Ordinance shall be known and may be cited as the “Citizen Potawatomi Nation Gaming Ordinance” and shall apply to all forms of gaming conducted within the jurisdiction of the Citizen Potawatomi Nation.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-102 Purposes

The purposes of this Ordinance are to promote the public order, peace, safety and welfare of all persons coming within the jurisdiction of the Citizen Potawatomi Nation, to provide a safe and wholesome means of recreational activity in a community setting, and to provide a source of revenue for the operation of the programs and departments of the Tribal government by ensuring that any gaming activity conducted whether Class I, II, or III is fair, responsible, and consistent with applicable federal law including the regulations and guidelines established by Public Law 100-497, known as “The Indian Gaming Regulatory Act,” and/or any Tribal-State Compact to which the Tribe is a party. This Ordinance shall be liberally construed to promote these purposes.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-103 Definitions

Unless the context clearly indicates a different meaning, the following words are defined as:

- (A) “Citizen Potawatomi Nation Legislature” or “Tribal Legislature” means the legislative body of Citizen Potawatomi Nation formerly known as the Business Committee.
- (B) “Class I Gaming” means social games played solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of or in connection with Tribal ceremonies or celebrations.
- (C) “Class II Gaming” means
 - (1) “Bingo” or lotto (whether or not electronic, computer or other technologic aids are used) when players:
 - (a) play for prizes with cards bearing numbers or other designations;
 - (b) cover numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined; and
 - (c) win the game by being the first person to cover a designated pattern on such cards.
 - (2) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo and other games similar to bingo;
- (D) Nonbanking card games that:
 - (1) state law explicitly authorizes, or does not explicitly prohibit, and are played legally anywhere in the State of Oklahoma; and
 - (2) players play in conformity with state laws and regulations concerning hours, periods of operation and limitations on wagers and pot size;
- (E) The term “Class II Gaming” does *not* include:
 - (1) any banking card games, including baccarat, chemin de fer or blackjack (21); or
 - (2) electronic, electromechanical facsimiles of any game of chance or slot machines of any kind.
- (F) “Class III Gaming” means all forms of gaming that are not Class I or Class II, including but not limited to:
 - (1) any house banking game, including, but not limited to -
 - (a) card games such as baccarat, chemin de fer, blackjack (21), and paigow (if played as house banking games);
 - (b) casino games such as roulette, craps and keno;
 - (2) any slot machines as defined in 15 U.S.C. § 1171(A)(1) and electronic or electromechanical facsimiles of any game of chance;
 - (3) any sports betting and pari-mutuel wagering including but not limited to wagering on horse racing, dog racing or jai alai; or
 - (4) lotteries
- (G) “Commission” means the Citizen Potawatomi Nation Gaming Commission and the Gaming Commission staff as established by this Ordinance.
- (H) “Commissioner” or “Gaming Commissioner” means a member of the Citizen Potawatomi Nation duly appointed by the Executive Branch and confirmed by the Tribal Legislature pursuant to this Ordinance.
- (I) “Compact” means the Tribal-State Compact concerning Class III gaming approved by the Secretary of the Interior and published in the Federal Register pursuant to 25 U.S.C. § 2710(D).
- (J) “Complimentary” means a service or item provided at no cost, or a reduced cost, to a customer of the gaming facility.
- (K) “Court” means the courts of the Citizen Potawatomi Nation.
- (L) “Executive Director” means the Executive Director of the Citizen Potawatomi Nation Gaming Commission, with delegated authority to run the daily operations of the Gaming Commission.
- (M) “Expenses” means all sums actually expended and reasonable and necessary for the gaming operation including, by example, supplies, equipment, non-cash prizes, facilities, security services, license fees, rent, employees and other personnel services.

- (N) “Gaming Commission Board” mean the three (3) members of the Citizen Potawatomi Nation Gaming Commission that have been appointed by the Tribal Legislature to oversee the regulation of gaming in the Citizen Potawatomi Nation jurisdiction.
- (O) “Gaming Facility” means the building, buildings or structure wherein gaming is permitted, performed, conducted or operated and associated and adjacent real property owned by the Tribe.
- (P) “Gaming Operation” means the definition set forth in 25 C.F.R. § 502.10.
- (Q) “Gaming Ordinance” means the Tribal Gaming Ordinance of the Citizen Potawatomi Nation, as amended and any rules promulgated there under.
- (R) “Gaming Site” means the tract or tracts of land upon which a Gaming Facility is located.
- (S) “Gross Gaming Revenue” means annual total amount of cash wagered on Class II and Class III games and admission fees (including table or card fees), less any amounts paid out as prizes or paid for prizes awarded.
- (T) “Guest” means any person, other than an employee, who is on the premises of the gaming facility.
- (U) “IGRA” means the Indian Gaming Regulatory Act of 1988, 25.U.S.C. § 2701 et seq., as amended.
- (V) “Indian Lands” means:
 - (1) lands within the limits of a Tribe’s reservation; or
 - (2) land over which an Indian Tribe exercises governmental power and that is either:
 - (a) held in trust by the United States for the benefit of any Indian Tribe or individual; or
 - (b) held by an Indian Tribe or individual subject to restriction by the United States against alienation.
- (W) “Key Hourly” means those key employees as defined in any statute or regulation and at a minimum includes a person who performs one or more of the following functions:
 - (1) Bingo Caller
 - (2) Counting Room Supervisor
 - (3) Chief of Security
 - (4) Custodian of gaming supplies or cash
 - (5) Floor manager
 - (6) Pit Boss
 - (7) Dealer
 - (8) Croupier
 - (9) Approver of Credit
 - (10) Custodian of Gaming Devices including person with access to cash and accounting records within such devices
 - (11) Networking employees with server access
 - (12) Any and all management within the Casino
 - (13) Any other person whose total cash compensation exceeds \$50,00 per year
 - (14) The four most highly compensated persons in the gaming operation
 - (15) Any other person the Commission deems necessary
- (X) “License” means any authorization granted by the Commission, pursuant to the Gaming Ordinance, to any person or facility, which is required for such person or facility to perform certain acts, conduct or engage in certain activities. The issuance of a license shall not create a property or liberty interest in such license for the benefit of the licensee.
- (Y) “Licensee” means any person who has been issued a valid and current license pursuant to the provisions of Section 26.
- (Z) “Net Revenues” means gross gaming revenues of a gaming operation less-
 - (1) Amounts paid out as, or paid for, prizes; and
 - (2) Total gaming related operating expenses, including all those expenses of the gaming operation commonly known as operating expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.
- (AA) “NIGC” means the National Indian Gaming Commission.
- (AB) “Primary Management Official” means the person having management responsibility for a management contract, as well as any person

who has the authority to hire and terminate employees or to set up working policy for the gaming operation or the chief financial officer or other person who performs the financial management responsibility.

(AC) “State” means the State of Oklahoma.

(AD) “TMICS” means the Tribal Minimum Internal Control Standards.

(AE) “Tribe” (and any of its derivations) means the Citizen Potawatomi Nation.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-104 Ownership of Gaming

The Citizen Potawatomi Nation shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this Gaming Ordinance.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-105 Application of Net Revenues

In compliance with 25 U.S.C. § 2710(B)(2)(B), net revenues from any Tribal gaming activity, are not to be used for purposes other than:

- (1) to fund Tribal government operations or programs;
- (2) to provide for the general welfare of the Tribe and its members;
- (3) to promote Tribal Economic Development;
- (4) to donate to charitable organizations; or
- (5) to help fund operations of local Government Agencies.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-106 Gaming Prohibited

Except as provided, no person shall conduct any form of gaming on Tribal Indian Land for which a charge is made, or other consideration is requested or required for participation, or to the winner of which any prize is awarded.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-107 Gaming Allowed

Class I gaming activities are permitted with no need for regulatory oversight. Class II and Class III gaming are

authorized to be conducted on the Tribe’s Indian lands if the gaming is duly licensed and authorized by the Tribe and subject to the regulations of the Tribal Ordinance, IGRA, the NIGC regulations, the Tribal-State Compact, and any other applicable laws or regulations.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-108 Administration of Gaming Operations

The Executive Branch of the Citizen Potawatomi Nation shall administer the Tribal gaming operations consistent with this Ordinance. The Tribal Chairman, or his designee, shall be the liaison between the General Manager (“GM”) of a gaming operation and the Executive Branch. The Gaming Commission regulates and monitors compliance with this Ordinance, any Tribal-State Compacts, and all applicable federal or Tribal laws on behalf of the Tribe.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-109 Management of Gaming Operations

All gaming operations shall be administered by the GM who is employed by and serves at the pleasure of the Executive Branch of the Tribal Government.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-110 License For Facilities, Places And Locations

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where Class II and/ or Class III gaming is conducted under this Ordinance.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-111 Public Safety Standards

In compliance with 25 U.S.C. § 2710 (B)(2)(E), the construction and maintenance of any gaming facilities, and the operation of gaming activities, shall be conducted in a manner which adequately protects the environment and the public health and safety, and for that purpose, shall comply with the requirements of any applicable Tribal-State Compact and all other applicable health, safety and environmental standards enacted by the Tribe.

The Tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment, and the health and safety of the public.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-112 Qualifications of General Manager

The General Manager must:

- (A) Not have been convicted of a felony, gaming offense, or crime involving dishonesty or moral turpitude;
- (B) Not have been convicted of any offense except traffic violations within two years from the date of employment;
- (C) Not be a member of the Tribal Legislature or related to any member of the Tribal Legislature by blood or marriage within the second degree;
- (D) Not have had his surety bond forfeited or been criminally convicted of, or found civilly liable for, any breach or fiduciary duty to the Tribe or have been impeached or removed from Tribal office;
- (E) Be bondable in the necessary amounts; and
- (F) Meet any other applicable qualifications as prescribed in the Indian Gaming Regulatory Act and the NIGC regulations.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-113 Duties of General Manager

The duties of the General Manager are:

- (A) to manage and conduct all forms of gaming and concessions of the Tribal Gaming Operation allowed under this Ordinance;
- (B) to timely submit all reports required by the Executive Branch and any applicable law;
- (C) to account for all monies and properties entrusted to him or her; and
- (D) to perform any other duties established by Tribal law.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-114 Conduct of Gaming Operations

The General Manager shall conduct the gaming operation consistent with the following:

- (A) The rules of play and operation of the game as prescribed and approved by the Gaming Commission and the Tribal Legislature.

- (B) Each and every player has a fair and equal opportunity to win.
- (C) The method of winning and the prize or prizes for each game should be clearly outlined before each game.
- (D) The winner or winners of each game shall be verified in a manner that all present may witness.
- (E) No person who is conducting or assisting in the gaming operation shall participate directly or indirectly in the play of that game.
- (F) No person under eighteen (18) years of age shall be permitted to play for any reason.
- (G) He/she shall make a determination as to the validity of a winner or winners at the conclusion of the game at which they were a winner. If the GM's decision is disputed, it will be forwarded to the Gaming Commission for the final resolution.
- (H) No alcoholic beverages shall be permitted in the facility during the time that the facility is being used for the gaming operation, unless the Citizen Potawatomi Nation or the State of Oklahoma has issued an Alcoholic Beverage License for on-premises consumption.
- (I) No illegal drugs of any kind shall be permitted in the facility.
- (J) Persons excessively intoxicated or under the influence of drugs, or in violation of any Tribal Law or Ordinance, shall neither be permitted to engage in any form of gaming nor to remain in the building when gaming is being conducted.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-115 Gaming Facility Employees

The following shall apply to all employees of the gaming facilities:

- (A) All persons employed by the gaming operation, particularly key employees and primary management officials, shall be licensed by the Gaming Commission as prescribed by the Indian Gaming Regulatory Act, NIGC regulations or any Tribal-State Compact and this Ordinance.
- (B) Each employee will wear his or her license in a visible manner when operating or assisting in the operation of a gaming facility.

- (C) No person shall be employed whose prior activity, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming.
- (D) As necessary, the Tribal Legislature may require the GM or any other key employee to be bonded in an amount not less than \$50,000 payable to the Tribe.
- (E) Background investigations will be conducted on the primary management officials and key employees as prescribed in the Indian Gaming Regulatory Act, federal regulations, any Tribal-State Compact, and this Ordinance.
- (F) When licenses are issued to key employees or primary management officials, the Gaming Commission will notify the NIGC within 30 days, as described in the Indian Gaming Regulatory Act, NIGC regulations, or any Tribal-State Compact for Class III Gaming.
- (G) The GM shall employ qualified Tribal members in preference to other equally qualified applicants for work, but shall not be required to employ or retain in employment unqualified Tribal members.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-116 Gaming Facility Records

The GM shall be responsible for proper storage and maintenance of records concerning all gaming operations. These records shall be audited annually by an independent auditor and the audit reports shall be open for inspection by any Tribal member at the office of the Treasurer.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-117 Establishment of Gaming Commission

The Citizen Potawatomi Nation Gaming Commission ("Gaming Commission"), having been previously established under prior gaming Ordinances, shall continue to act as the regulatory body of the Tribe. The Gaming Commission Board shall consist of three (3) Gaming Commissioners, whom will all be recognized tribal members of the Citizen Potawatomi Nation.

These members shall be recommended for appointment by the Executive Branch and confirmed by the Tribal Legislature.

The Commissioners may vet and propose potential candidates for an Executive Director. The Executive Branch shall duly appoint an Executive Director who will also be confirmed by the Tribal Legislature to be in charge of the daily operations of the Commission and establish a professional staff for purposes of investigations, background investigations and licensing, internal auditing, Title 31 compliance, and all other regulatory compliance as deemed necessary and required by law. The Gaming Commission shall report directly to the governing body of the Citizen Potawatomi Nation.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-118 Gaming Commissioner Qualifications

A Gaming Commissioner must:

- (A) Not ever have been convicted of a felony, gaming offense or crime involving dishonesty or moral turpitude.
- (B) Not have a direct or indirect financial interest in the gaming facility.
- (C) Not have been convicted of any offense except traffic violations within two years from the date of employment.
- (D) Not be a member of the Tribal Legislature or related to any member of the Tribal Legislature by blood or marriage within the second degree.
- (E) Not have had his surety bond forfeited or been criminally convicted of, or found civilly liable for, any breach of fiduciary duty to the Tribe or have been impeached or removed from Tribal office.
- (F) Be bondable in the necessary amounts.
- (G) Meet any other applicable qualifications as prescribed in the Indian Gaming Regulatory Act.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-119 Compensation

The Commissioners shall be compensated for meetings by a per diem in an amount approved by the Executive Branch.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-120 Meetings And Duties

The Gaming Commission shall meet regularly on a bi-monthly basis. These meetings shall take place at a time and place certain and determined by the Commissioners. The Commissioners, in circumstances in which regulatory requirements are deemed necessary, may call special meetings to be held outside of the regular bi-monthly meetings.

The duties of the Gaming Commissioners shall include, but may not be limited to:

- (A) Approval of regulatory changes;
- (B) Issuance or revocation of gaming licenses;
- (C) Additions or changes in regulatory fees;
- (D) Reviewing the Gaming Commission budget and approving the budget submission to the Tribal Legislature for final approval;
- (E) Reviewing annual audits of the gaming operations; and
- (F) Reviewing patron disputes or banishments.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-121 Quorum

A quorum will be established if 2 of the 3 Commissioners are present.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-122 Gaming Commission Funding

The Gaming Commission, functioning as an independent, non-profit, regulatory entity, shall be funded as follows:

- (A) The Executive Director of the Gaming Commission shall determine licensing fees and gaming fines to adequately operate and regulate the Tribe's gaming facilities, and propose a budget on an annual basis to the Commissioners for approval. The Commissioners shall provide this to the Tribal Legislature for final approval.
- (B) The Gaming Commission shall collect any licensing fees required. Such fees shall become tribal revenues and will be specifically disbursed to the Gaming Commission budget as approved by the Tribal Legislature.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-123 Function Of The Gaming Commission

The Gaming Commission shall have the following powers and duties:

- (A) The Gaming Commission shall be recognized as a law enforcement authority for purposes of conducting background investigations and fingerprinting, enforcing this Ordinance and the Tribe's regulations, enforcing gaming fines and investigating incidents of possible cheating, fraud, theft, or collusion.
- (B) To interpret and enforce all applicable gaming laws and regulations to ensure that all gaming within the Tribe's jurisdiction is operated in accordance with all applicable laws and regulations including the background checks and licensing of all employees of the gaming operation pursuant to 25 C.F.R. § 558.1 (B).
- (C) To conduct background investigations on primary management officials, key Tribal gaming employees and vendors in accordance with IGRA, NIGC regulations, and/or Tribal-State Compact provisions and forward them for NIGC and/or State review.
- (D) To issue, deny, review, rescind, put conditions on, suspend or revoke tribal gaming licenses for primary management officials, key Tribal gaming employees, and vendors and their applicable employees.
- (E) To promulgate Tribal gaming regulations in accordance with Tribal and Federal law and Tribal-State Compact requirements, as needed.
- (F) To establish regulations and procedures for patron dispute hearings, including but not limited to evidence, legal representation, and hearing officers, as described in Section 36(6), and licensing hearings as described in Section 28 of this Ordinance.
- (G) To continuously regulate and monitor gaming operations to ensure compliance with Tribal and Federal law and Tribal-State Compact requirements.
- (H) To oversee and/or conduct audits of the gaming facilities, including audits of service and supply contracts.

- (I) To conduct investigations of any alleged misconduct, take appropriate enforcement action, and make appropriate referrals to Tribal, State, and Federal law enforcement agencies.
- (J) To conduct hearings, take testimony, take disciplinary actions, levy fines, issue closure orders and resolve patron disputes.
- (K) To ban, bar or exclude patrons from Citizen Potawatomi Nation Gaming Facilities.
- (L) To perform reporting responsibilities to the IRS, as stated in Section 37 of this Ordinance, and ensure proper reporting in accordance with Title 31 of the U.S. Code.
- (M) To perform licensing responsibilities and duties assigned in Sections 24 and 29 of this Ordinance.
- (N) To Work cooperatively with all applicable Tribal, State, and Federal regulatory and law enforcement agencies.
- (O) To conduct internal audits in accordance with Federal, State and Tribal regulations.
- (P) To perform reviews and approvals of policy and procedures for all Citizen Potawatomi Nation gaming facilities.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-124 Licensing Key Employees and Primary Management Officials

The Executive Director of the Gaming Commission shall ensure that the policies and procedures set out in this Section are implemented with respect to key employees and primary management officials employed at any gaming facility operated on tribal lands. The Tribal Gaming Commission shall perform background investigations and issue licenses for primary management officials and key employees according to requirements that are at least as stringent as those in 25 C.F.R. § parts 556 & 558.

(A) Application Forms

- (1) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant.

“In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form

is authorized by 25 U.S.C. § 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be granted a gaming license. The information will be used by the Tribal gaming regulatory authorities and by the National Indian Gaming Commission (NIGC) members and staff who have need for the information in the performance of their official duties. The information may be disclosed by the Tribe or the NIGC to appropriate Federal, Tribal, State, local or foreign law enforcement and regulatory agencies when relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a Tribe or the National Indian Gaming Commission in connection with the issuance, denial or revocation of a gaming license, or investigations of activities while associated with a Tribe or a gaming operation. Failure to consent to the disclosures indicated in this notice will result in the Tribe being unable to license you for a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.”

- (2) Existing key employees and primary management officials shall be notified in writing that they shall either:
 - (a) Complete a new application form that contains a Privacy Act notice; or
 - (b) Sign a statement that contains the Privacy Act Notice and consent to the routine uses described in that notice.
 - (c) All license application forms used one-hundred and eighty (180) days after February 25, 2013, shall comply with this Section.
- (3) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by an applicant:

“A false statement on any part of your license application may be grounds for denying a license or the suspension or revocation

of a license. Also, you may be punished by fine or imprisonment.” (U.S. Code, Title 18 Section 1001.)

- (4) The Gaming Commission shall notify in writing existing key employees and primary management officials that they shall either:
 - (a) Complete a new application form that contains a notice regarding false statements; or
 - (b) Sign a statement that contains the notice regarding false statements.
 - (c) All license application forms used one-hundred and eighty days (180) after February 25, 2013, shall comply with this Section.

(B) Background Investigations:

- (1) The Gaming Commission shall conduct a background investigation of each primary management official or key employee, which is sufficient to make an eligibility determination under Subsection e below.
- (2) The Gaming Commission shall conduct background investigations in accordance with the standards and procedures as required by 25 CFR 556 & 558.
- (3) In conducting a background investigation, the Gaming Commission or its agent shall keep confidential the identity of each person interviewed in the course of the investigation.
- (4) The Gaming Commission shall request from each primary management official and key employee applicant all of the following information:
 - (a) Full name, any other names used (oral and/or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages spoken or written;
 - (b) Currently, and for the previous five years,: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver’s license numbers.
 - (c) The names and current addresses of at

least three personal references, including one personal reference that was acquainted with the applicant during each period of residence listed under Paragraph (4)(B) of this Section;

Current business and residence telephone numbers, and all cell phone numbers

- (d) A description of any existing and previous business relationships with other Tribes, including ownership interests in those businesses.
- (e) A description of any existing and previous business relationships with the gaming industry generally, including ownership interests in those businesses.
- (f) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;
- (g) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;
- (h) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within ten years of the date of the application, the name and, address of the court involved, and the date and disposition;
- (i) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within ten years of the date of the application and is not otherwise listed pursuant to Paragraph (4)(G) or (4)(H) of this Section, the criminal charge, the name and address of the court involved and the date and disposition;
- (j) The name and address of any licensing or regulatory agency with which

the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

- (k) A current photograph;
- (l) Any other information the Gaming Commission deems relevant; and
- (m) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(H), which shall be submitted to the NIGC for a check of the criminal history records information maintained by the Federal Bureau of Investigation;

- (5) When a Tribe employs a primary management official or key employee, the Tribe shall maintain a complete file, containing all the information listed in Section 24(B)(4)(a-m).

(C) Conducting Background Investigation.

- (1) The Gaming Commission or its agent is responsible for conducting the background investigations and making eligibility determinations for the licensing of key employees, primary management officials and general employees.

(a) Organizational Chart.

- (i) The Executive Director of the Gaming Commission.

- (1) The Executive Director of the Gaming Commission under this gaming Ordinance, shall be ultimately responsible for conducting and/or causing to be conducted the background investigations of key employees and primary management officials. The Executive Director of the Gaming Commission may conduct the investigations personally or may assign Gaming Commission staff to conduct the background investigations on behalf of the Executive Director of the Gaming Commission. The Executive Director of the Gaming Commission may also designate

a Licensing Agent to be responsible for reviewing and approving the investigative work performed. The Executive Director of the Gaming Commission or designee shall make all eligibility determinations concerning the licensing of key employees, primary management officials or general employees. A notice of results of the background investigation, including an eligibility determination, shall be submitted to the NIGC.

(ii) Licensing Agents and Background Investigators.

- (1) Licensing Agents and Background Investigators may be assigned by the Executive Director of the Gaming Commission to assist in background investigations. Any investigators employed for background investigations will be under the supervision of the Executive Director of the Gaming Commission or designee referred to in Subsection (A)(1) above. All reports of the investigators will be forwarded to the Gaming Commission Board or the Executive Director of the Gaming Commission or designee, who shall use the information from the reports to compile a notice of results, including an eligibility determination, for submission to the NIGC.

- (2) Persons responsible for the background investigations are granted authority under this Tribal Gaming Ordinance.

(D) Investigative Reports.

- (1) Before issuing a license to a primary management official or key employee, the Gaming Commission shall create and maintain an investigative report for each background investigation, which shall include the following information;

- (a) Steps taken in conducting a background investigation;
 - (b) Results obtained;
 - (c) Conclusions reached; and
 - (d) The basis for those conclusions.
- (2) The investigative report shall be retained for no less than 3 years from the date a primary management official or key employee is terminated from employment.

(E) Eligibility Determinations.

- (1) The Gaming Commission shall authorize a Tribal official to make a finding concerning the eligibility of a primary management official or key employee to receiving a gaming license.
 - (a) The finding shall be based on the official's review of the information compiled for the background investigation conducted pursuant to this Ordinance, and shall include, but not be limited to a person's;
 - (1) Prior activities;
 - (2) Criminal record; and
 - (3) Reputation, habits and associations.
 - (b) If the authorized Tribal official, in applying the standards adopted in this Ordinance, determines that granting a gaming license to the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices, and methods and/or activities in the conduct of gaming, the Gaming Commission shall not license that person as a primary management official or key employee.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-125 Notice of Results of Background Investigations

- (A) Before issuing a license to a Primary Management Official or Key Employee, the Tribal Gaming Commission shall submit a notice of results of the applicant's background investiga-

tion to the NIGC no later than sixty (60) days after the applicant begins work. The notice shall contain:

- (1) Applicant's name, date of birth, and social security number;
- (2) Date on which applicant began work or will begin work as a key employee, primary management official or general employee;
- (3) A summary of the information presented in the investigative report, which shall, at a minimum, include a listing of:
 - (a) Licenses that have been previously denied;
 - (b) Gaming licenses that have been revoked, even if subsequently reinstated;
 - (c) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and
 - (d) Every felony of which the applicant has been convicted or any ongoing prosecution; and
- (4) A copy of the eligibility determination made under 25 C.F.R. § 556.5.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-126 Granting Gaming Licenses

- (A) All primary management officials and key employees of the gaming operation must have a gaming license granted and issued by the Gaming Commission.
- (B) The Gaming Commission is responsible for granting and issuing gaming licenses to primary management officials and key employees.
- (C) The Gaming Commission may license a primary management official or key employee only after submitting a notice of results of the applicant's background investigation to the NIGC, as required by Section 25.
- (D) The Gaming Commission shall notify the NIGC of the issuance of a license to a primary management official or key employee within 30 days after its issuance.
- (E) The gaming Commission shall not employ an individual in a key employee or primary man-

agement official position who does not have a license after ninety (90) days of beginning work at a gaming operation.

(F) The Gaming Commission must reconsider a license application for a primary management official or key employee if it receives a statement of itemized objections to issuing such a license from the NIGC, and those objections are received within the 30 days of the NIGC receiving a notice of results of the applicant's background investigation.

(1) The gaming Commission shall take into account the NIGC's objections when reconsidering a license application.

(2) The gaming commission shall make the final decision whether to issue a license to an applicant for a primary management official or key employee position.

(G) If the Gaming Commission has issued a license to a primary management official or key employee before receiving the NIGC's statement of objections, the license shall be immediately suspended, and a notice and hearing shall be provided to the licensee, as required by Section 28.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-127 Denying Gaming Licenses

(A) If the authorized Tribal official, in applying the standards adopted in the Tribal Ordinance, determines that licensing of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, the authorized Tribal official shall not license that person in a key employee or primary management official position.

(B) If the Gaming Commission does not license an applicant, it shall;

(1) Notify the NIGC; and

(2) Forward copies of its eligibility determination and notice of results, under 25 C.F.R. § 556.6(B)(2), to the NIGC for inclusion in the Indian Gaming Record System.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-128 Gaming License Suspension And Revocation

(A) If, after a license is issued to a primary management official or key employee, the Tribe receives a notice from the NIGC that the primary management official or key employee is not eligible for employment, the Gaming Commission shall do the following;

(1) immediately suspend the license;

(2) provide the licensee with a written notice of the suspension and proposed revocation; and

(3) provide the licensee with notice of a time and place for a hearing on the proposed revocation of the license.

(B) A right to a hearing under this part shall vest only upon receipt of a license granted under an Ordinance approved by the NIGC Chair under 25 C.F.R. §558.4(D).

(C) After a revocation hearing, the Tribe shall notify the NIGC of its decision to revoke or reinstate a gaming license within 45 days of receiving notification from the NIGC, pursuant to paragraph (A) of this Section, that a primary management official or key employee is not eligible for employment.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-129 Licensing Notifications and Submissions to the NIGC

(A) Before issuing a license to a primary management official or to a key employee, the Tribe shall:

(1) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:

(a) Steps taken in conducting a background investigation;

(b) Results obtained;

(c) Conclusions reached; and

(d) The basis for those conclusions.

(2) Submit a notice of results of the applicant's background investigation to the NIGC no later than sixty (60) days after the applicant

begins work. The notice of results shall contain:

- (a) Applicant's name, date of birth, and social security number;
- (b) Date on which the applicant began or will begin work as a key employee or primary management official;
- (c) A summary of the information presented in the investigative report, which shall at a minimum include a listing of :
 - (i) Licenses that have previously been denied;
 - (ii) Gaming licenses that have been revoked, even if subsequently reinstated;
 - (iii) Every known criminal charge brought against the applicant within the last 10 years of the date of application; and
 - (iv) Every felony of which the applicant has been convicted or any ongoing prosecution.
- (d) A copy of the eligibility determination made under 25 C.F.R. § 556.5.
- (3) After the Tribe has provided a notice of results of the background investigation to the NIGC, the Tribe may license a primary management official or key employee.
- (4) Within 30 days after the issuance of the license, the Tribe shall notify the NIGC of its issuance.
- (5) A gaming operation shall not employ a key employee or primary management official who does not have a license after ninety days.
- (6) If the Tribe does not license an applicant –
 - (a) The Tribe shall notify the NIGC; and
 - (b) Shall forward copies of the eligibility determination and notice of results, under 25 C.F.R. § 556.6(B)(2), to the NIGC for inclusion in the Indian Gaming Individuals Record System.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-130 Records Retention

- (A) The Tribe shall retain the following for inspection by the NIGC Chair or his or her designee for no less than three years from the date of a primary management official's or key employee's termination of employment:
 - (1) Applications for licensing;
 - (2) Investigative reports; and
 - (3) Eligibility determinations.
- (B) When the Tribe employs a primary management official or a key employee, the Tribe shall maintain a complete application file containing the information listed under 25 C.F.R. § 556.4(A) (1) through (14).
 - (1) Before issuing a license to a primary management official or to a key employee, the Tribe shall:
 - (a) Create and maintain an investigative report on each background investigation. An investigative report shall include all of the following:
 - (b) Steps taken in conducting a background investigation;
 - (c) Results obtained;
 - (d) Conclusions reached, and
 - (e) The basis for those conclusions.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-131 Annual Audit

The Tribal Legislature will annually provide the NIGC with a copy of that portion of the audit prepared by the Tribe's independent auditor that relates to the gaming. This audit will include, among other matters, all contracts for supplies, services (except legal or accounting) or concessions in excess of \$25,000 annually that relate to the gaming operation.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-132 Gaming Account

By resolution, the Tribe, by the Tribal Legislature, shall designate one banking account as the Tribal "Gaming Account." The account shall be maintained in a financial institution designated by the Tribal Legislature. The Gaming Account shall be subject to the Annual Audit. Gross revenues derived from the conduct of Tribal

Gaming operations, excluding any cash payouts made during a Gaming session shall be deposited in the Tribal Gaming Account. No other monies shall be commingled with the Tribal Gaming Account. Except as specifically approved by the Tribal Legislature, disbursements from the Tribal Gaming Account will only be made to pay reasonable and necessary expenses and will only be made on checks endorsed by the Executive Branch. Net revenues are to be transferred monthly to the Tribe's General Fund account to be disbursed solely as authorized by Tribal Legislature appropriation.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-133 Supplies and Equipment

All reasonable and necessary expenses of the gaming operation must be approved by the Executive Branch. Provided further that all contracts for purchases of supplies, concessions, or services (excluding contracts for professional, legal or accounting services) must receive prior approval of the Executive Branch which shall be obtained by the GM by submitting the proper requisition. All purchases of equipment, materials, concessions and food or any other item paid from the Gaming Account shall be the property of the Tribe.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-134 Location and Schedule of Gaming

All gaming sessions authorized herein shall be conducted at a place on Indian Lands within Tribal Gaming Facilities and on such days and times as may be approved by the Tribal Legislature. The location and time for conducting Class III Gaming shall be consistent with any Tribal-State Compact.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-135 Exclusion and Discrimination

Notwithstanding any other provision of this Section, the Tribe's Chief District Judge, a member of the Executive Branch, Gaming Commissioners, the Executive Director, or the General Manager may bar, ban or exclude any person from admittance to any Tribal gaming facility, temporarily or for life, for any or no reason whatsoever. However, no person shall be discriminated against because of his race, color, creed, sex, or natural origin.

Any designated casino management may temporarily

ban, bar or exclude any person from admittance to a Tribal gaming facility only under the authority delegated to them by the Gaming Commission or the Executive Branch.

Self-exclusions or voluntary banishments will be accepted whether temporarily or for life and will be subject to a voluntary banishment hearing if rescindment of the banishment is requested.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-136 Patron Dispute Resolution

In the event of (A) an alleged personal injury or property damage suffered by a patron of the gaming facility, or (B) a dispute between a patron and the gaming enterprise regarding the payment of a bet or the distribution of winnings, the patron may make a claim against the gaming enterprise as follows:

(A) Personal Injury or Property Damage.

(1) Making a Claim.

Any patron having a claim against the gaming enterprise for personal injury or property damage shall present a claim to the gaming enterprise for any appropriate relief including the award of money damages. Claims against the gaming enterprise are to be presented within ninety (90) days of the date the injury or loss occurs. In the event a claim is not presented following ninety (90) days after the injury or loss occurs, but within one (1) year, any judgment in a lawsuit arising from the act which is the subject of the claim shall be reduced by ten (10) percent. A claim against the gaming enterprise shall be forever barred unless notice thereof is presented within one (1) year after the injury or the loss occurs. A claim against the gaming enterprise shall be in writing and filed with the Tribal Gaming Commission at the address of the gaming facility. Notices explaining this procedure shall be posted in the gaming facility. Such notices shall explain that this procedure is the exclusive method of making a tort claim. Such notices shall explain that upon denial of a claim redress must be sought exclusively in a competent court of jurisdiction.

(2) Notice.

The written notice of claims of the gaming enterprise shall state the following:

- (a) Date;
- (b) Time;
- (c) Place;
- (d) Circumstances of the claim;
- (e) the identities of Tribal or gaming employees, and witnesses as applicable,
- (f) the amount of compensation or other relief demanded,
- (g) the name, address and telephone number of the claimant; and
- (h) the name, address and telephone number of any agent authorized to settle the claim.

(3) Denial.

A claim is deemed denied if the gaming enterprise fails to approve the claim in its entirety within ninety (90) days of receipt, unless the interested parties have reached a settlement before the expiration of that period. A person may not initiate suit against the gaming enterprise unless the claim has been denied in whole or in part. The claimant and the gaming enterprise may continue attempts to settle a claim; however, settlement negotiations do not extend the date of denial.

(4) Limitations

No action for any cause arising from personal injury or property damage shall be maintained unless valid notice has been given and the action is commenced in the Citizen Potawatomi Nation Tribal court within 180 days after denial of the claim as set forth herein. Neither the claimant nor the gaming enterprise may extend the time to commence an action by continuing to attempt settlement of the claim.

(B) Patron Dispute – Payment of Winnings.

(1) Administrative Process.

Any person who has any dispute, disagreement or other grievance with the gaming enterprise that involves currency,

tokens, coins, or any other thing of value, may seek resolution of such dispute from the following persons and in the following order:

- (a) a member of the staff relevant of the gaming enterprise.
- (b) the supervisor in the area of the relevant gaming enterprise in which the dispute arose.
- (c) the General Manager of the gaming enterprise.

(2) Patron Rights Regarding Disputes.

When a patron brings a dispute for resolution through the administrative process, the complainant shall have the right to explain his or her side of the dispute, and to present witnesses in connection with any factual allegations. At each level, if the dispute remains unresolved, the complainant shall be informed of the right to take the dispute to the next higher level. Resolution of any dispute by the personnel of a gaming enterprise shall always involve two or more staff members. All disputes, whether resolved or not, shall be reported in detail by the staff persons involved to their supervisor, the General Manager of the property, and to the Gaming Commission.

(3) Refusal to Pay Winnings.

Whenever the gaming enterprise refuses payment of alleged winnings to a patron and the General Manager of the property and the patron are unable to resolve the dispute to the satisfaction of the patron and the dispute involves:

- (a) At least five hundred Dollars (\$500.00), the General Manager shall immediately notify the Gaming Commission. The Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or
- (b) Less than five hundred dollars (\$500.00), the General Manager shall inform the patron of his or her right to request that the Gaming Commission conduct an investigation. Upon re-

quest of the patron, the Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made.

(4) Limitation of Liability.

The liability of the gaming enterprise in any proceeding under these regulations shall be limited to the amount of the alleged winnings. A patron shall not be entitled to an award of special or punitive damages, or damages for mental distress. In addition, disputes relating to a patron's entitlement to a game prize shall be limited to the amount of such prize. The Gaming Commission's decision shall constitute the complainant's final remedy.

(5) Petition to the Gaming Commission

Patrons who have report complaints against the gaming enterprise shall have as their final remedy the right to file a petition for relief with the Gaming Commission. Any patron complaint must be submitted in writing to the Gaming Commission within thirty (30) days of the incident giving rise to the complaint. The Gaming Commission shall then grant a hearing.

(6) Hearing Procedures – Patron Disputes.

The Executive Director of the Gaming Commission shall establish hearing procedures as stated in Section 23 (J) that shall be used to hear and decide any petition for relief. The Gaming Commission shall then issue a written decision that shall be sent via certified mail to the patron and the GM of the enterprise.

(7) Petition for Reconsideration.

Within thirty (30) days after the date of receipt of the written decision, the aggrieved party may file a petition with the Gaming Commission requesting a review of the decision. The Gaming Commission may, at its discretion, set a hearing on the matter or may make a decision based solely upon the prior decision and other documentation provided to it by the patron and the gaming enterprise. The decision of the Executive

Director of the Gaming Commission shall be final and binding upon the patron and the gaming enterprise and shall not be subject to any further dispute resolution, judicial review, or any other legal action.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-137 Report of Winners

No prize shall be awarded unless the winner has fairly won without any collusion with the GM or any of his employees or agents. A receipt acknowledging acceptance and receipt of the prize awarded must be signed by any winner if it exceeds the amount designated by the GM or by law or regulation. The GM has the authority to hold the payment of any winnings indefinitely until the final verification of authentic winning has been determined whether by inquiry or electronic means of validation upon the approval of the Executive Director of the Gaming Commission, Gaming Commission Board or Tribal Chairman or designee.

The Executive Director of the Gaming Commission or designee shall ensure accurate and timely reports are sent to the Internal Revenue Service of any winners at any gaming facility whose prize winnings exceed the minimum limits set by the Internal Revenue Service. When this occurs, acceptable proof of a winner's name, address, and social security number must be presented to the GM or his designee in order to be paid prizes.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-138 Criminal Penalties

Any person or firm violating the provisions of this chapter shall be guilty of an offense and shall, upon conviction thereof, be punished as provided by law. If a person is convicted in Tribal court, he may be punished by confinement in the Tribal jail for a period of not less than ten (10) days and no more than six (6) months or by a fine of not less than \$500 and no more than \$5,000 or by both such fine and imprisonment per occurrence.

Such remedy shall not be exclusive or preclude any civil or other judicial remedy available to the Tribe.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-139 Service of Process

All notices or process made pursuant to this Ordinance may be made by directing said notice to:

The Executive Director of the Gaming Commission
 Citizen Potawatomi Nation
 1601 S. Gordon Cooper Drive
 Shawnee, OK 74801

Cc: Tribal Chairman
 Citizen Potawatomi Nation
 1601 S. Gordon Cooper Drive
 Shawnee, OK 74801

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-140 Repealer

Any prior gaming ordinances and all other ordinances inconsistent herewith are hereby repealed.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-3-141 Effective Date

Sections 23-3-101 through 23-3-141 shall become effective on May 22, 2014.

Enacted by Ordinance #14-04, by the Citizen Potawatomi Legislature on May 22, 2014.

CHAPTER FOUR INNKEEPERS RIGHTS

Section 23-4-101 Scope

The Citizen Potawatomi Nation Innkeepers' Rights Act is written to be consistent with the law of the state where the lodging establishment sits, with the exception that any action or proceeding seeking to enforce any provision of said Act, or based on any right arising out of this Act, shall be brought against any of the parties only in the courts of the Citizen Potawatomi Nation, and each of the parties hereto consents to the exclusive jurisdiction of the Citizen Potawatomi Nation District Court (and the appropriate appellate courts) in any such proceeding, waives any objection to venue laid therein and agrees to plead or claim in any such courts that such proceedings brought therein has been brought in any inconvenient forum.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-102 Definitions

(A) As used in the Citizen Potawatomi Nation Innkeepers' Rights Act:

- (1) Innkeeper shall mean the owner, operator, manager or keeper of a lodging establishment.

- (2) Lodging establishment shall mean a hotel, resort, villa, motel, condominium, inn, tourist court, campground, bed and breakfast, boarding house, furnished apartment, house or any place in which rooms, lodging or sleeping accommodations are furnished for pay to guests for transient occupancy.

- (3) Minor shall mean an unemancipated person under the age of eighteen (18) years.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-103 Rights and Responsibilities

- (A) An innkeeper shall have the right to refuse or deny any accommodations, facilities or privileges of a lodging establishment to any person who is unwilling or unable to pay for accommodations and services of the lodging establishment. The innkeeper shall have the right to require the prospective guest to demonstrate the ability to pay by cash, valid credit card or valid check.
- (B) The innkeeper may require a guest, parent of a minor or other responsible party to:
 - (1) Accept, in writing, liability of the guest room costs, taxes, all charges by a minor, and any damages to the guest room or its furnishings caused by the guest, or minor while a guest, at the lodging establishment; and
 - (2) Provide the innkeeper with a valid credit card number to cover the guest room costs, taxes, any charges or damage to the guest room or its furnishings caused by the guest or a minor while a guest; or
 - (3) Give the innkeeper:
 - (a) An advance cash payment to cover the guest room cost and taxes for all room nights reserved for the guest or minor guest; and
 - (b) A cash deposit towards the payment of any charges by the guest or minor, or any damages to the guest room or its furnishings, which cash deposit will be refunded to the extent not used to cover any charges or damages as determined by the innkeeper following room inspection at checkout.

- (C) A lodging establishment shall have the right to limit the number of persons who shall occupy any particular guest room in the lodging establishment.
- (D) An innkeeper refusing or denying accommodations, facilities or privileges of a lodging establishment for any of the reasons specified in this section shall not be liable in any civil or criminal action or for any fine or penalty based upon the refusal or denial, except that accommodations, facilities or privileges of a lodging establishment shall not be refused or denied based upon the race, creed, color, national origin, sex, disability or marital status of a person.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-104 Liability

- (A) In an action involving damage to a lodging establishment room or its furnishings, the court may order the person who rented the lodging establishment room, the person who caused the damage to the lodging establishment room to the parent of the minor or other responsible party to do the following:

- (1) Pay restitution for any damages suffered by the owner or operator of the lodging establishment, which damages may include any loss of revenue suffered by the lodging establishment resulting from the inability of the innkeeper to rent or lease the room during the period of time the lodging establishment is being repaired; and
- (2) Pay damages or restitution to any other person who is injured or whose property is damaged. The parents or other responsible parties shall be liable for acts of a minor in violation of this section which causes damages to the lodging establishment room or furnishings to cause injury to persons on the lodging establishment property.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-105 Ejection of Guests

- (A) Innkeepers may eject a guest for any of the following reasons and keep the room rental payment:

- (1) Non-payment;

- (2) Disorderly conduct or the person is visibly intoxicated, creating a public nuisance;
- (3) Using the premises for an unlawful act, including the unlawful use or possession of controlled substances by the person in violation of Tribal, Federal or State laws, or the use of the premises for the consumption of beer, wine or alcoholic liquors by a person under the age of twenty-one (21), in violation of Tribal, Federal and State laws;
- (4) Bringing property that may be dangerous to others onto the premises;
- (5) Failing to register as a guest;
- (6) Using false pretenses to obtain accommodations;
- (7) Being a minor unaccompanied by an adult registered guest;
- (8) Exceeding the posted guest room occupancy limit;
- (9) Violating Tribal, Federal, State or local lodging establishment laws or regulations; or
- (10) Violating the establishment's posted rules

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-106 Posting Innkeepers' Rights Act and Rules of the Establishment

The innkeeper shall post a copy of the Citizen Potawatomi Nation Innkeepers' Rights Act, together with all rules of the lodging establishment in a conspicuous place at or near the guest registration desk.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 23-4-107 Preclusions

Nothing in this Act prohibits an innkeeper from denying accommodations to a guest or ejecting a guest for any valid, nondiscriminatory reason not otherwise provided herein.

Enacted by Ordinance #14-05, by the Citizen Potawatomi Legislature on May 22, 2014.

CITIZEN POTAWATOMI NATION
LIMITED LIABILITY COMPANY ACT
TITLE 23

CHAPTER 5
ARTICLE 1
GENERAL PROVISIONS

Enacted by Ordinance #17-05, An Ordinance Creating a Limited Liability Company Act by the Citizen Potawatomi Legislature on December 8, 2016.

Section 101 Short Title

This Act may be cited as the Citizen Potawatomi Nation Limited Liability Company Act.

Section 102 Definitions

In this Act:

- (1) “Bankruptcy” means an event that causes a Person to cease to be Member as provided in Section 304 of this Title.
- (2) “Certificate of organization” means the certificate required by Section 201. The term includes the certificate as amended or restated.
- (3) “Constitution” means the Constitution of the Citizen Potawatomi Nation.
- (4) “Contribution” means any cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services, which a Person contributes to a Limited Liability Company in the Person’s capacity as a Member;
- (5) “Court” means any court of the Citizen Potawatomi Nation located within the territorial jurisdiction of the Nation and exercising jurisdiction over the Nation.
- (6) “Distribution”, except as otherwise provided in Section 405(G), means a transfer of money or other property from a Limited Liability Company to a Member.
- (7) “Foreign Limited Liability Company” means a Limited Liability Company formed

under the law of a jurisdiction other than the Nation and denominated by that law as a limited liability company.

- (8) “Knowledge” means a person’s actual, rather than constructive, knowledge of a fact
- (9) “Legislature” means the Citizen Potawatomi Nation Legislature.
- (10) “Limited Liability Company” and “Domestic Limited Liability Company”, except in the phrase “foreign limited liability company”, means an entity formed under this Act.
- (11) “Liquidating Trustee” means a person carrying out the winding up of a Limited Liability Company.
- (12) “Manager” means a person that under the Operating Agreement of a Manager-Managed Limited Liability Company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(C).
- (13) “Manager-Managed Limited Liability Company” means a Limited Liability Company that qualifies under Section 407(A).
- (14) “Member” means a Person that has become a Member of a Limited Liability Company under Section 401 and has not dissociated under Section 602.
- (15) “Member-Managed Limited Liability Company” means a Limited Liability Company that is not a Manager-Managed Limited Liability Company.
- (16) “Nation” means the Citizen Potawatomi Nation.
- (17) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the Members of a Limited Li-

ability Company, including a sole Member, concerning the matters described in Section 110(A). The term includes the agreement as amended or restated.

- (18) “Organizer” means a Person that acts under Section 201 to form a limited liability company.
- (19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (20) “Secretary” means the Clerk of the Citizen Potawatomi Nation District Court or the Clerk’s designee.
- (21) “Sign” means, with the present intent to authenticate or adopt a record:
- (22) “State” means a federally recognized Indian Tribe, the District of Columbia or the Commonwealth of Puerto Rico, or any state, territory, possession or other jurisdiction of the United States other than the Nation.
- (23) “Unit” means a Member’s share of profits and losses of a Limited Liability Company and a Member’s right to received Distributions.

Section 103 Knowledge; Notice

- (A) A person knows a fact when the person has actual knowledge of it or is deemed to know it under subsection (D) or law other than this Act.
- (B) A person has notice of a fact when the person has reason to know the fact from all of the facts known to the person at the time in question; or is deemed to have notice of the fact under subsection (D) of this section.
- (C) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.
- (D) A person that is not a Member is deemed to know of a limitation on authority to transfer real property as provided in Section 302(G); and to have notice of a limited liability company’s:
 - (1) dissolution- 90 days after a statement of dissolution under Section 702(B)(2)(A) becomes effective;

- (2) termination- 90 days after a statement of termination Section 702(B)(2)(F) becomes effective; and
- (3) merger, conversion, or domestication- 90 days after articles of merger, conversion, or domestication under Article 10 become effective.

Section 104 Nature, Purpose, And Duration of Limited Liability Company

- (A) A limited liability company is an entity distinct from its members.
- (B) A limited liability company may have any lawful purpose, regardless of whether for profit, with the exception of granting policies of insurance or assuming insurance risks or banking.
- (C) Notwithstanding any provision of this Act to the contrary, without limiting the general powers of subsection (B) of this section, a Limited Liability Company shall, subject to standards and restrictions, if any, as are set forth in the Operating Agreement, have the power and authority to make contracts of guaranty and suretyship and enter into interest rate, basis, currency, hedge or other swap agreements or cap, floor, put, call, option, exchange or collar agreements, derivative agreements, or other agreements similar to any of the foregoing.
- (D) A limited liability company has perpetual duration.

Section 105 Powers

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities. Any suit, action, or proceeding as against a limited liability company organized under this Act or as between members to such a limited liability company relating to any provision of this Act or the operations of such a limited liability company shall be brought only in the exclusive jurisdiction of the courts of the Citizen Potawatomi Nation and the appropriate appellate courts, absent an express waiver, in writing, of such jurisdiction and venue by a Member of such limited liability company. In the event of the formation of a limited liability company by any branch, authority, agency, instrumentality, official, or officer of the Nation’s government or in the event that any branch, authority, agency, instrumentality, official or officer of the Nation’s government is a Member or Manager in a

limited liability company, such events do not constitute a waiver or sovereign immunity by such branch, authority, agency, instrumentality, official, or officer of the Nation's government.

Section 106 Governing Law

The law of the Nation governs the internal affairs of a limited liability company; and the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

Section 107 Supplemental Principles of Law

Unless displaced by particular provisions of this Act, the principles of law and equity supplement this Act.

Section 108 Name

- (A) The name of a limited liability company must contain the words "limited liability company" or "limited company" or "company" or the abbreviation "L.L.C." or "LLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".
- (B) May contain the name of a Member or Manager
- (C) Must be distinguishable from all other corporations, limited liability companies, or other entities registered with the Secretary. The Secretary has the discretion to determine whether the requested name is so distinguishable. If a Person is aggrieved by a determination as to whether a name is complying, the aggrieved Person may file an action in the Nation's District Court seeking the use of a non-complying name.
- (D) May contain the words "Company" "Association" "Club" "Foundation" "Fund" "Institute" "Society" "Union" "Syndicate" "Limited" or "Trust" or abbreviations of like import.

Section 109 Reservation of Name

- (A) A Person, Limited Liability Company, or Foreign Limited Liability Company may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the Secretary for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the Secretary finds that the name applied for

is available, it must be reserved for the applicant's exclusive use for a 120-day period.

- (B) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the Secretary for filing a signed notice of the transfer which states the name and address of the transferee.

Section 110 Operating Agreement; Scope, Function, And Limitations

- (A) Except as otherwise provided in subsections (B) and (C), the operating agreement governs:
 - (1) relations among the members as members and between the members and the limited liability company;
 - (2) the rights and duties under this Act of a person in the capacity of manager;
 - (3) the activities of the company and the conduct of those activities; and
 - (4) the means and conditions for amending the operating agreement.
- (B) To the extent the operating agreement does not otherwise provide for a matter described in subsection (A), this Act governs the matter.
- (C) An operating agreement may not:
 - (1) Subject to Section 105 of this Act, vary a limited liability company's capacity under Section 105 to sue and be sued in its own name;
 - (2) vary the law applicable under Section 106;
 - (3) vary the power of the court under Section 204;
 - (4) subject to subsections (D) through (G), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;
 - (5) subject to subsections (D) through (G), eliminate the contractual obligation of good faith and fair dealing under Section 409(D);
 - (6) unreasonably restrict the duties and rights stated in Section 410;
 - (7) vary the power of a court to decree dissolution in the circumstances specified in Section 701(A)(4) and (5);
 - (8) vary the requirement to wind up a limited liability company's business as specified in Section 702(A) and (B)(1);

- (9) unreasonably restrict the right of a member to maintain an action under Article 9 of this Act;
 - (10) restrict the right to approve a merger, conversion, or domestication under Section 1014 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or
 - (11) except as otherwise provided in Section 112(B), restrict the rights under this Act of a person other than a member or manager.
- (D) If not manifestly unreasonable, the operating agreement may:
- (1) restrict or eliminate the duty:
 - (a) as required in Section 409(B)(1) and (G), to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;
 - (b) as required in Section 409(B)(2) and (G), to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
 - (c) as required by Section 409(B)(3) and (G), to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;
 - (2) identify specific types or categories of activities that do not violate the duty of loyalty;
 - (3) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;
 - (4) alter any other fiduciary duty, including eliminating particular aspects of that duty; and
 - (5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Section 409(D).
- (E) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.
 - (F) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this Act and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.
 - (G) The operating agreement may alter or eliminate the indemnification for a member or manager provided by Section 408(A) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:
 - (1) breach of the duty of loyalty;
 - (2) a financial benefit received by the member or manager to which the member or manager is not entitled;
 - (3) a breach of a duty under Section 406;
 - (4) intentional infliction of harm on the company or a member; or
 - (5) an intentional violation of criminal law.
 - (H) The court shall decide any claim under subsection (D) that a term of an operating agreement is manifestly unreasonable. The court:
 - (1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and
 - (2) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:
 - (a) the objective of the term is unreasonable; or
 - (b) the term is an unreasonable means to achieve the provision's objective.

Section 111 Operating Agreement; Effect on Limited Liability Company and Persons Becoming Members; Preformation Agreement

- (A) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.
- (B) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.
- (C) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

Section 112 Operating Agreement; Effect on Third Parties And Relationship To Records Effective on Behalf Of Limited Liability Company

- (A) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.
- (B) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Section 503(B)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.
- (C) If a record that has been delivered by a limited liability company to the Secretary for filing and has become effective under this Act contains a provision that would be ineffective under Section 110(C) if contained in the operating agreement, the provision is likewise ineffective in the record.

(D) Subject to subsection (C), if a record that has been delivered by a limited liability company to the Secretary for filing and has become effective under this Act conflicts with a provision of the operating agreement:

- (1) the operating agreement prevails as to members, dissociated members, transferees, and managers; and
- (2) the record prevails as to other persons to the extent they reasonably rely on the record.

Section 113 Office And Agent for Service of Process

- (A) A limited liability company shall designate and continuously maintain in the Nation an office, which need not be a place of its activity in the Nation; and an agent for service of process.
- (B) A foreign limited liability company that has a certificate of authority under Section 802 shall designate and continuously maintain in the Nation an agent for service of process.
- (C) An agent for service of process of a limited liability company or foreign limited liability company must be an individual who is a resident of the Nation or other person with authority to transact business in the Nation.

Section 114 Change of Designated Office or Agent for Service of Process

- (A) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the Secretary for filing a statement of change containing:
 - (1) the name of the company;
 - (2) the street and mailing addresses of its current designated office;
 - (3) if the current designated office is to be changed, the street and mailing addresses of the new designated office;
 - (4) the name and street and mailing addresses of its current agent for service of process; and
 - (5) if the current agent for service of process or an address of the agent is to be changed, the new information.
- (B) Subject to Section 205(C), a statement of change is effective when filed by the Secretary.

Section 117 Resignation of Agent for Service of Process

- (A) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the Secretary for filing a statement of resignation containing the company name and stating that the agent is resigning.
- (B) The Secretary shall file a statement of resignation delivered under subsection (A) and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the Secretary and is different from the mailing address of the designated office.
- (C) An agency for service of process terminates on the earlier of: the 31st day after the Secretary files the statement of resignation; or when a record designating a new agent for service of process is delivered to the Secretary for filing on behalf of the limited liability company and becomes effective.

Section 118 Service Of Process

- (A) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.
- (B) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in the Nation or the agent for service of process cannot with reasonable diligence be found at the agent's street address, the Secretary is an agent of the company upon whom process, notice, or demand may be served.
- (C) Service of any process, notice, or demand on the Secretary as agent for a limited liability company or foreign limited liability company may be made by delivering to the Secretary duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the Secretary, the Secretary shall forward one of the copies by registered or certified mail, return re-

ceipt requested, to the company at its designated office.

- (D) Service is effected under subsection (C) at the earliest of:
 - (1) the date the limited liability company or foreign limited liability company receives the process, notice, or demand;
 - (2) the date shown on the return receipt, if signed on behalf of the company; or
 - (3) five days after the process, notice, or demand is deposited with the United States Postal Service, if correctly addressed and with sufficient postage.
- (E) The Secretary shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.
- (F) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

**ARTICLE 2
FORMATION; CERTIFICATE OF
ORGANIZATION AND OTHER FILINGS**

Section 201 Formation Of Limited Liability Company; Certificate Of Organization

- (A) One or more persons may act as organizers to form a limited liability company by signing and delivering to the Secretary for filing a certificate of organization.
- (B) A certificate of organization must state:
 - (1) the name of the limited liability company, which must comply with Section 108;
 - (2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the company; and
 - (3) if the company will have no members when the Secretary files the certificate, a statement to that effect.
- (C) Subject to Section 112(C), a certificate of organization may also contain statements as to matters other than those required by subsection (B). However, a statement in a certificate of organization is not effective as a statement of authority.

(D) Unless the filed certificate of organization contains the statement as provided in subsection (B)(3), the following rules apply:

- (1) A limited liability company is formed when the Secretary has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 205(C).
- (2) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the Secretary for filing and the Secretary files the certificate.
- (3) Subject to any delayed effective date and except in a proceeding by the Nation to dissolve a limited liability company, the filing of the certificate of organization by the Secretary is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(E) If a filed certificate of organization contains a statement as provided in subsection (B)(3), the following rules apply:

- (1) The certificate lapses and is void unless, within [90] days from the date the Secretary files the certificate, an organizer signs and delivers to the Secretary for filing a notice stating that the limited liability company has at least one member; and the date on which a person or persons became the company's initial member or members.
- (2) If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).
- (3) Except in a proceeding by the Nation to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the Secretary is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Section 202 Amendment or Restatement of Certificate of Organization

(A) A certificate of organization may be amended or restated at any time.

(B) To amend its certificate of organization, a limited liability company must deliver to the Secretary for filing an amendment stating:

- (1) the name of the company;
- (2) the date of filing of its certificate of organization; and
- (3) the changes the amendment makes to the certificate as most recently amended or restated.

(C) To restate its certificate of organization, a limited liability company must deliver to the Secretary for filing a restatement, designated as such in its heading, stating:

- (1) in the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization;
- (2) if the company's name has been changed at any time since the company's formation, each of the company's former names; and
- (3) the changes the restatement makes to the certificate as most recently amended or restated.

(D) Subject to Sections 112(C) and 205(C), an amendment to or restatement of a certificate of organization is effective when filed by the Secretary.

(E) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

- (1) (1) cause the certificate to be amended; or
- (2) (2) if appropriate, deliver to the Secretary for filing a statement of change under Section 114 or a statement of correction under Section 206.

Section 203 Signing of Records to be Delivered for Filing to Secretary

(A) A record delivered to the Secretary for filing pursuant to this Act must be signed as follows:

- (1) Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of

a limited liability company must be signed by a person authorized by the company.

- (2) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.
- (3) A notice under Section 201(E)(1) must be signed by an organizer.
- (4) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under Section 702(C) or a person appointed under Section 702(D) to wind up those activities.
- (5) A statement of cancellation under Section 201(D)(2) must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.
- (6) A statement of denial by a person under Section 303 must be signed by that person.
- (7) Any other record must be signed by the person on whose behalf the record is delivered to the Secretary.

(B) Any record filed under this Act may be signed by an agent.

Section 204 Signing and Filing Pursuant to Judicial Order

(A) If a person required by this Act to sign a record or deliver a record to the Secretary for filing under this Act does not do so, any other Person that is aggrieved may petition the Citizen Potawatomi Nation Courts to order:

- (1) the Person to sign the record;
- (2) the Person to deliver the record to the Secretary for filing; or
- (3) the Secretary to file the record unsigned.

(B) If a petitioner under subsection (A) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

Section 205 Delivery To And Filing Of Records By Secretary; Effective Time And Date

(A) A record authorized or required to be delivered

to the Secretary for filing under this Act must be captioned to describe the record's purpose, be in a medium permitted by the Secretary, and be delivered to the Secretary. If the filing fees have been paid, unless the Secretary determines that a record does not comply with the filing requirements of this Act, the Secretary shall file the record and:

- (1) for a statement of denial under Section 303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and
- (2) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(B) Upon request and payment of the requisite fee, the Secretary shall send to the requester a certified copy of a requested record.

(C) Except as otherwise provided in Sections 115 and 206 and except for a certificate of organization that contains a statement as provided in Section 201(B)(3), a record delivered to the Secretary for filing under this Act may specify an effective time and a delayed effective date. Subject to Sections 115, 201(D)(1), and 206, a record filed by the Secretary is effective:

- (1) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the Secretary's endorsement of the date and time on the record;
- (2) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;
- (3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of the specified date; or the 90th day after the record is filed; or
- (4) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of the specified date; or the 90th day after the record is filed.

Section 206 Correcting Filed Record

(A) A limited liability company or foreign limited liability company may deliver to the Secretary

for filing a statement of correction to correct a record previously delivered by the company to the Secretary and filed by the Secretary, if at the time of filing the record contained inaccurate information or was defectively signed.

(B) A statement of correction under subsection (A) may not state a delayed effective date and must:

- (1) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;
- (2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and
- (3) correct the defective signature or inaccurate information.

(C) When filed by the Secretary, a statement of correction under subsection (A) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

- (1) for the purposes of Section 103(D); and
- (2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

Section 207 Liability for Inaccurate Information in Filed Record

(A) If a record delivered to the Secretary for filing under this Act and filed by the Secretary contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

- (1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and
- (2) subject to subsection (B), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:
 - (a) the record was delivered for filing on behalf of the company; and
 - (b) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

(iii) delivered to the Secretary for filing a statement of change under Section 114 or a statement of correction under Section 206.

(B) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the Secretary for filing under this Act and imposes that responsibility on one or more other members, the liability stated in subsection (A)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(C) An individual who signs a record authorized or required to be filed under this Act affirms under penalty of perjury that the information stated in the record is accurate.

Section 208 Certificate of Existence or Authorization

(A) The Secretary, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the Secretary show that the company has been formed under Section 201 and the Secretary has not filed a statement of termination pertaining to the company. A certificate of existence must state:

- (1) the company's name;
- (2) that the company was duly formed under the laws of the Nation and the date of formation;
- (3) whether all fees, taxes, and penalties due under this Act or other law to the Secretary have been paid;
- (4) whether the company's most recent annual report required by Section 209 has been filed by the Secretary;
- (5) whether the Secretary has administratively dissolved the company;

- (6) whether the company has delivered to the Secretary for filing a statement of dissolution;
 - (7) that a statement of termination has not been filed by the Secretary; and
 - (8) other facts of record in the office of the Secretary which are specified by the person requesting the certificate.
- (B) The Secretary, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the Secretary show that the Secretary has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:
- (1) the company's name and any alternate name adopted under Section 805(A) for use in the Nation;
 - (2) that the company is authorized to transact business in the Nation;
 - (3) whether all fees, taxes, and penalties due under this Act or other law to the Secretary have been paid;
 - (4) whether the company's most recent annual report required by Section 209 has been filed by the Secretary;
 - (5) that the Secretary has not revoked the company's certificate of authority and has not filed a notice of cancellation; and
 - (6) other facts of record in the office of the Secretary which are specified by the person requesting the certificate.
- (C) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the Secretary is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in the Nation.
- (1) the name of the company;
 - (2) the street and mailing addresses of the company's designated office and the name and street and mailing addresses of its agent for service of process in the Nation;
 - (3) the street and mailing addresses of its principal office; and
 - (4) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under Section 805(A).
- (B) Information in an annual report under this section must be current as of the date the report is delivered to the Secretary for filing.
- (C) The first annual report under this section must be delivered to the Secretary between [January 1 and April 1] of the year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A report must be delivered to the Secretary between January 1 and April 1 of each subsequent calendar year.
- (D) If an annual report under this section does not contain the information required in subsection (A), the Secretary shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (A) and delivered to the Secretary within 30 days after the effective date of the notice, it is timely delivered.
- (E) If an annual report under this section contains an address of a designated office or the name or address of an agent for service of process which differs from the information shown in the records of the Secretary immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 114.

Section 209 Annual Report for Secretary

- (A) Each year, a limited liability company or a foreign limited liability company authorized to transact business in the Nation shall deliver to the Secretary for filing a report that states:

ARTICLE 3
RELATIONS OF MEMBERS AND MANAGERS
TO PERSONS DEALING WITH LIMITED
LIABILITY COMPANY

Section 301 No Agency Power of Member as Member

- (A) A member is not an agent of a limited liability company solely by reason of being a member.
- (B) A person's status as a member does not prevent or restrict law other than this Act from imposing liability on a limited liability company because of the person's conduct.

Section 302 Statement of Authority

- (A) A limited liability company may deliver to the Secretary for filing a statement of authority. The statement:
 - (1) must include the name of the company and the street and mailing addresses of its designated office;
 - (2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:
 - (a) execute an instrument transferring real property held in the name of the company; or
 - (b) enter into other transactions on behalf of, or otherwise act for or bind, the company; and
 - (3) may state the authority, or limitations on the authority, of a specific person to:
 - (a) execute an instrument transferring real property held in the name of the company; or
 - (b) enter into other transactions on behalf of, or otherwise act for or bind, the company.
- (B) To amend or cancel a statement of authority filed by the Secretary under Section 205(A), a limited liability company must deliver to the Secretary for filing an amendment or cancellation stating:
 - (1) the name of the company;
 - (2) the street and mailing addresses of the company's designated office;

- (3) the caption of the statement being amended or canceled and the date the statement being affected became effective; and
- (4) the contents of the amendment or a declaration that the statement being affected is canceled.

- (C) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.
- (D) Subject to subsection (C) and Section 103(D) and except as otherwise provided in subsections (F), (G), and (H), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.
- (E) Subject to subsection (C), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:
 - (1) the person has knowledge to the contrary;
 - (2) the statement has been canceled or restrictively amended under subsection (B); or
 - (3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.
- (F) Subject to subsection (C), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:
 - (1) the statement has been canceled or restrictively amended under subsection (B) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or
 - (2) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the

grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

- (G) Subject to subsection (C), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.
- (H) Subject to subsection (I), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (F) and is a limitation on authority for the purposes of subsection (G).
- (I) After a statement of dissolution becomes effective, a limited liability company may deliver to the Secretary for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (F) and (G).
- (J) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (F) or (G).
- (K) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection (F)(1).

Section 303 Liability of Members and Managers

- (A) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:
 - (1) are solely the debts, obligations, or other liabilities of the company; and
 - (2) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.
- (B) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on

the members or managers for the debts, obligations, or other liabilities of the company.

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

Section 401 Becoming Member

- (A) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.
- (B) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.
- (C) If a filed certificate of organization contains the statement required by Section 201(B)(3), a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company's initial members.
- (D) After formation of a limited liability company, a person becomes a member:
 - (1) as provided in the operating agreement;
 - (2) as the result of a transaction effective under Article 10;
 - (3) with the consent of all the members; or
 - (4) if, within 90 consecutive days after the company ceases to have any members:
 - (a) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and
 - (b) the designated person consents to become a member.
- (E) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Section 402 Form of Contribution

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

Section 403 Liability For Contributions

- (A) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.
- (B) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (A) may enforce the obligation.

Section 404 Sharing of and Right to Distributions Before Dissolution

- (A) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502 and any charging order in effect under Section 503.
- (B) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.
- (C) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 708(C), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.
- (D) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

Section 405 Limitations on Distribution

- (A) A limited liability company may not make a distribution if after the distribution:
 - (1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities; or
 - (2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.
- (B) A limited liability company may base a determination that a distribution is not prohibited under subsection (A) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.
- (C) Except as otherwise provided in subsection (F), the effect of a distribution under subsection (A) is measured:
 - (1) in the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and
 - (2) in all other cases, as of the date:
 - (a) the distribution is authorized, if the payment occurs within 120 days after that date; or
 - (b) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.
- (D) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors.
- (E) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for

purposes of subsection (A) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(F) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(G) In subsection (A), “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Section 406 Liability for Improper Distributions

(A) Except as otherwise provided in subsection (B), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 and in consenting to the distribution fails to comply with Section 409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 405.

(B) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (A) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

(C) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 405.

(D) A person against which an action is commenced because the person is liable under subsection (A) may:

- (1) implead any other person that is subject to liability under subsection (A) and seek to compel contribution from the person; and
- (2) implead any person that received a distribution in violation of subsection (C) and seek to compel contribution from the person in the amount the person received in violation of subsection (C).

(E) An action under this section is barred if not commenced within two years after the distribution.

Section 407 Management of Limited Liability Company

(A) A limited liability company is a member-managed limited liability company unless the operating agreement:

- (1) expressly provides that:
 - (a) the company is or will be “manager-managed”;
 - (b) the company is or will be “managed by managers”; or
 - (c) management of the company is or will be “vested in managers”; or

(2) includes words of similar import.

(B) In a member-managed limited liability company, the following rules apply:

- (1) The management and conduct of the company are vested in the members.
- (2) Each member has equal rights in the management and conduct of the company’s activities.
- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- (5) The operating agreement may be amended only with the consent of all members.

(C) In a manager-managed limited liability company, the following rules apply:

- (1) Except as otherwise expressly provided in

this Act, any matter relating to the activities of the company is decided exclusively by the managers.

- (2) Each manager has equal rights in the management and conduct of the activities of the company.
- (3) A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.
- (4) The consent of all members is required to:
 - (a) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the good will, outside the ordinary course of the company's activities;
 - (b) approve a merger, conversion, or domestication under Article 10;
 - (c) undertake any other act outside the ordinary course of the company's activities; and
 - (d) amend the operating agreement.
- (5) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.
- (6) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.
- (7) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.
- (D) An action requiring the consent of members under this Act may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the mem-

ber by signing an appointing record, personally or by the member's agent.

- (E) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.
- (F) This Act does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

Section 408 Indemnification and Insurance

- (A) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 405 and 409.
- (B) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 110(G), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.
- (C) Subject to the Standards and Restrictions set forth in an Operating Agreement, a Limited Liability Company may indemnify and hold harmless any Member or Manager or other Person from and against claims or demands.

Section 409 Standards of Conduct for Members and Managers

- (A) A member of a member-managed limited liability company owes to the company and, subject to Section 901(B), the other members the fiduciary duties of loyalty and care stated in subsections (B) and (C).
- (B) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

- (1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:
 - (a) in the conduct or winding up of the company's activities;
 - (b) from a use by the member of the company's property; or
 - (c) from the appropriation of a limited liability company opportunity;
 - (2) to refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company; and
 - (3) to refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.
- (C) Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.
- (D) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this Act or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.
- (E) It is a defense to a claim under subsection (B) (2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.
- (F) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.
- (G) In a manager-managed limited liability company, the following rules apply:

- (1) Subsections (A), (B), (C), and (E) apply to the manager or managers and not the members.
- (2) The duty stated under subsection (B)(3) continues until winding up is completed.
- (3) Subsection (D) applies to the members and managers.
- (4) Subsection (F) applies only to the members.
- (5) (5) A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

Section 410 Right of Members, Managers, and Dissociated Members to Information

- (A) In a member-managed limited liability company, the following rules apply:
- (1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this Act.
 - (2) The company shall furnish to each member:
 - (a) without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this Act, except to the extent the company can establish that it reasonably believes the member already knows the information; and
 - (b) on demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.
 - (3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(B) In a manager-managed limited liability company, the following rules apply:

- (1) The informational rights stated in subsection (A) and the duty stated in subsection (A)(3) apply to the managers and not the members.
- (2) During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:
 - (a) the member seeks the information for a purpose material to the member's interest as a member;
 - (b) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and
 - (c) the information sought is directly connected to the member's purpose.
- (3) Within 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall in a record inform the member that made the demand:
 - (a) of the information that the company will provide in response to the demand and when and where the company will provide the information; and
 - (b) if the company declines to provide any demanded information, the company's reasons for declining.
- (4) Whenever this Act or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(C) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person

seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (B)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (B)(3).

- (D) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.
- (E) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (G) applies both to the agent or legal representative and the member or dissociated member.
- (F) The rights under this section do not extend to a person as transferee.
- (G) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

Section 411 Business Transactions of Member or Manager with Limited Liability Company

Except as provided in an Operating Agreement, a Member or Manager may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one (1) or more obligations of, provide collateral for, and transact other business with, a Limited Liability Company, and subject to applicable law, has the same rights and obligations with respect to any such matter as a Person who is not a Member or Manager.

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

Section 501 Nature of Transferable Interest

A transferable interest is personal property.

Section 502 Transfer of Transferable Interest

(A) A transfer, in whole or in part, of a transferable interest is permissible; does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and subject to Section 504, does not entitle the transferee to:

- (1) participate in the management or conduct of the company's activities; or
- (2) except as otherwise provided in subsection (C), have access to records or other information concerning the company's activities.

(B) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(C) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(D) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(E) A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

(F) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(G) Except as otherwise provided in Section 602(4) (B), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(H) When a member transfers a transferable interest to a person that becomes a member with respect

to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406(C) known to the transferee when the transferee becomes a member.

Section 503 Charging Order

(A) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(B) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (A), the court may:

- (1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and
- (2) make all other orders necessary to give effect to the charging order.

(C) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to Section 502.

(D) At any time before foreclosure under subsection (C), the member or transferee whose transferable interest is subject to a charging order under subsection (A) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(E) At any time before foreclosure under subsection (C), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(F) This Act does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(G) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Section 504 Power of Personal Representative of Deceased Member

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Section 502(C) and, for the purposes of settling the estate, the rights of a current member under Section 410.

ARTICLE 6 MEMBER'S DISSOCIATION

Section 601 Member's Power to Dissociate; Wrongful Dissociation

(A) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Section 602(1).

(B) A person's dissociation from a limited liability company is wrongful only if the dissociation:

- (1) is in breach of an express provision of the operating agreement; or
- (2) occurs before the termination of the company and:
 - (a) the person withdraws as a member by express will;
 - (b) the person is expelled as a member by judicial order under Section 602(5);
 - (c) the person is dissociated under Section 602(7)(A) by becoming a debtor in bankruptcy; or
 - (d) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(C) A person that wrongfully dissociates as a member is liable to the limited liability company and,

subject to Section 901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

Section 602 Events Causing Dissociation

A person is dissociated as a member from a limited liability company when:

- (1) the company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date;
- (2) an event stated in the operating agreement as causing the person's dissociation occurs;
- (3) the person is expelled as a member pursuant to the operating agreement;
- (4) the person is expelled as a member by the unanimous consent of the other members if:
 - (a) it is unlawful to carry on the company's activities with the person as a member;
 - (b) there has been a transfer of all of the person's transferable interest in the company, other than:
 - (i) a transfer for security purposes; or
 - (ii) a charging order in effect under Section 503 which has not been foreclosed;
 - (c) the person is a corporation and, within 90 days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or
 - (d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) on application by the company, the person

is expelled as a member by judicial order because the person:

- (a) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities;
- (b) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under Section 409; or
- (c) has engaged in, or is engaging, in conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member;
- (6) in the case of a person who is an individual:
 - (a) the person dies; or
 - (b) in a member-managed limited liability company:
 - (i) a guardian or general conservator for the person is appointed; or
 - (ii) there is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under [this act] or the operating agreement;
- (7) in a member-managed limited liability company, the person:
 - (a) becomes a debtor in bankruptcy;
 - (b) executes an assignment for the benefit of creditors; or
 - (c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property;
- (8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed;
- (9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's

entire transferable interest in the company is distributed;

- (10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;
- (11) the company participates in a merger under Article 10, if:
 - (a) the company is not the surviving entity; or
 - (b) otherwise as a result of the merger, the person ceases to be a member;
- (12) the company participates in a conversion under Article 10;
- (13) the company participates in a domestication under Article 10, if, as a result of the domestication, the person ceases to be a member; or
- (14) the company terminates.

Section 603 Effect of Person's Dissociation as Member

- (A) When a person is dissociated as a member of a limited liability company:
 - (1) the person's right to participate as a member in the management and conduct of the company's activities terminates;
 - (2) if the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and
 - (3) subject to Section 504 and Article 10, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.
- (B) A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

ARTICLE 7 DISSOLUTION AND WINDING UP

Section 701 Events Causing Dissolution

- (A) A limited liability company is dissolved, and its activities must be wound up, upon the occur-

rence of any of the following:

- (1) an event or circumstance that the operating agreement states causes dissolution;
- (2) the consent of all the members;
- (3) the passage of 90 consecutive days during which the company has no members;
- (4) on application by a member, the entry by a court of the Nation of an order dissolving the company on the grounds that:
 - (a) the conduct of all or substantially all of the company's activities is unlawful; or
 - (b) it is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement; or
- (5) on application by a member, the entry by of the Nation of an order dissolving the company on the grounds that the managers or those members in control of the company:
 - (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or
 - (b) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

- (B) In a proceeding brought under subsection (A) (5), the court may order a remedy other than dissolution.

Section 702 Winding Up

- (A) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.
- (B) In winding up its activities, a limited liability company:
- (1) shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company; and
 - (2) may:
 - (a) deliver to the Secretary for filing a statement of dissolution stating the name of the company and that the company is dissolved;
 - (b) preserve the company activities and

property as a going concern for a reasonable time;

- (c) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
 - (d) transfer the company's property;
 - (e) settle disputes by mediation or arbitration;
 - (f) deliver to the Secretary for filing a statement of termination stating the name of the company and that the company is terminated; and
 - (g) perform other acts necessary or appropriate to the winding up.
- (C) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under Section 407(C) and is deemed to be a manager for the purposes of Section 304(A)(2).
- (D) If the legal representative under subsection (C) declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:
- (1) has the powers of a sole manager under Section 407(C) and is deemed to be a manager for the purposes of Section 304(A)(2); and
 - (2) shall promptly deliver to the Secretary for filing an amendment to the company's certificate of organization to:
 - (a) state that the company has no members;
 - (b) state that the person has been appointed pursuant to this subsection to wind up the company; and
 - (c) provide the street and mailing addresses of the person.
- (E) A Court of the Nation may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities:
- (1) on application of a member, if the applicant establishes good cause;

- (2) on the application of a transferee, if:
 - (a) the company does not have any members;
 - (b) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and
 - (c) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (D); or
- (3) in connection with a proceeding under Section 701(A)(4) or (5).

Section 703 Known Claims Against Dissolved Limited Liability Company

- (A) Except as otherwise provided in subsection (D), a dissolved limited liability company may give notice of a known claim under subsection (B), which has the effect as provided in subsection (C).
- (B) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:
 - (1) specify the information required to be included in a claim;
 - (2) provide a mailing address to which the claim is to be sent;
 - (3) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
 - (4) state that the claim will be barred if not received by the deadline.
- (C) A claim against a dissolved limited liability company is barred if the requirements of subsection (B) are met and:
 - (1) the claim is not received by the specified deadline; or
 - (2) if the claim is timely received but rejected by the company:
 - (a) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within 90 days after the claimant receives the notice; and

- (b) the claimant does not commence the required action within the 90 days.

- (D) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Section 704 Other Claims Against Dissolved Limited Liability Company

- (A) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.
- (B) The notice authorized by subsection (A) must:
 - (1) be published at least once in a newspaper of general circulation in the Nation in which the dissolved limited liability company's principal office is located or, if it has none in the Nation, in the State in which the company's designated office is or was last located;
 - (2) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and
 - (3) state that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.
- (C) If a dissolved limited liability company publishes a notice in accordance with subsection (B), unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, the claim of each of the following claimants is barred:
 - (1) a claimant that did not receive notice in a record under Section 703;
 - (2) a claimant whose claim was timely sent to the company but not acted on; and
 - (3) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.
- (D) A claim not barred under this section may be enforced:
 - (1) against a dissolved limited liability company, to the extent of its undistributed assets; and
 - (2) if assets of the company have been distributed after dissolution, against a member or

transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

Section 705 Administrative Dissolution

(A) The Secretary may dissolve a limited liability company administratively if the company does not:

- (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the Secretary under this Act or law other than this Act; or
- (2) deliver, within 60 days after the due date, its annual report to the Secretary.

(B) If the Secretary determines that a ground exists for administratively dissolving a limited liability company, the Secretary shall file a record of the determination and serve the company with a copy of the filed record.

(C) If within 60 days after service of the copy pursuant to subsection (B) a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary that each ground determined by the Secretary does not exist, the Secretary shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The Secretary shall serve the company with a copy of the filed declaration.

(D) A limited liability company that has been administratively dissolved continues in existence but, subject to Section 706, may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 702 and 708 and to notify claimants under Sections 703 and 704.

(E) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Section 706 Reinstatement Following Administrative Dissolution

(A) A limited liability company that has been administratively dissolved may apply to the Sec-

retary for reinstatement within two years after the effective date of dissolution. The application must be delivered to the Secretary for filing and state:

- (1) the name of the company and the effective date of its dissolution;
- (2) that the grounds for dissolution did not exist or have been eliminated; and
- (3) that the company's name satisfies the requirements of Section 108.

(B) If the Secretary determines that an application under subsection (A) contains the required information and that the information is correct, the Secretary shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(C) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Section 707 Appeal From Rejection of Reinstatement

(A) If the Secretary rejects a limited liability company's application for reinstatement following administrative dissolution, the Secretary shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

(B) Within 30 days after service of a notice of rejection of reinstatement under subsection (A), a limited liability company may appeal from the rejection by petitioning a Court of the Nation to set aside the dissolution. The petition must be served on the Secretary and contain a copy of the Secretary's declaration of dissolution, the company's application for reinstatement, and the Secretary's notice of rejection.

(C) The court may order the Secretary to reinstate a dissolved limited liability company or take other action the court considers appropriate.

Section 708 Distribution of Assets in Winding Up Limited Liability Company's Activities

(A) In winding up its activities, a limited liability company must apply its assets to discharge its

obligations to creditors, including members that are creditors.

(B) After a limited liability company complies with subsection (A), any surplus must be distributed in the following order, subject to any charging order in effect under Section 503:

- (1) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
- (2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 502.

(C) If a limited liability company does not have sufficient surplus to comply with subsection (B) (1), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(D) All distributions made under subsections (B) and (C) must be paid in money.

ARTICLE 8

FOREIGN LIMITED LIABILITY COMPANIES

Section 801 Governing Law

(A) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

- (1) the internal affairs of the company; and
- (2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

(B) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of the Nation.

(C) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in the Nation per Sections 104-105.

Section 802 Application for Certificate of Authority

(A) A foreign limited liability company may apply

for a certificate of authority to transact business in the Nation by delivering an application to the Secretary for filing. The application must state:

- (1) the name of the company and, if the name does not comply with Section 108, an alternate name adopted pursuant to Section 805(A);
- (2) the name of the state or other jurisdiction under whose law the company is formed;
- (3) the street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
- (4) the name and street and mailing addresses of the company's initial agent for service of process in the Nation.

(B) A foreign limited liability company shall deliver with a completed application under subsection (A) a certificate of existence or a record of similar import signed by the Secretary or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

Section 803 Activities Constituting Transacting Business

(A) Activities of a foreign limited liability company in the Nation constitute transacting business in the Nation within the meaning of this Article, including the ownership in the Nation of income-producing real property or tangible personal property.

(B) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of the Nation other than this Act.

Section 804 Filing of Certificate of Authority

Unless the Secretary determines that an application for a certificate of authority does not comply with the filing requirements of this Act, the Secretary, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in the Nation, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

Section 805 Noncomplying Name of Foreign Limited Liability Company

- (A) A foreign limited liability company whose name does not comply with Section 108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in the Nation, an alternate name that complies with Section 108. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in the Nation under the alternate name unless the company is authorized by a Court of the Nation to transact business in the Nation under another name.
- (B) If a foreign limited liability company authorized to transact business in the Nation changes its name to one that does not comply with Section 108, it may not thereafter transact business in the Nation until it complies with subsection (A) and obtains an amended certificate of authority.

Section 806 Revocation Of Certificate of Authority

- (A) A certificate of authority of a foreign limited liability company to transact business in the Nation may be revoked by the Secretary in the manner provided in subsections (B) and (C) if the company does not:
- (1) pay, within 60 days after the due date, any fee, tax, or penalty due to the Secretary under this Act or law other than this Act;
 - (2) deliver, within 60 days after the due date, its annual report required under Section 209;
 - (3) appoint and maintain an agent for service of process as required by Section 113(B); or
 - (4) deliver for filing a statement of a change under Section 114 within 30 days after a change has occurred in the name or address of the agent.
- (B) To revoke a certificate of authority of a foreign limited liability company, the Secretary must prepare, sign, and file a notice of revocation and send a copy to the company's agent for service of process in the Nation, or if the company does not appoint and maintain a proper agent in the Nation, to the company's designated office. The notice must state the revocation's effective date, which must be at least 60 days after the date the

Secretary sends the copy; and the grounds for revocation under subsection (A).

- (C) The authority of a foreign limited liability company to transact business in the Nation ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection (B). If the company cures each ground, the Secretary shall file a record so stating.

Section 807 Cancellation of Certificate of Authority

To cancel its certificate of authority to transact business in the Nation, a foreign limited liability company must deliver to the Secretary for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

Section 808 Effect of Failure to Have Certificate of Authority

- (A) A foreign limited liability company transacting business in the Nation may not maintain an action or proceeding in the Nation unless it has a certificate of authority to transact business in the Nation.
- (B) The failure of a foreign limited liability company to have a certificate of authority to transact business in the Nation does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in the Nation.
- (C) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in the Nation without a certificate of authority.
- (D) If a foreign limited liability company transacts business in the Nation without a certificate of authority or cancels its certificate of authority, it appoints the Secretary as its agent for service of process for rights of action arising out of the transaction of business in the Nation.

Section 809 Action by Tribal Attorney

The Tribal Attorney may maintain an action to enjoin a foreign limited liability company from transacting business in the Nation in violation of this Article.

ARTICLE 9 ACTIONS BY MEMBERS

Section 901 Direct Action by Member

(A) Subject to subsection (B), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this Act or arising independently of the membership relationship.

(B) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Section 902 Derivative Action

A member may maintain a derivative action to enforce a right of a limited liability company if:

- (1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or
- (2) a demand under paragraph (1) would be futile.

Section 903 Proper Plaintiff

(A) Except as otherwise provided in subsection (B), a derivative action under Section 902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(B) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

Section 904 Pleading

In a derivative action under Section 902, the complaint must state with particularity:

- (1) the date and content of the plaintiff's demand and the response to the demand by the managers or other members; or
- (2) if a demand has not been made, the reasons

a demand under Section 902(1) would be futile.

Section 905 Special Litigation Committee

(A) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing a person's right to information under Section 410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(B) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

(C) A special litigation committee may be appointed:

- (1) in a member-managed limited liability company:
 - (a) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and
 - (b) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or
- (2) in a manager-managed limited liability company:
 - (a) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and
 - (b) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(D) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

- (1) continue under the control of the plaintiff;
- (2) continue under the control of the committee;
- (3) be settled on terms approved by the committee; or
- (4) be dismissed.

(E) After making a determination under subsection (D), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (A) and allow the action to proceed under the direction of the plaintiff.

Section 906 Proceeds and Expenses

(A) Except as otherwise provided in subsection (B):

- (1) any proceeds or other benefits of a derivative action under Section 902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and
- (2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(B) If a derivative action under Section 902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

ARTICLE 10 MERGER, CONVERSION, AND DOMESTICATION

Section 1001 Definitions

In this Article:

- (1) “Constituent limited liability company” means a constituent organization that is a limited liability company.

- (2) “Constituent organization” means an organization that is party to a merger.
- (3) “Converted organization” means the organization into which a converting organization converts pursuant to Sections 1006 through 1009.
- (4) “Converting limited liability company” means a converting organization that is a limited liability company.
- (5) “Converting organization” means an organization that converts into another organization pursuant to Section 1006.
- (6) “Domesticated company” means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to Sections 1010 through 1013.
- (7) “Domesticating company” means the company that effects a domestication pursuant to Sections 1010 through 1013.
- (8) “Governing statute” means the statute that governs an organization's internal affairs.
- (9) “Organization” means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.
- (10) “Organizational documents” means:
 - (a) for a domestic or foreign general partnership, its partnership agreement;
 - (b) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;
 - (c) for a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;
 - (d) for a business trust, its agreement of trust and declaration of trust;
 - (e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among

its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

- (f) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.
- (11) “Personal liability” means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:
- (a) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or
 - (b) by the organization’s organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.
- (12) “Surviving organization” means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Section 1002 Merger

- (A) A limited liability company may merge with one or more other constituent organizations pursuant to this section, Sections 1003 through 1005, and a plan of merger, if:
 - (1) the governing statute of each of the other organizations authorizes the merger;
 - (2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and
 - (3) each of the other organizations complies with its governing statute in effecting the merger.

(B) A plan of merger must be in a record and must include:

- (1) the name and form of each constituent organization;
- (2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;
- (3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
- (4) if the surviving organization is to be created by the merger, the surviving organization’s organizational documents that are proposed to be in a record; and
- (5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization’s organizational documents that are, or are proposed to be, in a record.

Section 1003 Action on Plan of Merger by Constituent Limited Liability Company

- (A) Subject to Section 1014, a plan of merger must be consented to by all the members of a constituent limited liability company.
- (B) Subject to Section 1014 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the Secretary for filing under Section 1004, a constituent limited liability company may amend the plan or abandon the merger as provided in the plan; or except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Section 1004 Filings Required for Merger; Effective Date

- (A) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:
 - (1) each constituent limited liability company, as provided in Section 203(A); and
 - (2) each other constituent organization, as provided in its governing statute.

(B) Articles of merger under this section must include:

- (1) the name and form of each constituent organization and the jurisdiction of its governing statute;
- (2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;
- (3) the date the merger is effective under the governing statute of the surviving organization;
- (4) if the surviving organization is to be created by the merger:
 - (a) if it will be a limited liability company, the company's certificate of organization; or
 - (b) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;
- (5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;
- (6) a statement as to each constituent organization that the merger was approved as required by the organization's governing statute;
- (7) if the surviving organization is a foreign organization not authorized to transact business in the Nation, the street and mailing addresses of an office that the Secretary may use for the purposes of Section 1005(B); and
- (8) any additional information required by the governing statute of any constituent organization.

(C) Each constituent limited liability company shall deliver the articles of merger for filing in the office of the Secretary.

(D) A merger becomes effective under this Article:

- (1) if the surviving organization is a limited liability company, upon the later of:
 - (a) compliance with subsection (C); or

(b) subject to Section 205(C), as specified in the articles of merger; or

- (2) if the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

Section 1005 Effect of Merger

(A) When a merger becomes effective:

- (1) the surviving organization continues or comes into existence;
- (2) each constituent organization that merges into the surviving organization ceases to exist as a separate entity;
- (3) all property owned by each constituent organization that ceases to exist vests in the surviving organization;
- (4) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;
- (5) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;
- (6) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;
- (7) except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect; and
- (8) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Article 7;
- (9) if the surviving organization is created by the merger:
 - (a) if it is a limited liability company, the certificate of organization becomes effective; or
 - (b) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and
- (10) if the surviving organization preexisted the merger, any amendments provided for in

the articles of merger for the organizational document that created the organization become effective.

- (B) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of the Nation to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in the Nation on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in the Nation appoints the Secretary as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the Secretary under this subsection must be made in the same manner and has the same consequences as in Section 116(C) and (D).

Section 1006 Conversion

- (A) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, Sections 1007 through 1009, and a plan of conversion, if:
- (1) the other organization's governing statute authorizes the conversion;
 - (2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute; and
 - (3) the other organization complies with its governing statute in effecting the conversion.
- (B) A plan of conversion must be in a record and must include:
- (1) the name and form of the organization before conversion;
 - (2) the name and form of the organization after conversion;
 - (3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
 - (4) the organizational documents of the con-

verted organization that are, or are proposed to be, in a record.

Section 1007 Action on Plan of Conversion by Converting Limited Liability Company

- (A) Subject to Section 1014, a plan of conversion must be consented to by all the members of a converting limited liability company.
- (B) Subject to Section 1014 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the Secretary for filing under Section 1008, a converting limited liability company may amend the plan or abandon the conversion as provided in the plan; or except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section 1008 Filings Required for Conversion; Effective Date

- (A) After a plan of conversion is approved:
- (1) a converting limited liability company shall deliver to the Secretary for filing articles of conversion, which must be signed as provided in Section 203(A) and must include:
 - (a) a statement that the limited liability company has been converted into another organization;
 - (b) the name and form of the organization and the jurisdiction of its governing statute;
 - (c) the date the conversion is effective under the governing statute of the converted organization;
 - (d) a statement that the conversion was approved as required by this Act;
 - (e) a statement that the conversion was approved as required by the governing statute of the converted organization; and
 - (f) if the converted organization is a foreign organization not authorized to transact business in the Nation, the street and mailing addresses of an office which the Secretary may use for the purposes of Section 1009(C); and
 - (2) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the Sec-

retary for filing a certificate of organization, which must include, in addition to the information required by Section 201(B):

- (a) a statement that the converted organization was converted from another organization;
- (b) the name and form of that converting organization and the jurisdiction of its governing statute; and
- (c) a statement that the conversion was approved in a manner that complied with the converting organization's governing statute.

(B) A conversion becomes effective:

- (1) if the converted organization is a limited liability company, when the certificate of organization takes effect; and
- (2) if the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

Section 1009 Effect of Conversion

(A) An organization that has been converted pursuant to this Article is for all purposes the same entity that existed before the conversion.

(B) When a conversion takes effect:

- (1) all property owned by the converting organization remains vested in the converted organization;
- (2) all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;
- (3) an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
- (4) except as prohibited by law other than this Act, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;
- (5) except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
- (6) except as otherwise agreed, the conversion

does not dissolve a converting limited liability company for the purposes of Article 7.

(C) A converted organization that is a foreign organization consents to the jurisdiction of the courts of the Nation to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in the Nation on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in the Nation appoints the Secretary as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the Secretary under this subsection must be made in the same manner and has the same consequences as in Section 116(C) and (D).

Section 1010 Domestication

(A) A foreign limited liability company may become a limited liability company pursuant to this section, Sections 1011 through 1013, and a plan of domestication, if:

- (1) the foreign limited liability company's governing statute authorizes the domestication;
- (2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(B) A limited liability company may become a foreign limited liability company pursuant to this section, Sections 1011 through 1013, and a plan of domestication, if:

- (1) the foreign limited liability company's governing statute authorizes the domestication;
- (2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
- (3) the foreign limited liability company complies with its governing statute in effecting the domestication.

(C) A plan of domestication must be in a record and must include:

- (1) the name of the domesticating company be-

fore domestication and the jurisdiction of its governing statute;

- (2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;
- (3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and
- (4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

Section 1011 Action On Plan of Domestication by Domesticating Limited Liability Company

- (A) A plan of domestication must be consented to by all the members, subject to Section 1014, if the domesticating company is a limited liability company; and as provided in the domesticating company's governing statute, if the company is a foreign limited liability company.
- (B) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the Secretary for filing under Section 1012, a domesticating limited liability company may amend the plan or abandon the domestication as provided in the plan; or except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section 1012 Filings Required for Domestication; Effective Date

- (A) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary for filing articles of domestication, which must include:
 - (1) a statement, as the case may be, that the company has been domesticated from or into another jurisdiction;
 - (2) the name of the domesticating company and the jurisdiction of its governing statute;
 - (3) the name of the domesticated company and the jurisdiction of its governing statute;
 - (4) the date the domestication is effective under the governing statute of the domesticated company;

- (5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this Act;
- (6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and
- (7) if the domesticated company was a foreign limited liability company not authorized to transact business in the Nation, the street and mailing addresses of an office that the Secretary may use for the purposes of Section 1013(B).

(B) A domestication becomes effective:

- (1) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and
- (2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

Section 1013 Effect of Domestication

(A) When a domestication takes effect:

- (1) the domesticated company is for all purposes the company that existed before the domestication;
- (2) all property owned by the domesticating company remains vested in the domesticated company;
- (3) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;
- (4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;
- (5) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;
- (6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of Article 7.

(B) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of the Nation to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in the Nation on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in the Nation appoints the Secretary as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the Secretary under this subsection must be made in the same manner and has the same consequences as in Section 116(C) and (D).

(C) If a limited liability company has adopted and approved a plan of domestication under Section 1010 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the Secretary for filing setting forth:

- (1) the name of the company;
- (2) a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;
- (3) a statement the domestication was approved as required by this Act; and
- (4) the jurisdiction of formation of the domesticated foreign limited liability company.

Section 1014 Restrictions on Approval of Mergers, Conversions, and Domestications

(A) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication is ineffective without the consent of the member, unless:

- (1) the company's operating agreement provides for approval of a merger, conversion,

or domestication with the consent of fewer than all the members; and

- (2) the member has consented to the provision of the operating agreement.

(B) A member does not give the consent required by subsection (A) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

ARTICLE 11 MISCELLANEOUS PROVISIONS

Section 1101 Savings Clause

This Act does not affect an action commenced, proceeding brought, or right accrued before this Act takes effect.

Section 1102 Application to Existing Relationships

(A) Before the Effective Date of this Act, this Act governs only:

- (1) a limited liability company formed on or after the effective date of this Act; and
- (2) except as otherwise provided in subsection (C), a limited liability company formed before the effective date of this act which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this Act.

(B) Except as otherwise provided in subsection (C), on and after the effective date of this Act governs all limited liability companies.

(C) For the purposes applying this Act to a limited liability company formed before the effective date of this act:

- (1) the company's articles of organization are deemed to be the company's certificate of organization; and
- (2) for the purposes of applying Section 102(10) and subject to Section 112(D), language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement requirements that act might have imposed for the contents of the articles of organization.

Section 1103 Fees

(A) No document required to be filed under this Act shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to the Secretary:

- (1) Application for reservation of name, application for renewal of reservation or notice of transfer or cancellation of reservation - Seventy Five Dollars (\$75.00)
- (2) Certificate of organization or other document contemplated by Sections 201-202 - Fifty Dollars (\$50.00)
- (3) Certificate of conversion, merger, or domestication or any filing contemplated by Article 10 - Seventy Five Dollars (\$75.00)
- (4) Certificate of good standing or certificate of authority – Seventy Five Dollars (\$75.00)
- (5) Annual report – Fifty Dollars (\$50.00)
- (6) For certifying copies of any document on file with the Secretary - Thirty Dollars (\$30.00) per document.
- (7) For any other filing, certificate, or affidavit not specifically enumerated by this section – Fifty Dollars (\$50.00)

Section 1104 Severability

If any provision of this Act is held invalid, the invalidity does not affect other provisions of the Act which can be given effect without the invalid provision.”

CITIZEN POTAWATOMI NATION
INDUSTRIAL DEVELOPMENT AUTHORITY
TITLE 23

Enacted by Ordinance #17-08 enacted by the Citizen Potawatomi Legislature on March 6, 2017.

23-6-101 Short Title

This Act shall be known and may be cited as the “Citizen Potawatomi Nation Industrial Development Authority Act”.

23-6-102 Purpose

The Citizen Potawatomi Industrial Development Authority is hereby created for the purpose of developing and operating an industrial park to encourage industry, nonprofit and commercial enterprises, manufacturing, assembly, the transportation of goods, and the provision of associated services within the trust lands and jurisdictional territory of the Citizen Potawatomi Nation.

23-6-103 Board of Directors

The authority shall be managed by a board of directors comprised of the Chairman of the Citizen Potawatomi Nation, the Vice-Chairman of the Citizen Potawatomi Nation, and the Secretary/Treasurer of the Citizen Potawatomi Nation. The Chairman of the Citizen Potawatomi Nation shall be Chairman of the Board. The Board may appoint non-voting advisory members. The directors and advisory-members shall receive no salary. The Board shall keep detailed minutes of its proceedings. It shall keep suitable records of its financial transactions, and it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the Citizen Potawatomi Legislature.

23-6-104 Powers of the Authority

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated, with the caveat that all such powers may only be used in furtherance of the purposes contained in Section 102 of this Act:

- (1) To employ employees and agents;

- (2) To acquire, purchase, or lease as lessee, real property (including leases governed by 25 U.S.C. §§ 415 et seq.);
- (3) To lease any or all of its facilities or equipment, including the sublease of its real property owned by or leased from the Nation (including leases governed by 25 U.S.C. §§ 415 et seq.) subject to the approval of the Citizen Potawatomi Legislature in accordance with the Citizen Potawatomi Nation Business Leasing Regulations Act of 2012.
- (4) To enter into contracts with the Citizen Potawatomi Nation, the federal government or any other governmental bodies or political subdivisions, or with any other corporation, non-profit, entity, or person;
- (5) To accept grants and gifts from the Citizen Potawatomi Nation, the federal government, any governmental body or political subdivision, corporation, non-profit, entity, or person;
- (6) To borrow, at such rates of interest as the law authorizes, from the federal government or any agency thereof, individual, partnership, or private or governmental corporation, or any other entity; to issue its notes or other obligations; to secure such obligations by leasehold mortgage or pledge of non-trust property and improvements hereinafter acquired and the income derived therefrom; and to use any revenues and other income of the Authority for payment of interest and retirement of principal of such obligations. The Citizen Potawatomi Nation may lend money to the Authority. Notes or other obligations issued under this subdivision shall not be deemed to constitute a debt of the Citizen Potawatomi Nation or of any political

subdivision of the Citizen Potawatomi Nation or a pledge of the faith and credit of the Citizen Potawatomi Nation or of any political subdivision of the Citizen Potawatomi Nation;

- (7) To fix and revise from time to time the rents, fees and other charges to be paid to it in connection with the lease of various authority facilities and for any other services furnished or provided by the authority. Such rents, fees and charges shall provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects and the principal and interest of any bonds issued by the authority or other debts contracted as the bonds become due and payable. The Authority and the Citizen Potawatomi Nation may agree on payment by the Authority on account of governmental services to be rendered by the Citizen Potawatomi Nation in such amounts as the Authority may find to be consistent with the purposes of this Act. A reserve may be accumulated and maintained out of the revenues and receipts of the Authority for extraordinary repairs and expenses and for such other purposes. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the authority shall have exclusive control of the revenues and receipts derived from the lease of any authority facility and the right to use the revenues and receipts, net of tribal taxes, in the exercise of its powers and duties set forth in this Act.
- (8) To do all acts and things necessary or convenient to carry out the powers granted the Authority by this Act;
- (9) To adopt such rules and regulations from time to time, not in conflict with the laws of the Citizen Potawatomi Nation, concerning the regulation and use of properties under its control as will tend to further the protection of such property and the public thereon.
- (10) To form, or be a Member or Manager of, a limited liability company formed under the laws of the Nation.

- (11) To sue and be sued and to prosecute and defend, at law or in equity, any action or proceeding seeking to enforce any provision of this Act in the courts of the Citizen Potawatomi Nation. Any action or proceeding seeking to enforce any provision of this Act, or based on any right arising out of this Act, shall be brought against any of the parties only in the courts of the Citizen Potawatomi Nation, and each of the parties hereto consents to the exclusive jurisdiction of the Citizen Potawatomi Nation District Court and the appropriate appellate courts in any such proceeding, waives any objection to venue laid therein and agrees not to plead or claim in any such courts that such proceedings brought therein has been brought in any inconvenient forum;

23-6-105 Annual Report, Rules, Regulations

The Authority shall make an annual report, shall adopt rules and regulations, and establish general policies for the conduct of its business in light of the Authority's purposes set out in Section 102 of this Act. It shall make an annual report to the Legislature of the Citizen Potawatomi Nation and such special reports as may be requested in writing by the Legislature.

23-6-106 Exemption from Taxation

The Authority is hereby declared to be performing a public function in behalf of the Citizen Potawatomi Nation with respect to which the Authority is created and to be a public instrumentality of such locality. Accordingly, the income, including any profit made by the authority, shall at all times be exempt from all taxation by the State of Oklahoma, any political subdivision thereof, including, county and city taxation.

23-6-107 Authority to be nonprofit; excess earnings

The Authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall enure to the benefit of any individual, firm or corporation, except that if the Board of Directors of the Authority determines that sufficient provision has been made for the full payment of the expenses and other obligations of the Authority then any net earnings of the Authority thereafter accruing shall be paid to the Citizen Potawatomi Nation. However, nothing herein contained shall prevent the Board of Directors from transferring all or any part of its facilities or properties in accordance with the terms of any contract entered into by the Authority.

CITIZEN POTAWATOMI NATION
BUILDING CODES
TITLE 24

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CHAPTER ONE BUILDING CODE

Section 24-1-101 Building Code

The Citizen Potawatomi Building Code is the 2009 International Building Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-1-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Building Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER TWO EXISTING BUILDING CODE

Section 24-2-101 Existing Building Code

The Citizen Potawatomi Existing Building Code is the 2009 International Existing Building Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-2-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Existing Building Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER THREE PROPERTY MAINTENANCE CODE

Section 24-3-101 Property Maintenance Code

The Citizen Potawatomi Property Maintenance Code is the 2009 International Property Maintenance Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-3-102 Waiver

The Chairman of the Citizen Potawatomi Nation is

authorized to grant a written waiver of the Citizen Potawatomi Property Maintenance Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER FOUR PLUMBING CODE

Section 24-4-101 Plumbing Code

The Citizen Potawatomi Plumbing Code is the 2009 International Plumbing Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-4-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Plumbing Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER FIVE MECHANICAL CODE

Section 24-5-101 Mechanical Code

The Citizen Potawatomi Mechanical Code is the 2009 International Mechanical Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-5-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Mechanical Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER SIX

FIRE CODE

Section 24-6-101 Fire Code

The Citizen Potawatomi Fire Code is the 2009 International Fire Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-6-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Fire Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CHAPTER SEVEN

PRIVATE SEWAGE CODE

Section 24-7-101 Private Sewage Code

The Citizen Potawatomi Private Sewage Code is the 2009 International Private Sewage Code.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

Section 24-7-102 Waiver

The Chairman of the Citizen Potawatomi Nation is authorized to grant a written waiver of the Citizen Potawatomi Private Sewage Code based on the recommendation of a licensed architect for specific projects when said waiver is in the best interest of the Nation and said waiver will not impose a risk to the health, safety, or welfare of tribal citizens, employees or guests.

As amended by Ordinance #10-01 enacted by the Citizen Potawatomi Legislature on 9/30/2009.

CITIZEN POTAWATOMI NATION
COPYRIGHTS, PATENTS, AND INTELLECTUAL PROPERTY
TITLE 25

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PREFACE

Section 25-0-001 Authorization

There is hereby enacted as a law of the Citizen Potawatomi Nation an ordinance entitled the CITIZEN POTAWATOMI NATION COPYRIGHT ACT in words and figures as follows, to-wit:

Section 25-0-002 Title

This Act may be cited as the Citizen Potawatomi Nation Copyright Act of 1986.

Section 25-0-003 Purpose

It being necessary to strengthen the Tribal Government by protecting and regulating certain conduct within the Tribal jurisdiction in order for the Citizen Potawatomi Nation to efficiently and effectively exercise its confirmed governmental responsibilities within the Indian Country subject to the jurisdiction of the Citizen Potawatomi Nation, the purpose of this Act is to provide simple, fair, straightforward and efficient procedures, to provide for the protection and regulation of certain conduct, and encourage and endorse creative endeavors on behalf of the Tribe.

Section 25-0-004 Definitions

- (A) "Reproduce" means to copy, make, form, imitate or duplicate.
- (B) "Distribute" means to spread, circulate or dispense.
- (C) "Display" means to exhibit, print conspicuously, place in public.
- (D) "Publish" means to make publicly known; to issue written work; announce, proclaim, divulge or promulgate.
- (E) "Authorship" means, in this instance, the entity holding reproduction, publication and distribution rights of approval.

CHAPTER ONE WHAT COPYRIGHT IS

Section 25-1-101 Copyright Principals

Copyright is a form of protection provided by the laws of the Citizen Potawatomi Nation to original works of authorship donated to, commissioned by or created by employees of the Citizen Potawatomi Nation; including, but not limited to: literary, dramatic, musical, artistic, administrative, video, photographic and computer creations, works, grants and programs.

Section 25-1-102 Copyright Ownership

This Act authorizes the Citizen Potawatomi Nation, through its governing body, to be the sole owner of copyright with the exclusive right to do and to authorize others to do the following:

- (A) To reproduce copyrighted work in copies
- (B) To prepare derivative works based upon the copyrighted work
- (C) To distribute copies of the copyrighted work publicly by sale or other transfer of ownership, or by rental, lease or lending
- (D) To perform the copyrighted work publicly
- (E) To display the copyrighted work publicly

Section 25-1-103 Copyright Violation

It is illegal for anyone to violate any of these rights provided to the Citizen Potawatomi Nation as owner of copyright as provided in this Act. Persons convicted of violating the Copyright Ordinance of the Citizen Potawatomi Nation shall be found guilty of a misdemeanor and upon conviction thereof shall be sentenced to labor for a period not to exceed 60 days.

CHAPTER TWO CLAIM TO COPYRIGHT

Section 25-2-101

Copyright protection exists from the time the work is created in fixed form. Only the Citizen Potawatomi Nation, or those deriving their rights through the Tribe, can rightfully claim copyright.

- (A) In the case of works "made for hire," the Citizen Potawatomi Nation and not the creator, hold the copyright.
- (B) In the case of a work prepared by an employee within the scope of his/her employment, the Citizen Potawatomi Nation, not the employee, holds the copyright.
- (C) In the case of "one of a kind" original works donated to the Nation, the Citizen Potawatomi Nation, and not the donor, holds the copyright.

Section 25-2-102

This Act provides that transfer of ownership of any material object that embodies a protected work does not of itself convey any rights in the copyright.

Section 25-2-103

Specific and select permission granted for reproduction, publication, display or performance does not itself convey any rights of copyright.

CHAPTER THREE WHAT WORKS ARE PROTECTED

Section 25-3-101

Copyright protection exists for original works of authorship when they become fixed in a tangible form of expression. The fixation does not need to be directly perceptible, so long as it may be communicated with the aid of a machine or device. Copyrighted works include the following categories:

- (A) Literary and/or written works
- (B) Musical works, including accompanying words
- (C) Dramatic works, including any accompany music
- (D) Pictorial, graphic and sculptural works
- (E) Motion pictures and other audiovisual works
- (F) Computer programs, software and system designed specifically for the Citizen Potawatomi Nation

CHAPTER FOUR WHAT WORKS ARE NOT PROTECTED

Section 25-4-101

Several categories of material are generally not eligible for copyright protection. These include:

- (A) Works that have not been fixed in a tangible form or expression, i.e., works which have not been written or recorded.
- (B) Titles, names, short phrases and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering, or coloring; mere listings of ingredients or contents.
- (C) Ideas, procedures, methods, processes, concepts, principals or discoveries, as distinguished from a description, explanation or illustration.
- (D) Works consisting entirely of information that is common property and containing no original authorship. For example: calendars, measurements, lists of tables, etc., taken from public documents or other common sources

CHAPTER FIVE SECUREMENT OF COPYRIGHT

Section 25-5-101

Copyright is secured automatically when the work is created; a work is created when it is fixed in a copy for the first time. "Copy" means material object from which

a work can be read, heard or visually perceived either directly or with the aid of a machine or device. If a work is prepared over a period of time the part of the work existing in fixed form on a particular date constitutes the created work as of that date.

Section 25-5-102

When a work is put into fixed form all copies must bear a notice of copyright including (in visual materials) the letter "C" in a circle or the word "copyright"; the year of first publication; the name of the owner of the copyright. Thus all written materials, video materials and recording must include the phrase "Copyright held by the Citizen Potawatomi Nation, 20__.

Section 25-5-103

When copyright cannot fully be held by the Tribe (as in a product made possible by a federal grant) finished product should include the copyright symbol and a notice of joint copyright. For example: Copyright 1986 by the Citizen Potawatomi Nation and the National Endowment for the Humanities.

CHAPTER SIX TRANSFER OF COPYRIGHT

Section 25-6-101

Any of all of the exclusive rights, or any subdivisions of those rights, of the Citizen Potawatomi Nation may be transferred, but the transfer of exclusive rights is not valid unless that transfer is in writing and signed by the approved agent (Legislature) of the Citizen Potawatomi Nation. Transfer of a right on a non-exclusive basis does not require a written agreement. For example: The HowNiKan policy statement allows reproduction of HowNiKan articles as long as credit is given to the HowNiKan.

Section 25-6-102

This Act shall be in full force and effect according to its terms from and after the date of enactment by the Citizen Potawatomi Nation Business Committee.

RESERVED

CITIZEN POTAWATOMI NATION
EDUCATION ASSISTANCE PROGRAM
TITLE 26

RESERVED

CITIZEN POTAWATOMI NATION
FOOD AND DRUGS
TITLE 27

RESERVED

CITIZEN POTAWATOMI NATION
HEALTH, HOSPITALS, AND ASYLUMS
TITLE 28

RESERVED

CITIZEN POTAWATOMI NATION
HEALTH PROGRAMS AND PUBLIC WELFARE
TITLE 29

RESERVED

CITIZEN POTAWATOMI NATION
GOVERNMENTAL CONTRACTS
TITLE 30

RESERVED

CITIZEN POTAWATOMI NATION
LABOR AND EMPLOYMENT
TITLE 31

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As amended by Ordinance #17-07 enacted by the Citizen Potawatomi Legislature on March 6, 2017.

PREFACE

Section 31-0-001 Citation

This Act may be cited as “The Citizen Potawatomi Nation Workers’ Compensation Ordinance for Tribal Employees” (hereafter, “Ordinance”).

Section 31-0-002 Purpose

The purpose of this Ordinance is to establish the exclusive remedies available to employees of the Citizen Potawatomi Nation (“Potawatomi”) on trust lands resulting from work-related injuries and death.

Section 31-0-003 Exclusive Remedy

All work-related injuries and deaths sustained by employees of the Citizen Potawatomi Nation are withdrawn from private controversy. The sole and exclusive remedy for same shall be whatever is provided for in this Ordinance.

Section 31-0-004 Insurance

The benefits authorized by this Ordinance are solely to be provided by insurance, if any, purchased by the Potawatomi. A failure by the Potawatomi to purchase or keep in effect said insurance shall mean that no benefits are provided under this Ordinance. Such a failure shall not entitle any person to maintain an action against the Citizen Potawatomi Nation.

Section 31-0-005 Sovereign Immunity

The Potawatomi hereby waive the sovereign immunity of the tribe, its tribal agencies and enterprises only the extent of any insurance purchased pursuant to this Ordinance and only as necessary to enforce rights and obligations bestowed by the terms of this Ordinance. Solely for the purpose of adjudicating claims under this Ordinance, the Potawatomi consent to suit in tribal court. Such suit shall not be entertained by the tribal court until an employee has satisfied all administrative requirements imposed by this Ordinance and any subsequent rules imposed by the Potawatomi and/or any insurance policies purchased under Section 31-0-004.

Section 31-0-006 Administration

Claims and benefits under this Code shall be administered by the Citizen Potawatomi Nation Office of Human Resources, or its successor, in conjunction with the insurance company providing the benefits (hereafter, “Administrator”).

Section 31-0-007 Rules

The Office of Human Resources and the Administrator, upon approval of the Tribal Legislature, will promulgate rules and procedures for pursuing claims for the benefits provided by this Ordinance.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 31-0-008 Effective Date

This Ordinance shall take effect and be in full force from and after its adoptions by the Business Committee.

CHAPTER ONE

RULES AND REGULATIONS GOVERNING TRIBALWORKERS’ COMPENSATION CLAIMS

Section 31-1-101 Authorization

The Citizen Potawatomi Nation (hereafter, “Tribe” or “Potawatomi”) has enacted the Citizen Potawatomi Nation Tribal Workers’ Compensation Code (hereafter, “Code”). Chapter Three of the Code states that the tribe may purchase insurance to provide benefits to tribal employees who are injured on the job. Chapter Four of the Code states that regulations will be adopted to govern how claims are to be administered. Accordingly, these “Rules and Regulations Governing Tribal Workers’ Compensation Claims” (hereafter, “Rules”) have been adopted by the Business Committee.

Section 31-1-102 Coverage

Covered workers within the meaning of Section 31-1-103 (7), (11), and (27) of the Rules may be eligible for benefits under insurance purchased by the tribe. The tribe may, at its election, reject the benefits set forth under Chapters Five, Six and/or Seven, and amend these rules to include modified benefits under Chapters Five, Six and/or Seven.

Section 31-1-103 Definitions

Under the context otherwise requires, the definitions which follow govern the construction and meaning of the terms used in this Code:

- (1) “ADMINISTRATOR” shall mean any insurance company from which the tribe has purchased an insurance policy to provide workers’ compensation benefits consistent with these Rules and the Code.
- (2) “AVERAGE WEEKLY WAGE” shall be calculated based on the preceding twenty-six (26) weeks of the covered worker’s actual

wage earnings; or in the case of a worker who has not worked for the tribe longer than twenty-six (26) weeks, the Average Weekly Wage shall be calculated based on the tribes' Average Weekly Beginning Worker Wage.

- (3) "BENEFITS" shall mean the indemnity and medical payments provided by any insurance purchased by the tribe pursuant to the Code. "Indemnity" shall mean total disability and partial disability income benefits and impairment payment; and "Medical" shall mean medical expenses, mileage and other expenses associated with medical treatment.
- (4) "CHILD" includes dependent natural legitimate children, dependent stepchildren, adopted children and acknowledged illegitimate children, but does not include married children or children over the age of eighteen (18) unless they are shown to be dependents.
- (5) "CLAIMANT" means the injured covered worker or, in the event of death of the covered worker, dependents of the deceased.
- (6) "COURSE AND SCOPE OF EMPLOYMENT" shall mean the tribe's employment of the covered worker at the time the injury occurred. An injury must arise out of and be in the course and scope of employment, and the worker must be acting in the furtherance of the employer's interest at the time of the incident and/or accident, in order for a claim to be compensable.
- (7) "COVERED WORKER" and "WORKER" shall mean persons employed for compensation by the tribal government of the Citizen Potawatomi Nation. For purposes of these Rules, the term "worker" or "covered worker" shall not mean either (1) employees of the First National Bank and Trust Company of Shawnee (2) independent contractors or (3) volunteer employees.
- (8) "DEATH" is any fatality of the covered worker proximately and directly caused by work injury or occupational disease.
- (9) "DEPENDENTS" are the following person, and they shall be deemed to be the only recognizable dependents under the provisions of these Rules:
 - (a) The widow or widower, if married and living with the deceased at the time of deceased's death and legally entitle to be supported by the deceased as a dependent;
 - (b) A child under eighteen (18) years of age, or incapable of self-support, unmarried and dependent upon the deceased; or a child under twenty-five (25) years of age enrolled as a full-time student in and accredited education institution at the time of the covered worker's injury;
 - (c) Any of the following persons who were wholly dependent on the earnings of the worker for support at the time of his injury. The relation of dependency must exist at the time of injury:
 - (iv) A parent or grandparent
 - (v) A grandchild, brother or sister, niece or nephew only if under eighteen (18) years of age, or incapable of self-support and dependent upon the deceased.
- (10) "DISABILITY" means the inability of the covered worker to obtain and/or retain wages equivalent to the pre-injury wage rate as a result of a direct loss of functional capacity compromising that individual's ability to perform the necessary duties of the job. This functional loss must be directly and materially attributable to a compensable work related injury and/or occupational disease and must be supported by the worker's attending physician "PARTIAL DISABILITY" is distinguished as any incapacity less than 100 percent inability as defined above.
- (11) "EMPLOYER" shall mean the Citizen Potawatomi Nation. See definition of "Covered Worker" and "Worker" above. For notifications of injury and other similar contexts, "Employer" shall mean a worker's supervisor or the Administrator. For purposes of these Rules only, the terms "Employer," "tribe" and "Potawatomi" shall also include:
 - (a) agencies, corporations and enterpris-

- es owned and operated by the Citizen Potawatomi Nation unless excluded by these Rules or by a duly adopted Resolution passed by a majority of the Citizen Potawatomi Nation Tribal Legislature;
- (b) any business owned and operated by the Citizen Potawatomi Nation or Citizen Band Potawatomi Indian Tribe of Oklahoma, Incorporated;
 - (c) Radio Station KGFF-AM;
 - (d) FireLake Golf Course and associated recreational and retail facilities;
 - (e) FireLake Entertainment Center and other gaming facilities;
 - (f) FireLake Discount Foods; and
 - (g) Tribal convenience stores and other retail facilities.
- (12) “IMPAIRMENT” means any anatomic or functional abnormality or loss existing after Maximum Medical Improvement as defined herein that results from a compensable injury and/or occupational disease and is reasonable presumed to be permanent based on reasonable medical probability.
- (13) “INJURY” shall mean any physical or mental impairment, including, without limitation, death and/or occupational disease as further herein defined.
- (14) “INTOXICATION” means blood alcohol content in excess of .08 percent or conviction of the offense of driving while intoxicated (or words to that effect) by any jurisdiction, or loss of the normal use of one’s mental and/or physical faculties resulting from the voluntary introduction into the body of (1) an alcoholic beverage; (2) a controlled substance; (3) a mind-altering drug and/or hallucinogenic; (4) an abusable glue or aerosol paint; or (5) any other similar substance.
- (15) “MAXIMUM MEDICAL IMPROVEMENT” (MMI) means the earlier of:
- (a) the point after which further material recovery from or last improvement to an injury can no longer reasonably be anticipated, based on the reasonable medical probability; or
 - (b) the expiration of twenty-four (24) months from the date Incapacity Income Benefits begin to accrue.
- (16) “OCCUPATIONAL DISEASE” shall be only those diseases which arise out of and in the course and scope of the worker’s employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which a worker has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.
- (17) “OFFICE OF HUMAN RESOURCES” shall mean the Potawatomi Office of Human Resources or its successor.
- (18) “PARENT OR GRANDPARENT” shall mean the natural or adoptive father or mother or the natural grandfather or grandmother of the covered worker.
- (19) “POLICY” shall mean any Tribal Workers Benefit Policy of Insurance issued to the Nation.
- (20) “QUASI-DEPENDENT” means those persons who were only partially dependent on the earnings of the covered worker for support at the time of the injury causing death.
- (21) “SCHEDULED WEEKS” means one hundred four (104) weeks and is the maximum number of weeks that a covered worker shall be entitled to Functional Impairment Benefits under these Rules.
- (22) “MAXIMUM SCHEDULED WEEKS” means number of compensable weeks determined by administration but not to exceed the maximum scheduled weeks.
- (1) “SETTLEMENT” shall mean the date the

release of all claims is executed and the monetary terms of the agreement met.

- (2) "TRIBAL COURT" shall mean the District Court of the Citizen Potawatomi Nation and appellate courts.
- (3) Pronouns of the masculine gender used in these Rules shall apply to both sexes.
- (4) Unless stated otherwise in specific sections of these Rules, time limits shall be calculated using calendar days.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 31-1-104 Acknowledgment of Rules

- (A) All covered workers and persons asserting a claim shall be conclusively presumed to have elected to take Workers' Benefits in accordance with the tenants, conditions, and provisions of these Rules by virtue of employment with the Potawatomi.
- (B) The following notice shall be posted in a conspicuous location in each separate facility covered by these Rules:

NOTICE TO WORKERS

If you are injured or sustain an occupational disease while at work, you may be entitled to benefits as provided by Tribal Resolution. NOTIFY YOUR SUPERVISOR OR THE OFFICE OF HUMAN RESOURCES IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT. If you fail to do so, you may lose your benefits under the Tribal Workers' Benefits System. In no event shall benefits be paid to a worker who failed to notify his supervisor or the Office of Human Resources within five (5) days after sustaining such work-related injury.

Your exclusive remedy for any work connected injury or disease is through compliance with these Rules. Oklahoma's Workers' Compensation System will not accept a claim from you because you are employed by a Sovereign Indian Nation employer who is exclusively under the jurisdiction of its own Tribal Workers' Benefit System.

NOTICE TO SUPERVISORS

You are required to display this poster conspicuously in a manner that will be of greater benefit to your workers. It is your responsibility to file a claim on behalf of your worker. You are required to report any injuries or

notification of occupational disease as soon as possible, and in no event more than five (5) days after you have knowledge thereof. It is your responsibility to obtain any necessary forms from the Office of Human Resources department.

Section 31-1-105 Notification to Employer of Injury by Worker

Any covered worker and/or person claiming benefits under these Rules must notify his supervisor or the Office of Human Resources of any and all injuries immediately, and in no event later than five (5) days from the date of occurrence. Failure to report such incidents may result in the worker's forfeiture of benefits under these Rules.

Section 31-1-106 Time Limit For Reporting of Claims

- (A) Claims for injury shall be made by the covered worker within five (5) days of the date of occurrence.
- (B) Claims for occupational disease shall be made within five (5) days from date of first notice to the claimant by a physician or from the date of manifestation of symptoms, whichever is earliest, but in no event, longer than five (5) days from the date worker terminates his employment with Employer.
- (C) Failure to give notice of injury to the Employer within the above sated time limit shall constitute a forfeiture by the covered worker, or his representatives in case of death, of all benefits available and payable under these Rules.

Section 31-1-107 Burden of Proof

- (A) The burden of proof shall rest upon the covered worker, or his dependents in the case of death, to prove;
 - (1) That the injury complained of was a result of an incident, accident or occupational disease;
 - (2) That it arose out of the covered workers' employment;
 - (3) That it arose while in the course and scope of employment and arose proximately out of covered employment; and
 - (4) That it arose while in the furtherance of the employer's interests.

Section 31-1-108 Right to Waive Defenses

The Administrator and/or Insurer shall have the right and power to waive any and all defenses (except the defense of tribal sovereign immunity) that may affect the compensability of a covered injury under these Rules.

Section 31-1-109 Guardian for Minor or Incompetent

Any person who is mentally incompetent and/or under the age of eighteen (18) and is entitled to receive compensation under these Rules, shall be appointed a guardian or other representative by the Administrator.

CHAPTER TWO

ADMINISTRATOR'S DUTIES AND POWERS

Section 31-2-101 Administrator: Powers and Duties

- (A) The Administrator or its designee shall be the payor of the workers' benefits and all authorized disbursements therefrom shall be paid by the Administrator or representative with its stated authority, and shall be the custodian of all claim files and related documents.
- (B) The Administrator shall administer these Rules in accordance with the terms and conditions described herein, and remit payment described herein and remit payment for all matters of benefit claims as provided for in these Rules. Further, the Administrator shall have the authority to determine the distribution of benefit checks.
- (C) The Administrator shall be empowered to request medical reports, police reports, autopsy reports, and special investigations, engage the services of adjusters and consultants, and perform other activities as required to process any claim for benefits or to further these Rules.
- (D) In the case of death of a covered worker, the Administrator shall have the right to request the performance of an autopsy on the decedent from an appropriate official licensed to perform autopsies, and further the Administrator shall have the right to request any and all reports made from such autopsies. If requested, the legal beneficiaries of the deceased worker are entitled to have a representative present at any autopsy ordered by the Administrator.
- (E) Complete and accurate administrative records and claim files shall be maintained on all activities relating to the claims made under the Policy.

All closed files shall be preserved for not less than six (6) years.

Section 31-2-102 Accident/Investigation Reports

- (A) When an incident and/or accident occurs to a worker, the worker shall immediately, or as soon as possible thereafter and in no event later than five (5) days from the date of the occurrence, report the incident or accident and the injury resulting therefrom to his immediate supervisor, who in turn shall report to his department or organization, as appropriate.
- (B) All incidents or accidents resulting in injury or death must be reported to the Administrator within five (5) days of the date of occurrence or knowledge of alleged occurrence by the responsible department or organization.

Section 31-2-103 Acceptance/Denial of a Claim

Upon receiving a claim for benefits from an injured worker, the Administrator shall promptly investigate the claim and begin payment of compensation within twenty-one (21) days of a valid claim or the Administrator shall send the claimant written notice, within twenty-one (21) days, that further investigation is needed and the reasons for further investigation. The Administrator shall complete its investigation within forty-five (45) days of receipt of the claim and shall commence the payment of benefits or notify the claimant in writing that the claim is denied.

CHAPTER THREE

COVERAGE AND COMPENSABILITY

Section 31-3-101 Entitlement to Benefit

Coverage exists under these Rules for a covered worker's injury without regard to fault or negligence if the injury arises out of and in the course and scope of employment and if the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, including, without limitation, any covered worker whose work at the time of injury was subject to the Longshore and Harbor Workers' Compensation Act (33 USC §901-950), the Jones Act (46 U.S.C.A. appx. §688), or any other Federal Workers' Compensation Acts. If an injury is an occupational disease as defined herein, the employer in whose employ the worker was last injuriously exposed to the hazards of the disease is considered to be the employer of the worker for purposes of obtaining benefits under these Rules.

Section 31-3-102 Disclosure of Pre-Existing Disabilities

- (A) Each worker shall disclose any pre-existing disease, allergy, physical or mental disorder and/or disability known to the worker that would prevent him from performing in a reasonable and safe manner the activities involved in his assigned work. Disclosure shall be made in the employment application before commencing employment or before becoming a covered worker under these Rules, as provided herein. Each worker shall also have a duty to seasonably inform the Administrator of any new or changed health condition that could affect the worker's performance of his assigned duties. Such disclosure shall be made – at the latest – promptly after submitting a claim for benefits under these Rules.
- (B) Any claim resulting from an employment-related aggravation of a pre-existing condition that was not disclosed as required under these Rules may be declined by the Administrator under these Rules if the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to Section 31-3-102 (A).

Section 31-3-103 Mental Trauma Injuries

- (A) Mental traumas, disorders, and/or conditions, even if manifested in physical symptoms and/or related to stress, are not compensable injuries under these Rules, except that mental trauma is only recoverable if resulting from an injury traceable to a definite time, place, and cause rather than from repetitive mental trauma.
- (B) Regardless of Section 31-3-103 (A), a mental trauma or emotional injury that arises principally from a personnel action, including, without limitation, a transfer, promotion, demotion, or termination is not a compensable injury under these Rules.

Section 31-3-104 Going To and Returning From Work

An accident and/or incident occurring to a worker while on the way to or from work is not within the course and scope of employment except when such traveling is directly connected with the worker's work and in furtherance of the employer's interest. This exception will not apply if the worker deviates from a reasonable

direct route of travel and/or is not acting in the interests of the employer.

Section 31-3-105 Benefits Precluded by Neglect and/or Refusal of Worker to Submit to Treatment

- (A) No benefits shall be payable for the death and/or disability of a worker if the worker's death is caused by, or the worker's disability is aggravated, caused or continued by, and unreasonable refusal and/or neglect to submit to and/or follow any competent or reasonable surgical treatment, medical aid or advice. A worker who has refused and/or neglected to submit to medical and/or other therapeutic treatment will be deemed to have reached Maximum Medical Improvement as defined herein. Any such existence of a disability that could have been reasonably treated to success with reasonable medical probability will be discounted in determining the appropriate incapacity rating as prescribed herein.
- (B) Any covered worker entitled to benefits under these Rules shall be presumed to have reached Maximum Medical Improvement if such claimant has refused and/or neglected to seek appropriate medical treatment within six (6) months from the date of occurrence or from the last date of prior treatment.

Section 31-3-106 Injury or Death by Consumption and/or Application of Drugs and/or Chemicals

No benefits of any nature shall be payable for injury and/or death caused or contributed to by the use and/or abuse of any drug, including narcotics and hallucinogens, whether organic or chemical in nature, or any gas, vapors, and/or fumes taken and/or inhaled voluntarily, or by voluntary poisoning. The Administrator may choose to pay benefits for injury and/or death caused or contributed to by the use of prescription drugs only if (1) the drug was used in a manner consistent with its labeling and with the advice of the prescribing physician, (2) the drug's listed side effects could reasonably be anticipated to interfere with the performance of the worker's assigned duties, and (3) the worker advised his immediate supervisor of the prescription's possible side effects.

Section 31-3-107 Intoxication

No benefits of any nature shall be payable for any covered worker injured or killed while intoxicated as defined in Section 31-1-103 (14), regardless of whether

or not the intoxicated condition was the proximate cause of the injury or death. It is only necessary to prove that the covered worker was intoxicated at the time of the incident or accident to deny benefits under these Rules. All workers accepting employment with an employer and under these Rules, agree to submit to post-incident/post-accident drug and alcohol screening, and agree to waive any statutory or common-law privilege associated with the results of said test.

Section 31-3-108 False Statement or Representation to Obtain Compensation; Penalty and Forfeiture

If, in order to obtain any benefits under the provision of these Rules, any person willfully makes a false statement or representation, they shall forfeit all rights to compensation, benefits, or payments upon proof that the offense was committed. Any claim resulting from an employment-related aggravation of a pre-existing condition that was not disclosed as required under these Rules may be declined by the Administrator under these Rules of the claimant had knowledge of the pre-existing condition and failed to disclose such condition pursuant to Section 31-3-102.

Section 31-3-109 Injuries Resulting From Self-Inflicted Injuries, Willful Misconduct, or "Horseplay"

No benefits of any nature shall be payable for any covered worker's injury or death caused by a covered worker's willful intention to injure himself or another. An injury sustained during "horseplay" is not incurred in the course and scope of the employment, and thus such an injury under these Rules is not compensable. In addition, the willful disregard of a safety order from the employer to the worker to wear a safety device and/or to perform work in a certain manner may cause such person to forfeit all rights to compensation, benefit, or payment upon proof that the offense was committed and that such disregard or performance was the direct and proximate cause of the injury, death, and/or occupational disease.

Section 31-3-110 Injuries Resulting From "Acts of God"

No benefits of any nature shall be payable for any covered worker injured or killed when the injury arose out of an act of God, unless the employment exposes the worker to a greater risk of injury from an act of God than ordinarily applies to the general public. Further, injury or death which results from a natural cause, i.e., heart

attack, stroke or other natural function failure, which does not arise out of the course and scope of employment while the worker was acting in the furtherance of the employer's interest, shall not be compensable.

Section 31-3-111 Recreational, Social or Athletic Activities

No benefits of any nature shall be payable for any covered worker injured or killed if the injury or accident occurred as a result of the worker's voluntary participation in an off-duty, recreational, social, or athletic activity not constituting part of the worker's work-related duties, except where these activities are expressly required by the employer. Only employees who are being paid or receiving "comp time" for participation in an event held in conjunction with an official tribal activity shall be eligible to receive benefits.

Section 31-3-112 Injuries Caused by Third Parties

No benefits of any nature shall be payable for any covered worker injured or killed as the result of an act of a third party who intended to injure the worker because of reasons personal to that worker and not directed at the worker for reasons indigenous to his employment.

**CHAPTER FOUR
BENEFITS – GENERAL PROVISIONS**

Section 31-4-101 Right to Compensation and Medical Treatment Benefits

Every covered worker coming within the provisions of these Rules who is injured, and in the event of a worker's death, the dependents of every such covered worker, arising out of and in the course and scope of employment and while acting in the furtherance of the employer's interest at the time of the incident and/or accident, unless the injury is otherwise limited or excluded by the terms and conditions of these Rules, shall be entitled to receive, and shall be paid, for loss sustained on account of the injury, death and/or occupational disease, such benefits as provided under these Rules.

Section 31-4-102 Worker's Benefit as Exclusive Remedy

The rights and remedies provided by the provisions of these Rules for a worker on account of injury or occupational disease for which benefits under these Rules are recoverable, shall be the exclusive and only rights and remedies of such worker, the worker's personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury

and/or occupational disease against the employer, the employer's representative, insurer, guarantor or surety, for any matter relating to the occurrence of or payment for any injury or death covered under these Rules and including any other benefits or compensation a worker may attempt to obtain from a third party who may be able to seek indemnification from an employer.

Section 31-4-103 Effect of Compensation Paid in Other Jurisdiction or Third Party Recovery

A covered worker who pursues and recovers compensation under the worker compensation laws of another jurisdiction, in violation of Section 31-4-102, is barred from recovering under these Rules. A covered worker who seeks recovery against a third party for a work-related injury forfeits and waives any and all rights to compensation under these Rules.

Section 31-4-104 Liability of Third Parties – Subrogation

The employer and/or its representative, insurer, guarantor, or surety shall be subrogated to the common law rights of the worker to pursue any claims for compensation against any third party that is liable for the death of or injuries to, said worker arising out of an in the course and scope of employment and while the worker was acting in the furtherance of the employer's interest to the extent of the benefits bestowed upon the said worker. In case of recovery of the proceeds thereof shall be distributed as follows:

- (A) A sum sufficient to repay the employer and/or the Administrator for the amount of Compensation actually paid to the worker under these Rules up to that time;
- (B) A sum sufficient to pay the employer the present worth, computed at the current legal interest rate for court judgments and decrees, of the future payments of compensation for which the employer is liable.
- (C) The balance, if any, shall be paid over to the worker.

For subrogation purposes hereunder, any payment made unto an covered worker, his guardian, parent, next of kin, or legal representative, by or on behalf of any third party, his or its principal or agent liable for, connected with, or involved in causing an injury to such worker shall be considered as having been so paid as damages resulting from and because said injury was under circumstances creating a legal liability against said third

party, whether such payment be made under a covenant not to sue, compromise settlement, denial of liability or otherwise.

Section 31-4-105 Assignability of Benefits – Attachment of Liens

Benefits received under these Rules are not assignable, except that a legal beneficiary may, with approval of the Employer, assign the right to death benefits. Income of death benefits are subject only to the following liens or claims, to the extent of any income or death benefits that are unpaid on the date the Administrator receives written notice of the lien, in the following order of priority:

- (A) Court-ordered child support; and
- (B) A subrogation interest established under these Rules.

Section 31-4-106 Aggravation of Pre-Existing Disease or Condition

If a covered worker is suffering from a pre-existing disease and/or injury at the time an occupational incident, accident and/or disease occurs or arises in the course and scope of employment and while the worker was acting in furtherance of the employer's interest at the time of the injury and/or incident, and the preexisting disease and/or injury is aggravated thereby, the aggravation of the disease or injury is subject to provisions herein, compensable under these Rules. The amount of the award for that disability as set forth in these Rules may be reduced or denied in its entirety by the Administrator in consideration of the following:

- (A) A prior settlement from any source for the same impairment;
- (B) The difference between the degree of impairment of the worker before the covered accident and/or occupational disease and the degree of impairment after the covered accident or occupation disease.
- (C) In no event shall benefits be paid for impairments and/or disabilities in excess of One Hundred (100) percent of the whole person.
- (D) Whether the disability results from a disease or injury the worker failed to disclose in violation of Section 31-3-102.

Section 31-4-107 Termination of Benefits Upon Death

Where a worker is entitled to compensation under these Rules for an injury sustained, and death ensues from any

cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability for such compensation thereafter shall terminate.

CHAPTER FIVE BENEFITS

Section 31-5-101 Vocational Rehabilitation

Vocational Rehabilitation benefits are not mandatory under these Rules, but may, in the discretion of the Administrator be ordered pursuant to its authority established herein.

Section 31-5-102 Waiting Period

An initial waiting period of three (3) consecutive calendar days is to accrue before the covered worker shall be entitled to benefits under this Section. In case the injury results in disability of fourteen (14) days or more, the benefits will be allowed from the date of disability.

Section 31-5-103 Total Disability & Partial Disability Income Benefits

(A) When the worker is disabled from work duty at the directions of the employer designated physician by reason of a compensable injury or occupational disease, benefits shall be payable as follows:

- (1) If the covered worker is One Hundred (100) percent disabled, benefits are payable at Seventy (70) percent of the worker's pre-injury average weekly wage.
- (2) If the covered worker is less than One Hundred (100) percent disabled, benefits are payable at Seventy (70) percent of the difference between the worker's pre-injury average weekly wage.
- (3) The Tribal Administrator, Deputy Tribal Administrator, any other compensated tribal officer and directors of tribal programs and enterprises shall receive benefits equal to One Hundred (100) percent of the pre-injury weekly wage or salary.

(B) Except as provided herein, such benefits will continue to be paid in accordance with the terms of these Rules until which time the earliest of the following occurs:

- (1) The expiration of twenty-four (24) months

from the date of the occurrence, or in the case of an occupational disease, twenty-four (24) month from the earliest of the first manifestation of the symptoms or notification from a physician that the illness is indigent of the worker's condition;

- (2) The attending physician declares that the worker has reached Maximum Medical Improvement;
- (3) The claimant is incarcerated;
- (4) A full, unrestricted release is provided by the treating physician;
- (5) A modified or light duty release is provided by the treating physician and a bona fide job offer of suitable work consistent with the worker's disability is rejected;
- (6) A new or intervening incident is the proximate cause of disability;
- (7) Benefits are refused by the worker;
- (8) Presumption of MMI or abandonment of medical treatment as defined by Section 31-4-101 of these Rules;
- (9) Suspension of benefits for reasons granted authority in these Rules;
- (10) The worker's earnings capacity is reduced for reasons other than disability from the work-related injury.
- (11) The covered worker dies from any cause not resulting from the injury for which he was entitled to compensation under this Section, and the covered worker's estate is not entitled to any further benefits under these Rules.

Section 31-5-104 Impairment Benefits

- (A) At the expiration of twenty-four (24) months from the date of the incident, accident and/or occupational disease, the worker is presumed to have reached Maximum Medical Improvement (MMI) regardless of disability and/or current medical status. The attending physician is to provide an impairment rating in accordance with the most current edition of the American Medical Association based on reasonable medical probability. In addition, at this time the attending physician is required to provide a treatment plan for reasonable and necessary future medical needs.

- (B) The impairment ratings are to be converted to the man as a whole. Those ratings assigned to a specific body part are to be converted in accordance with the AMA guidelines.
- (C) A rating may not be issued prior to the declaration of Maximum Medical Improvement. The Administrator may reserve issuance of payment under the following conditions:
 - (1) Contribution for prior impairment ratings;
 - (2) Clarification by the Administrator of these Rules as to the validity of the date for MMI;
 - (3) Similar rating or Maximum Medical Improvement issues to be resolved before the physician.
- (D) The rating recognized by the Administrator is binding. The rating will not be retroactively paid for weeks accrued in resolving the rating issue subsequent to the date of Maximum Medical Improvement. Such benefits will become effective the date of the ruling and commence at the time. Benefits will not be withheld beyond a reasonable time period in clarification of the rating and MMI date.
- (E) The settlement for impairment for those eligible covered workers will be based on the ratings for parts of body or as whole body. Notwithstanding provisions herein, the administrator shall retain the right and discretion to order lump sum settlements and weekly settlements at their sole discretion.

Section 31-5-105 Benefit Issuance Period

Except as provided herein:

- (A) All benefits under this Article are to be issued weekly.
- (B) There shall be no acceleration of benefits under these Rules.
- (C) Any settlements issued on behalf of a covered worker shall be executed by signed memorandum only.

Section 31-5-106 Not To Exceed Pre-Injury Average Weekly Wage

In no event may the worker's incapacity income benefits, or other income sources supplementing the loss income exceed One Hundred (100) percent of the worker's pre-injury average weekly wage.

Section 31-5-107 Benefit Offsets

The Administrator is entitled to benefit offsets for any pecuniary wages paid in the form of Social Security, long-term and short-term disability, employer elected salary contribution, vacation or sick leave or any other entitlement of a similar nature. Further, if any overpayment is made under this Article to the covered worker of any Disability Income Benefits, such shall be deducted from any benefits payable under functional Impairment Benefits; or in the case where no Functional Impairment Benefits are payable, then such overpayment of benefits may be deducted through payroll deductions.

CHAPTER SIX DEATH BENEFITS

Section 31-6-101 Distribution of Death Benefits

When death ensues to the covered worker by reason of a compensable injury or occupational disease, benefit shall be payable to the dependents who were wholly dependent on the earnings of the worker for support at the time of his injury, compensation upon the basis of seventy-five (75) percent per week of the worker's average weekly wage, commencing from the date of death as follows:

- (A) If there are no children entitled to benefits, then all to the surviving spouse for the projected probable life span of the decedent based on established mortality tables, the life of the surviving spouse or until remarriage, whichever comes first, provided that upon remarriage two years benefits shall be paid to the surviving spouse in a lump sum at the discretion of administration. To be an eligible "surviving spouse" under these Rules, the surviving spouse must have been married and living with the decedent at the time of the compensable injury. If there are surviving eligible children, the surviving spouse shall be entitled to one-half of death benefits.
- (B) If there is no surviving spouse, equal shares of all to:
 - (1) Any child of the deceased until the child shall reach the age of eighteen (18), or until the child dies, whichever occurs first;
 - (2) Any child beyond eighteen (18) years of age if such child older than eighteen (18) years of age is enrolled as a full-time student in any accredited educational institution at the

time of the injury to the covered worker. That child shall be entitled to benefits until earliest of: the date on which the child dies, the date on which the child reaches twenty-five (25), or the date on which the child ceases, for a second consecutive semester, to be enrolled as such a student.

- (3) Any child who was physically or mentally incapacitated from earning at the time of the compensable injury causing death for the duration of the incapacity or the incapacitated child's death, whichever is earlier.
- (4) If there is a surviving spouse, one-half of death benefits paid to each surviving eligible child in equal shares.
- (C) If there is no surviving spouse, nor any surviving eligible children, death benefits shall be paid to any surviving minor and dependent grandchildren equally, until such time as the grandchild dies or ceases to be a minor.
- (D) If there is no surviving spouse, child or grandchild, the death benefits shall be paid to a surviving dependent who is a parent, sibling, or grandparent of the deceased and who were wholly dependent on the earnings of the worker for support at the time of the compensable injury. If more than one of these dependents survives the deceased, the death benefits shall be divided among them in equal shares.
- (E) If the worker is not survived by any of the above dependents and is survived by quasi-dependents who were only partially dependent upon the earnings of the covered worker at the time of his death, then weekly compensation payable under this Section shall be equal to the same proportion of the weekly benefits for the benefit of the person wholly dependent as the amount contributed by the worker to such quasi-dependents bears to the annual earnings of the deceased at the time of injury.
- (F) If the worker is not survived by any legal beneficiaries, any duty to pay such benefits, but not including burial benefits, under this Article shall cease immediately.

Section 31-6-102 Death From Other Causes

Where a worker is entitled to compensation under these Rules for any injury sustained, and death ensues from

any cause not resulting from the injury for which he was entitled to the compensation, payments of the unpaid balance for such injury shall cease and all liability thereafter shall terminate.

Section 31-6-103 Redistribution of Death Benefits

- (A) If a legal beneficiary as defined in Section 31-6-101 dies or otherwise becomes ineligible for death benefits, benefits shall be redistributed to the remaining legal beneficiaries in accordance with Section 310-6-101.
- (B) If all legal beneficiaries cease to be eligible, any duty to pay the remaining death benefits payable under Section 31-6-101 shall cease immediately.

CHAPTER SEVEN MEDICAL BENEFITS

Section 31-7-101 Entitlement to Medical Benefits

All covered workers are entitled to reasonable health care, supplies and reasonable necessary transportation incurred for such services. Medical benefits are payable from the date the compensable injury or accident occurs.

Section 31-7-102 Right to Select Doctor; Employer Selection

- (A) Except in an emergency where the employer, Administrator or his agent cannot be reached immediately, all health care must be approved or recommended by the employer or Administrator. Health care treatment must be offered promptly and be reasonable suited to treat the injury without undue inconvenience to the worker. If the worker has reason to be dissatisfied with the care offered, he should communicate the basis of such dissatisfaction to the Administrator, in writing if requested, following which the Administrator and the worker may agree to alternate care reasonable suited to treat the injury.
- (B) Chiropractic treatment must be approved by the Administrator and approved by the attending physician. Treatment is limited to sixty (60) days from the referral date, or sixteen (16) treatments whichever is less.
- (C) The Administrator is under no obligation to pay for health care furnished by a health care provider or any other person selected in a manner inconsistent with the requirements of this Chapter.

Section 31-7-103 Release of Medical-Related Information

The Potawatomi, the Office of Human Resources, the Administrator or any agents thereof, in making or defending a claim for benefits, agrees to the release of all information to which the worker, employer, carrier, or his agents have access concerning the worker's physical or mental condition relative to the claim and further waives any privilege for the release of such information. The information shall be made available to any party or the party's representative upon request, and includes any third-party health care providers. Neither the Potawatomi, the Office of Human Resources, the Administrator or any agents thereof shall be liable criminally or for civil damages by reason of the release of information.

Section 31-7-104 Medical Expenses

- (A) Expenses shall be limited to those usual and customary charged in the community, or like community, for similar services. Charges believed to be excessive or unnecessary may be denied by the Administrator. Any institution or person rendering treatment to a worker under these Rules agrees to be bound by such charges as allowed by the Administrator and shall not recover in law or equity any amount in excess of that set by the Administrator.
- (B) In no event shall the Tribal Workers' Benefit System be liable for expenses or reimbursement for medical, surgical, hospital, or related benefits to which the injured person may be entitled to receive from or through the United States Public Health Service or any other Federally funded or sponsored Indian Health Service, nor in any event shall the Tribal Workers' Benefit System be considered to be an "alternative source" for payment of the expense of such service.

Section 31-7-105 Settlement of Future Medical Treatment

The worker may negotiate settlement of future medical expenses which will be paid in weekly installments to the worker. The basis for settlement will be the value of the current and future medical treatment plan. Settlements under this Section are not to exceed Ten Thousand (\$10,000.00) dollars and must be approved by the Citizen Potawatomi Nation Tribal Legislature.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

**CHAPTER EIGHT
ADJUDICATION OF DISPUTES**

Section 31-8-101 Appeals From Decisions of the Administrator

Any and all appeals from a decision of the Administrator may be filed in the District Court in and for the Citizen Potawatomi Nation ("Tribal Court"). Any appeal shall be limited to determining only whether the Administrator's decision is supported by any substantial evidence.

Section 31-8-102 Hearings

All Parties, including the claimant, the Potawatomi and the Administrator, shall have the right to be represented by an attorney in all matters presented to the Tribal Court, to cross-examine all witnesses and to review all evidence of any nature as it may be related to the matter under consideration. However, attorney fees are limited by Section 31-3-103.

Section 31-8-103 Claimant Attorney's Fees and Other Related Costs

- (A) If the Tribal Court awards benefits to the claimant in excess of the Administrator's original benefit determination (as communicated to the claimant), the claimant's attorneys fees will be approved with a maximum limit of ten (10) percent of the total benefits award, or Five Thousand (\$5,000.00), whichever is less.
- (B) The claimant or Administrator may engage the services of physicians or experts for hearing purposes at the respective party's costs which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such consultants will be considered in a contested case, notwithstanding the provisions of these Rules limiting the outside or unauthorized treatment.

CITIZEN POTAWATOMI NATION
MINERAL LANDS AND MINING
TITLE 32

RESERVED

CITIZEN POTAWATOMI NATION
MONEY AND FINANCE
TITLE 33

RESERVED

CITIZEN POTAWATOMI NATION
NAVIGATION AND NAVIGABLE WATERS
TITLE 34

RESERVED

CITIZEN POTAWATOMI NATION
**PUBLIC CONSERVATION AND ENVIRONMENTAL
 PROTECTION ACT**
TITLE 35

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CHAPTER ONE ESTABLISHMENT OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION

Section 35-1-101 Establishment

The Citizen Potawatomi Nation hereby creates the Department of Environmental Protection to serve under the direction and delegated authority of the chairman of the Citizen Potawatomi Nation.

Section 35-1-102 Required Reporting

The Department of Environmental Protection shall report any infractions of tribal or federal environmental protection laws and regulations to the Tribal Chairman of the Citizen Potawatomi Nation.

Section 35-1-103 Department of Environmental Protection

The Department is hereby authorized to:

- (1) Review and propose changes in this statute to the Tribal Legislature of the Citizen Potawatomi Nation including maintaining the law of the Citizen Potawatomi Nation to meet or exceed federal regulations;
- (2) Negotiate cooperative agreements with federal, state, local and tribal authorities on matters dealing with environmental management as delegated by the Chairman of the Citizen Potawatomi Nation, subject to the approval of the Citizen Potawatomi Nation Tribal Legislature;
- (3) Consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups;
- (4) Utilize the information, facilities, personnel, and other resources of federal agencies including, but not limited to, the Department of Interior, the Environmental Protection Agency, and the Department of Human Services that may be made available to the Department within the Department's funding authorization and delegated authority;
- (5) Enforce this code;
- (6) Pursue through the Citizen Potawatomi Office of Self Governance any loans or grants from the federal government and other

sources as may be necessary for the planning, construction, and operation of environmental protection facilities and activities on the Nation's lands;

- (7) Direct the examination and approval of plans and specifications for solid wastes disposal facilities and to inspect construction remediation, operation, and closing of solid waste disposal sites, facilities, and other environmental sensitive operations;
- (8) Direct investigations and inspections, which the Department deems necessary to ensure compliance with this Act;
- (9) Direct inspections of closed or abandoned solid waste disposal sites, and other regulated sites to determine compliance rules and regulations for proper protective measures;
- (10) Seek an injunction against any person in violation of this Act;
- (11) Create environmental advisory committees as may be necessary to fulfill the intents and purposes of this Act;
- (12) Refer substantial violations of this Act to the tribal prosecutor;
- (13) Promulgate rules and regulations implementing the provisions of this Act, subject to the review of the Citizen Potawatomi Nation Tribal Legislature.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 35-1-104 Revision of Act

This Act will be reviewed and where necessary revised, not less frequently than every three years by the Citizen Potawatomi Nation Tribal Legislature.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 35-1-105 Complaint Reception

The Department shall establish and publicize the manner in which individuals or groups may submit complaints, grievances, and requests for information.

Section 35-1-106 Annual Report

The Department shall transmit to the Tribal Chairman and the Tribal Legislators of the Citizen Potawatomi Nation, not later than 90 days after the end of each fiscal year, a comprehensive and detailed report on all

activities of the Department during the preceding fiscal year. Each report shall include:

- (1) A statement of specific and detailed objectives for the activities authorized by this section;
- (2) Statements of the Department's conclusions as to the effectiveness of such activities and programs in meeting the stated objectiveness of such activities and the purposes of this Act, measured through the end such fiscal year;
- (3) Summary of outstanding environmental problems and opportunities before the Citizen Potawatomi Nation, in order of priority;
- (4) A plan for the following fiscal year.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 35-1-107 Meetings

The Chairman of the Citizen Potawatomi Nation may attend and preside over any and all meetings of the Department, appoint its executive director, oversee its budget and employees as otherwise provided by the constitution and laws of the Citizen Potawatomi Nation. The Chairman may appoint an individual or individuals to act in his place, maintain the records of the Department, provide notices in accordance with this Ordinance or as required by law, and perform any other duties assigned to the Department.

Section 35-1-108 Rules and Regulations

Under the direction of the Tribal Chairman, the Department may make and adopt such rules and regulations as it may deem advisable for the management and regulation of the business and affairs of the Department.

CHAPTER TWO FLOOD DAMAGE PREVENTION

Section 35-2-101 Citation

This ordinance shall be known as the "Flood Damage Prevention Ordinance" and shall apply to certain areas of Citizen Potawatomi Nation Tribal lands subject to periodic flooding within the jurisdiction of the Citizen Potawatomi Nation.

Section 35-2-102 Statutory Authorization

The Citizen Potawatomi Nation, pursuant to legislative authority granted by Article 4 and Article 18 of the Constitution of the Citizen Potawatomi Nation, does ordain as follows:

Section 35-2-103 Findings of Fact

- (1) The flood hazard areas of Citizen Potawatomi Nation Tribal Lands are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage.

Section 35-2-104 Purposes

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
- (7) Insure that potential buyers are notified that property is in a flood are.

Section 35-2-105 Methods of Reducing Flood Losses

In order to accomplish its purposes, this ordinance uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 35-2-106 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

ALLUVIAL FAN FLOODING – means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX – means a point of an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

AREA OF SHALLOW FLOODING – means a designated AO, AH, or VO zone on a Community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

BASE FLOOD – means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT – means any area of the building having its floor subgrade (below ground level) on all sides.

CRITICAL FEATURE – means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT – means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING - means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and C, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter wall with openings sufficient to facilitate the unimpeded movements of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of

“elevated building”, even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3 (e) (5) of the National Flood Insurance Program regulations.

EXISTING CONSTRUCTION – means for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures”.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulation adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION – means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING – means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) – means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related to erosion areas having special hazards have been designated as Zones A, M, and/or E.

FLOOD INSURANCE RATE MAP (FIRM) – means an official map of a community, on

which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

FLOODPLAIN OR FLOOD-PRONE AREA – means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT – means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM – means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY (REGULATORY FLOODWAY) – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE – means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and shop repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE – means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE – means any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary to qualify as a registered historic district;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a requested historic district;
- (C) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or;
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LEVEE – means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound

engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM – means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR – means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood Insurance Program regulations.

MANUFACTURED HOME – means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

MANUFACTURED HOME PARK OR SUBDIVISION – means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL – means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevation shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION – means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management

regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION – means a manufactured home park or subdivision for which the construction of facilities affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATIONAL VEHICLE – means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

START OF CONSTRUCTION – (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit dated. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, and the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparations, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways, nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE – means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE – means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT – means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

VARIANCE – is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

VIOLATION – means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3 (b) (5), (c) (4), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION – means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other

datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverline areas.

Section 35-2-107 Lands to Which This Ordinance Applies

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of Citizen Potawatomi Nation.

Section 35-2-108 Basis for Establishing the Areas of Special Flood Hazard

Since areas of special flood hazard have not been identified, water surface elevations have not been provided, nor has sufficient data identifying the floodway or coastal high hazard area been provided by the Federal Emergency Management Agency (FEMA), the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources.

Section 35-2-109 Establishment of Development Permit

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

Section 35-2-110 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

Section 35-2-011 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 35-2-112 Interpretation

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Section 35-2-113 Warning and Disclaimer or Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and

flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 35-2-114 Designation of the Floodplain Administrator

The Citizen Potawatomi Nation Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

Section 35-2-15 Duties & Responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (2) Review permit application to determine whether proposed construction or other development, including the placement of manufactured homes, will be reasonably safe from flooding.
- (3) Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local Governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

Section 35-2-116 Permit Procedures

(A) Application for Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure shall meet the flood-proofing criteria of Chapter 2, Section 19 (2);
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
- (5) Maintain a record of all such information in accordance with Chapter 2, Section 15 (1).

(B) Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The danger that materials may be swept onto other lands to the injury of others;
- (4) The compatibility of the proposed use with existing and anticipated development.
- (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;

- (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable;
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (10) The relationship of the proposed use to the comprehensive plan for that area.

Section 35-2-117 Variance Procedures

- (A) The appeal Board as established by the community shall hear and render judgment on requests for variances from the requirements of this ordinance.
- (B) The Appeal Board shall hear and render judgment on all appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- (C) Any person or persons aggrieved by the decision of the Appeal Board may appeal such decision in the courts of competent jurisdiction.
- (D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
- (F) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, provid-

ing the relevant factors in Section Sixteen of this Chapter have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

- (G) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
- (H) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (J) Prerequisites for granting variances:
 - (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (2) Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (3) Any application to who a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (A) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the

conduct of a functionally dependent use provided that (i) the criteria outlined in Chapter Two, Section Seventeen (1) – (9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Section 35-2-118 Provisions for Flood Hazard Reduction

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements.

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Section 35-2-119 Standards for Subdivision Proposals

- (A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance.
- (B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Chapter 2, Section 9; Chapter 2, Section 16; and the provisions of Sections Eighteen and Nineteen of this ordinance.
- (C) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

**CHAPTER THREE
FLOOD DAMAGE PREVENTION**

Section 35-3-101 Citation

The Citizen Potawatomi Nation Floodplain Board shall appoint the Floodplain Administrator to administer and implement the Provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to Floodplain management.

Section 35-3-102 Statutory Authorization

The Citizen Potawatomi Nation, pursuant to legislative authority granted by Article 4 and Article 18 of the Constitution of the Citizen Potawatomi Nation, does ordain as follows:

Section 35-3-103 Findings of Fact

- (A) The flood hazard areas of Citizen Potawatomi Nation Tribal Lands, are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood pro-

tection and relief, all of which adversely affect the public health, safety and general welfare.

- (B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, flood-proofed or otherwise protected from flood damage.

Section 35-3-104 Purposes

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (F) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas.

Section 35-3-105 Methods of Reducing Flood Losses

In order to accomplish its purposes, this ordinance uses the following methods:

- (A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

- (D) Control filling, grading, dredging and other development which may increase flood damage;
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 35-3-106 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

ALLUVIAL FAN FLOODING – means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX – means a point of an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

AREA OF SHALLOW FLOODING – means a designated AO, AH, or VO zone on a Community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as one A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

BASE FLOOD – means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT – means any area of the building having its floor subgrade (below ground level) on all sides.

CRITICAL FEATURE – means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT – means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING - means a non-basement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and C, “elevated building” also includes a building elevated by means of fill or solid foundation perimeter wall with openings sufficient to facilitate the unimpeded movements of flood waters. In the case of Zones V1-30, VE, or V, “elevated building” also includes a building otherwise meeting the definition of “elevated building”, even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3 (e) (5) of the National Flood Insurance Program regulations.

EXISTING CONSTRUCTION – means for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures”.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION – means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are

to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulation adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION – means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING – means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM) – means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related to erosion areas having special hazards have been designated as Zones A, M, and/or E.

FLOOD INSURANCE RATE MAP (FIRM) – means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY – is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

FLOODPLAIN OR FLOOD-PRONE AREA – means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT – means the operation of an overall program of corrective and preventive measures for reducing flood

damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS – means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM – means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY (REGULATORY FLOODWAY) – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE – means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and shop repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE – means the

highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE – means any structure that is:

- (A) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary to qualify as a registered historic district;
- (B) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a requested historic district;
- (C) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior or;
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LEEVE – means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEEVE SYSTEM – means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR – means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program

regulations.

MANUFACTURED HOME – means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home: does not include a “recreational vehicle”.

MANUFACTURED HOME PARK OR SUBDIVISION – means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL – means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevation shown on a community's Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION – means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION – means a manufactured home park or subdivision for which the construction of facilities affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATIONAL VEHICLE – means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self-propelled or permanently towable by a light duty truck; and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel,

or seasonal use.

START OF CONSTRUCTION – (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit dated. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, and the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparations, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways, nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation of the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE – means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE – means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT – means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work

performed. The term does not, however, include either: (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or (2) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

VARIANCE – is a grant of relief to a person from the requirement of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction ordinance. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations).

VIOLATION – means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3 (b) (5), (c) (4), (c) (10), (d) (3), (e) (2), (e) (4), or (e) (5) is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION – means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverline areas.

Section 35-3-107 Lands to Which This Ordinance Applies

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of Citizen Potawatomi Nation.

Section 35-3-108 Basis for Establishing the Areas of Special Flood Hazard

Since areas of special flood hazard have not been identified, water surface elevations have not been provided, nor has sufficient data identifying the floodway or coastal high hazard area been provided by the Federal Emergency Management Agency (FEMA), the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources.

Section 35-3-109 Establishment of Development Permit

A Development Permit shall be required to ensure conformance with the provisions of this ordinance.

Section 35-3-110 Compliance

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

Section 35-3-111 Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 35-3-112 Interpretation

In the interpretation and application of this ordinance, all provisions shall be; (1) considered as minimum requirements; (2) liberally construed in favor of the governing body; and (3) deemed neither to limit nor repeal any other powers granted under State statutes.

Section 35-3-113 Warning and Disclaimer or Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 35-3-114 Designation of the Floodplain Administrator

The Citizen Potawatomi Nation Engineer is hereby appointed the Floodplain Administrator to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

Section 35-3-115 Duties & Responsibilities of the Floodplain Administrator.

Duties and responsibilities of the Floodplain Administrator shall include, but not be limited to, the following:

- (A) Maintain and hold open for public inspection all records pertaining to the provisions of this ordinance.
- (B) Review permit application to determine whether proposed construction or other development, including the placement of manufactured homes, will be reasonably safe from flooding.
- (C) Review, approve or deny all applications for development permits required by adoption of this ordinance.
- (D) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local Governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required.
- (E) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation.

Section 35-3-116 Permit Procedures

- (A) Application for Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:
 - (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
 - (2) Elevation in relation to mean sea level to which any nonresidential structure shall be flood-proofed;
 - (3) A certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure shall meet the

flood-proofing criteria of Chapter 2, Section 19 (2);

- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.
 - (5) Maintain a record of all such information in accordance with Chapter 2, Section 115 (1).
- (B) Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this ordinance and the following relevant factors:
- (1) The danger to life and property due to flooding or erosion damage;
 - (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (3) The danger that materials may be swept onto other lands to the injury of others;
 - (4) The compatibility of the proposed use with existing and anticipated development.
 - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
 - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
 - (8) The necessity to the facility of a waterfront location, where applicable;
 - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (10) The relationship of the proposed use to the comprehensive plan for that area.

Section 35-3-117 Variance Procedures

- (A) The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on re-

quests for variances from the requirements of this ordinance.

- (B) The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- (C) Any person or persons aggrieved by the decision of the Citizen Potawatomi Nation Floodplain Board may appeal such decision in the courts of competent jurisdiction.
- (D) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (E) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this ordinance.
- (F) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (G) Upon consideration of the factors noted above and the intent of this ordinance, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this ordinance.
- (H) Variances shall remain consistent with the "No Rise" policy established by the Citizen Potawatomi Nation Floodplain Board and will not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (I) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued des-

ignation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(J) Prerequisites for granting variances:

- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (2) Variances shall only be issued upon, (i) showing a good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (3) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- (K) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria outlined in Chapter Two, Section Seventeen (1) – (9) are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Section 35-3-118 Provisions for Flood Hazard Reduction

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements.

- (A) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, in-

cluding the effects of buoyancy;

- (B) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (C) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (D) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and,
- (G) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

Section 35-3-119 Standards for Subdivision Proposals

- (A) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this ordinance.
- (B) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Chapter 2, Section 9; Chapter 2, Section 16; and the provisions of Sections 18 and 19 of this ordinance.
- (C) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (D) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Section 35-3-120 Penalties for Non-compliance

In accordance with Section 59.2 (b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of federally-subsidized flood insurance, a community must adopt floodplain management regulations that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions".

Section 35-3-121 Enforcement

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Citizen Potawatomi Nation from taking such other lawful action as is necessary to prevent or remedy any violation.

CITIZEN POTAWATOMI NATION
PUBLIC FENCES AND MAINTENANCE
TITLE 36

RESERVED

CITIZEN POTAWATOMI NATION
PUBLIC HIGHWAYS AND ROADWAYS
TITLE 37

RESERVED

CITIZEN POTAWATOMI NATION
PUBLIC HOUSING
TITLE 38

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CHAPTER ONE GENERAL PROVISIONS

Section 38-1-101 Applicability

The following title shall hereinafter be referred to as the “Potawatomi Housing Code.” It shall apply to any and all arrangements, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for human occupation and residence. It shall also apply to any and all mortgages, leasehold mortgages and agreements to secure an interest in a building.

The following arrangements are not governed by this Code:

- (A) Residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service; or
- (B) Occupancy in a hotel, motel, or other commercial lodging.

Section 38-1-102 Jurisdiction

- (A) Jurisdiction is extended over all persons, structures, and lands to the extent authorized by the Potawatomi Constitution.
- (B) All persons or entities within the jurisdiction of the Potawatomi who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures shall be considered to have consented to Potawatomi jurisdiction for the purposes of enforcing this Code. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Potawatomi, whether they are Indian or non-Indian, and whether they have a place of business within the Potawatomi Reservation.

Any person may consent to Potawatomi jurisdiction, by conduct or otherwise, for the purpose of enforcing this Code.

- (C) Jurisdiction over all matters arising within the jurisdiction of the Potawatomi with respect to the subjects of this Code, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Code shall be exercised by the Potawatomi Court.

Section 38-1-103 Purposes and Interpretation

This Code shall be interpreted and construed to fulfill the following purposes:

- (A) To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- (B) To preserve the peace, harmony, safety, health and general welfare of the people of the Potawatomi and those permitted to enter or reside on the Reservation.
- (C) To provide eviction procedures and to require landlords to use those procedures when evicting tenants.
- (D) To encourage landlords and tenants to maintain and improve dwellings on the Reservation in order to improve the quality of housing as a Potawatomi resource.
- (E) To simplify the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessors, and lessees, of buildings.
- (F) To avail the Potawatomi, Potawatomi entities, and Potawatomi members of financing for the construction and/or purchase of family residences on trust land within the jurisdiction of the Potawatomi by prescribing procedures for the recording, priority and foreclosure of mortgages given to secure loans made by or through any government agency or lending institution.
- (G) To establish laws and procedures which are necessary in order to obtain governmental funding for Potawatomi housing programs or loan guarantees for private or Potawatomi housing construction, purchase, or renovation.

Section 38-1-104 Relation To Other Laws

- (A) Applicable Law. Unless affected or displaced by this Code, the law to be applied in governing disputes arising hereunder shall be as set forth in the Potawatomi Law and Order Code § 8.
- (B) Other Applicable Laws. Additional Potawatomi and federal laws may apply with regard to Potawatomi housing such as the ordinance establishing the Indian Housing Authority and governmental housing laws and regulations.
- (C) Conflicts With Other Laws
 - (1) Potawatomi Laws: To the extent that this Code may conflict with Potawatomi laws or

ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such Potawatomi laws or ordinances shall govern over the provisions of this Code if it has specific applicability and it is clearly in conflict with the provisions of this Code.

- (2) Federal Laws: Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.
- (3) State Laws: To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

Section 38-1-105 Definitions

As used in this Code, the following words will have the meanings given them in this Section unless the context plainly requires otherwise:

- (A) *Action, suit or lawsuit, claim, complaint or defense* shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.
- (B) (B) *Adult Person* is any person eighteen (18) years of age or older.
- (C) *Borrower/Mortgagor* is the Potawatomi, the Indian Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Potawatomi or such Indian(s) or non-Indian(s) who has executed a Mortgage as defined in this code or a Leasehold Mortgage as defined in this Code.
- (D) *Building* is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.
- (E) *Building or housing codes* are any law or ordinance, or governmental regulation of the Potawatomi or an agency of the United States

which deals with fitness for habitation, health conditions, or the safety, construction, maintenance, operation, occupancy, use, or appearance of any dwelling unit.

- (F) *Dwelling unit* is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.
- (G) *Guest* is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.
- (H) *He/His*: the use of he/his means he or she, his or her, and the singular includes the plural.
- (I) *Housing Authority* is the Citizen Potawatomi Nation Housing Authority, established by Potawatomi Business Committee Resolution #96-62 for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Potawatomi.
- (J) *Indian* is any person recognized as being an Indian or Alaska Native by any Tribe, or by the government of the United States.
- (K) *Indian Country*, the *territorial jurisdiction*, or the *jurisdiction* of the Potawatomi shall include any and all areas which may constitute the *Indian Country* of the Potawatomi under applicable provisions of its laws or the laws of the United States.
- (L) *Landlord* can be the Potawatomi, Housing Authority, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.
- (M) *Lease* is an agreement, written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.
- (N) *Leasehold Mortgage* is the mortgage of a lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Mutual Help Home Ownership administered by the Indian Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.
- (O) *Mortgage Foreclosure Proceeding* is a proceeding:

- (1) To foreclose the interest of the Borrower(s)/Mortgagor(s), and each person or entity claiming through the Borrower(s)/Mortgagor(s), in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under the home purchase program of any federal agency; and
- (2) To assign where appropriate the Borrower(s)/Mortgagor(s) interest to a designated assignee.

(P) *Lender Designated Assignee*. Any lender as defined in the Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee. If the Mortgage or Lease and/or Leasehold Mortgage falls under a federal agency homebuyer program or federal agency loan guarantee program, the Lender must seek written approval from the Potawatomi of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S. government and federal agencies, guaranteeing or insuring the Mortgage or Leasehold Mortgage acts as a Lender Designated Assignee.

(Q) *Lender/Mortgagee* is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Potawatomi, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such Lender/Mortgagee.

(R) *Lessor* is the legal, beneficial, or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.

(S) *Lessee* is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The *lessee* may, for purposes of federal agency home mortgage programs, be the Indian Housing Authority.

(T) *Mortgage* is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building or land, and may refer both to a security instrument creating a lien, whether called

a *mortgage*, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

(U) *Mortgagor/Borrower* - see Borrower/Mortgagor.

(V) *Mortgagee/Lender* - see Lender/Mortgagee.

(W) *Mobile home* is a structure designed for human habitation and for being moved on a street or highway. Mobile home includes pre-fab, modular and manufactured homes. Mobile home does not include a recreational vehicle or a commercial coach.

(X) *Nuisance* is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(Y) *Owner* is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use, or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(Z) *Person* includes the Potawatomi, Indian Housing Authority, an individual or organization, and where the meaning of a portion of this code requires, it means a public agency, corporation, partnership, or any other entity.

(AA) *Premises* is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.

(AB) *Rent* is all periodic payments to be made to a landlord or lessor under a lease.

(AC) *Rental agreement* - see Lease.

(AD) *Reservation* is the land within the boundaries of the Potawatomi Reservation surveyed by Orrin T. Morrell under his contract dated September 3, 1872.

(AE) *Shall*, for the purposes of this Code, will be defined as, mandatory or must.

(AF) *Subordinate Lienholder* is the holder of any

lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Potawatomi shall not be considered a subordinate lienholder with respect to any claim regarding a Potawatomi tax on real property.

- (AG) *Tenant* is the lessee(s), sublessee(s), or person(s) entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.
- (AH) *Potawatomi Court* is the Court as established by the laws of the Potawatomi or such body as may now or hereafter be authorized by the laws of the Potawatomi to exercise the powers and functions of a Court of law.
- (AI) *Potawatomi Recording Clerk* is the Reality- director for the Potawatomi or such other person designated by the Potawatomi to perform the recording functions required by this document or any deputy or designee of such person.
- (AJ) *Potawatomi* is the Citizen Potawatomi Nation formerly known as the Citizen Band Potawatomi Indian Tribe of Oklahoma.

CHAPTER TWO GENERAL PROVISIONS

Section 38-2-101 Rental Agreements

- (A) Effect of Rental Agreements. The provisions of this Code, as well as the applicable laws identified in Section 38-1-104, establish the minimum rights and responsibilities of landlords and tenants. Unless inconsistent therewith, rental agreements may supplement these minimum rights and responsibilities.
- (B) Terms Prohibited in Rental Agreements. No rental agreement shall provide that the tenant agrees: (1) to waive or forfeit his rights or remedies under this Code or any other applicable laws as identified in Section 38-1-104; (2) to exculpate or limit the liability of the landlord or to indemnify the landlord for that liability or the costs connected therewith; (3) to permit the landlord to dispossess him without resort to court order; or (4) to pay a late charge prior to the expiration of the grace period set forth in Section 38-3-104(A). A provision prohibited by this subsection shall be unenforceable.

- (C) Term of Tenancy. In the absence of a definite term in the rental agreement, the tenancy shall be month-to-month.

- (D) Payment of Rent. In the absence of definite terms in the rental agreement, rent is payable at the landlord's office (if known) or at the dwelling unit. In the absence of definite terms, the amount of rent shall be the fair market value of the rental unit.

Section 38-2-102 Rules and Regulations

- (A) The landlord may promulgate reasonable rules and regulations regarding the use and occupancy of the dwelling unit.
- (B) Such rules and regulations are enforceable against the tenant only if: (1) their purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for all the tenants generally; (2) the rules and regulations are reasonably related to the purpose for which they are adopted; (3) the rules and regulations apply to all tenants in the premises in a fair manner; (4) the rules and regulations are sufficiently explicit in their prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he shall or shall not do to comply; and (5) the tenant has notice of the rules and regulations at the time he enters into the rental agreement or when they are adopted:
- (C) If a rule or regulation that would result in a substantial modification of the terms of the rental agreement is adopted after the tenant enters into the rental agreement, such rule or regulation is not valid unless the tenant consents to such rule or regulation in writing.

Section 38-2-103 Landlord Responsibilities

Except as otherwise provided in a rental agreement or a Mutual Help Occupancy Agreement, each landlord subject to the provisions of this Code shall:

- (A) Maintain the dwelling unit in a decent, safe, and sanitary condition.
- (B) Comply with applicable building and housing codes.
- (C) Make all necessary repairs to put and maintain the premises in a fit and habitable condition, except where the premises are intentionally ren-

dered unfit or uninhabitable by the tenant or his guest, in which case such duty shall be the responsibility of the tenant.

- (D) Keep common areas clean, safe, and secure.
- (E) Ensure tenant access to the dwelling unit.
- (F) Maintain in good condition and safe working order all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, where such things are not the responsibility of the tenant or are generated by an installation within the exclusive control of the tenant.
- (G) Provide and maintain proper and appropriate receptacles and facilities for the disposal of ashes, garbage, rubbish, and other waste.
- (H) Provide running water, hot water, and heat in accordance with applicable building and housing codes, except to the extent the tenant is required to provide such for himself.
- (I) Guarantee the right of quiet enjoyment of the dwelling unit to the tenant and insure that the conduct of other tenants, their guests, and other persons on the premises does not cause a nuisance, endangerment of public health and safety, breach of peace, or interference with the quiet enjoyment of the tenant.
- (J) Give sole possession of the dwelling unit to the tenant in accordance with the rental agreement and refrain from: (I) entering the unit, except as authorized in 38-2-104(K) (2) making repeated demands for entry otherwise lawful under Section 38-2-104(K) but which have the effect of unreasonably harassing the tenant; (3) sexually harassing or physically assaulting the tenant in or around his dwelling unit; or (4) locking the tenant out of his dwelling unit without the tenant's consent.
- (K) Disclose, in writing, the name, address, and telephone number of the person responsible for receiving rent, notices and demands under this code, the person authorized to manage the dwelling unit, the owner of the premises or his agent, and the person responsible for making repairs, where they are required.

Section 38-2-104 Tenant Responsibilities

Except as otherwise provided in a rental agreement or mutual help occupancy agreement, each tenant subject to the provisions of this Code shall:

- (A) Pay rent without demand or notice at the time and place agreed upon by the parties.
- (B) Immediately notify the landlord of any defects in the premises hazardous to life, health, or safety.
- (C) Keep the dwelling unit reasonably clean and dispose of all ashes, garbage, rubbish, junk, and abandoned vehicles in a proper, sanitary, and safe manner.
- (D) Use all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances which are part of the dwelling unit or premises, and the property of the landlord, in a proper, safe, sanitary, and reasonable manner.
- (E) Refrain from destroying, defacing, damaging, or removing any part of the dwelling unit, premises, or common areas, and to require guests to act in like manner.
- (F) Pay reasonable charges for the repair of damages, other than normal wear and tear, to the dwelling unit, premises, or common areas caused by the tenant or his guests, or to repair such damages as required under the rental agreement, within thirty (30) calendar days of such damage.
- (G) Conduct himself, and require his guests to conduct themselves, in a manner which does not disturb the quiet enjoyment of others or cause a breach of the peace.
- (H) Not give up the dwelling unit to others, assign a lease arrangement, or sublease the dwelling unit without the written or oral permission of the landlord.
- (I) Use the dwelling unit only for residential purposes as agreed, and not to use the unit or permit its use for any other purpose, including illegal conduct or any other activity which may harm the physical or social environment of the premises or the area around it.
- (J) Abide by all rules and regulations promulgated by the landlord in accordance with Section 38-2-101 of this Code.
- (K) Provide the landlord access to the dwelling unit to perform maintenance and repairs, inspect the premises, supply necessary or agreed services, or show the dwelling unit to prospective buyers or tenants, provided that such access shall be at

reasonable times when the tenant is present, and upon reasonable written or oral notice from the landlord, except in emergency situations where the health, safety or welfare of the tenant or the tenant's neighbors is in immediate danger or where the tenant consents. No tenant who unreasonably denies access to a landlord for these purposes may pursue an action or grievance on the grounds that any services or repairs were not provided.

Section 38-2-105 Tenant Remedies

Where a landlord has not complied with this Code or the agreement of the parties, the tenant has the following rights:

- (A) To give reasonable notice to the landlord to comply with his obligations, demand repairs which are the responsibility of the landlord, or terminate the agreement under which the tenant occupies the premises. Should landlord fail to make repairs, as duly noticed by tenant, within a reasonable time, tenant may make necessary repairs and deduct cost from the rent payment; or
- (B) To seek a Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

Section 38-2-106 Landlord Remedies

Where a tenant has not complied with this Code or the agreement of the parties, the landlord has the right to:

- (A) Give reasonable notice to the tenant: to comply with his obligations, pay any monies due and owing under the agreement of the parties, or landlord has right to terminate the agreement under which the tenant occupies the premises, and demand that he and those with him leave the premises.
- (B) Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.
- (C) Seek a Court order or judgment for the payment of monies or costs, for compliance with the agreements and obligations of tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

Section 38-2-107 Abandoned Dwelling Units

Where a dwelling has been abandoned (the tenant has vacated without notice and does not intend to return which is evidenced by removal of possessions, nonpayment of rent, disconnected utilities, or expressed to the landlord or third party) a landlord, without further notice to the tenant may post a notice on the dwelling stating that the landlord intends to take possession and that the tenant's possessions will be inventoried and removed within ten (10) days from the posting. If the tenant's possessions are not claimed within thirty (30) days from their removal from the abandoned dwelling, the landlord may dispose of the possessions.

CHAPTER THREE GROUNDS FOR EVICTION/NOTICE TO QUIT/PRE-EVICTION OPTIONS

Section 38-3-101 Grounds For Eviction

A tenant may be evicted for:

- (A) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- (B) Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- (C) Nuisance, property damage; or destruction, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.
- (D) Serious or repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with Section 38-2-102, this Code, or any applicable building or housing codes.
- (E) Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.
- (F) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

Section 39-3-102 Notice To Quit Requirements

- (A) When Notice to Quit is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in Section 38-3-101, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this chapter.
- (B) Purpose of Notice to Quit. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.
- (C) Statement of Grounds for Eviction Required. The notice to quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reasons(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.
- (D) Form of Notice. The notice shall be in writing substantially in the following form: "I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing)."
- (E) Time Requirements for Notice. The notice must be delivered within the following periods of time:
- (1) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
 - (2) No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabit-

able, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

- (3) No less than fourteen (14) calendar days in all other situations.

Section 38-3-103 Serving The Notice To Quit

Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

- (A) Delivery must be made by an adult person.
- (B) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy delivered by mail, or
 - (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (C) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
 - (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a Potawatomi office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
- (D) The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

Section 38-3-104 Re-Eviction Options

- (A) Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

(B) Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

(C) Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:

- (1) The parties may employ the use of advocates or attorneys;
- (2) The parties may employ the use of a mediator or conciliator;
- (3) The parties may agree to arbitrate the issues in binding arbitration;
- (4) The parties may agree to options set forth in Section 408(A)(4)(8);
- (5) The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
- (6) The parties may agree to dismiss the matter in exchange for any agreement reached;
- (7) The parties may agree to stipulate to a judgment to be entered by the Court.

CHAPTER FOUR JUDICIAL EVICTION PROCEDURES

Section 38-4-101 Summons and Complaint

If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Potawatomi Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- (A) The names of the adult tenant(s) against whom the suit is brought;
- (B) A description of the rental agreement, if any;
- (C) The address or reasonable description of the location of the premises;
- (D) The grounds for eviction;
- (E) A statement showing that the notice to quit and any required termination notices have been served in accordance with this code or other applicable law; and

(F) A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.

(G) If the landlord is an Indian Housing Authority, a statement that the Indian Housing Authority has complied with all required regulatory processes prior to filing the eviction action.

Section 38-4-102 Action Upon Filing Complaint

When a complaint is filed in the Potawatomi Court, it shall be immediately presented to a Potawatomi Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with Section 38-4-101 and served as set forth in Section 38-3-103, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be no less than three (3) calendar days after the date of the order in matters involving serious nuisance or ten (10) calendar days in all other cases.

Section 38-4-103 Hearing On Complaint

- (A) If the tenant appears before the Court in person or in writing to test the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- (B) The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- (C) A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the premises between the date on which the complaint was tiled and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon nuisance or injuries provided in Section 38-3-101(C) and shall not

extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

- (D) The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

Section 38-4-104 Defenses

- (A) The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

- (1) The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- (2) The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.

- (B) There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.

- (C) That due to the conduct of the landlord, there is injury' to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.

- (D) That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

- (E) The landlord is evicting the tenant because of

his/her race, sex, sexual orientation, Religion, age, marital status, family status, or because the tenant is disabled.

- (F) Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

Section 38-4-105 Discovery and Prehearing Proceedings

Extensive, prolonged, or time-consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The Court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

Section 38-4-106 Evidence

Evidence in proceedings under this Code shall be under the provisions of the general Potawatomi code of evidence.

Section 38-4-107 Burden of Proof

The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

Section 38-4-108 Judgment

- (A) Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:

- (1) Order the immediate eviction of a tenant and delivery of the premises to the landlord;
- (2) Grant actual damages as provided in the agreement of the parties or this Code, including interest,
- (3) Order the parties to carry out an obligation required by law;
- (4) Establish a payment plan for the tenant;
- (5) Order rent payments out of per capita payments or through garnishment;
- (6) Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;

- (7) Remediate the action - in part or in whole - through appropriate recalculation of rent;
- (8) Order the tenant to perform work for the landlord or the owner to payoff back rent due and/or damages;
- (9) Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation;
- (10) Order the parties into negotiations as provided in Section 38-3-104 of this Code; or
- (11) Grant any relief provided in this code or allowed in law or equity.

(B) If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

Section 38-4-109 Form of Judgment

The judgment shall state the relief granted by the Court to any party. The judgment may state brief reasons for the relief granted, but need not state finding of fact or conclusions of law in support of the judgment. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

Section 38-4-110 Execution of Judgment

Any judgment may be immediately executed, and the judgments and orders of the Court shall be enforced by a duly-authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it with in five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtain under the general Potawatomi civil procedure code and/or Potawatomi small claims procedure code.

Section 38-4-111 Stay of Execution

If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

- (A) Good and reasonable grounds affecting the well-being of the party are stated; or
- (B) There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- (C) Execution of the judgment could result in extreme hardship for the tenant(s); or
- (D) A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

Section 38-4-112 Appeals

Appeals under this Chapter shall be according to the general Potawatomi appellate provision.

Section 38-4-113 Miscellaneous Complaints and Claims

Any miscellaneous complaint or claim including a complaint or claim by a tenant which does not fall within the procedures of this code may be made under the general Potawatomi civil procedure code and/or Potawatomi small claims procedure code.

Section 38-4-114 Notice To Leave The Premises

Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

- (A) Delivery shall be made by:
 - (1) A law enforcement officer of the Potawatomi or an agency of the United States Government, or
 - (2) Any person authorized by the Potawatomi Court.
- (B) Delivery will be effective when it is:
 - (1) Personally delivered to a tenant with a copy delivered by mail, or

- (2) Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - (3) Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- (C) If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
- (1) Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 - (2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a Potawatomi office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

Section 38-4-115 Forcible Eviction

- (A) Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a Potawatomi law enforcement officer. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (C) below.
- (B) Following eviction, the Court may allow the landlord, the Indian Housing Authority or the United States Government access to any property leased by either of them for purposes of preserving and securing it.
- (C) Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its re-

moval and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner.

Section 38-4-116 No Self-Help Eviction

Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving a notice to quit, and obtaining a Court order as provided in this Code.

Section 38-4-117 Security Deposits

- (A) Security Deposit Limits. A landlord may demand a security deposit of an amount equal to one-hundred dollars (\$100) or one month's periodic rent, whichever is greater, which may be in addition to the current month's rent. Additional security deposits may be allowed for special circumstances such as animals or pets or tenant history or prior damages.
- (B) Payment of Security Deposit at Termination of Tenancy. The person who is the landlord at the time a tenancy is terminated shall pay to the tenant or former tenant the amount of the security deposit that was deposited by the tenant with the person who was landlord at the time such security deposit, was deposited less the value of any damages which any person, who was a landlord of such premises at any time during the tenancy of such tenant, has suffered as a result such tenant's failure to comply with such tenant's obligations. Damages shall not include normal wear and tear.
- (C) Action to Reclaim Security Deposit. Any tenant may bring a civil action in Potawatomi Court to reclaim any part of his security deposit which may be due.

CHAPTER FIVE

MORTGAGE AND FORECLOSURE

Section 38-5-101 Priority

All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Potawatomi leasehold tax assessed after the recording of the mortgage.

Section 38-5-102 Recording

- (A) The Potawatomi Recording Clerk shall maintain in the Potawatomi Real Estate program a system for the recording of mortgages and such other documents as the Potawatomi may designate by laws or resolution.
- (B) The Potawatomi Recording Clerk shall endorse upon any mortgage or other document received for recording:
 - (1) The date and time of receipt of the mortgage or other document;
 - (2) The filing number, to be assigned by the Potawatomi Recording Clerk, which shall be a unique number for each mortgage or other document received; and
 - (3) The name of the Potawatomi Recording Clerk or designee receiving the mortgage or document.

Upon completion of the above-cited endorsements, the Potawatomi Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Title 38

Citizen Potawatomi Nation)
)ss.
Potawatomi Indian Country)

I certify that this is a true and correct copy of a document received for recording this date.
Given under my hand and seal this ____ day of _____

(SEAL)

(Signature) (Date)

The Potawatomi Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage or other document to the person or entity that presented the same for recording.

(C) The Potawatomi Recording Clerk shall also maintain a log of each mortgage or other document recorded in which there shall be entered:

- (1) The name(s) of the Borrower/Mortgagor of each mortgage, identified as such;
- (2) The name(s) of the Lender/Mortgagee of each Mortgage, identified as such;
- (3) The name(s) of the grantor(s), grantee(s), or other designation of each party named in any other documents filed or recorded;
- (4) The date and time of the receipt;
- (5) The filing number assigned by the Potawatomi Recording Clerk; and
- (6) The name of the Potawatomi Recording Clerk or designee receiving the mortgage or document.

(D) The certified copies of the mortgages and other documents and the log maintained by the Potawatomi Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Potawatomi Recording Clerk.

Section 38-5-103 Foreclosure Procedures

(A) A Borrower/Mortgagor shall be considered to be in default when he is thirty (30) days past due on his mortgage payment(s) to the Lender/Mortgagee.

(B) Before a Borrower/Mortgagor becomes ninety (90) days delinquent on his mortgage payments and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

- (1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.
- (2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor,

able to receive and relay Messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

(C) Lender/Mortgagee may appoint an agent to perform the services or arranging and conducting the face-to-face interview specified in this action.

(D) Before the Borrower/Mortgagor has been delinquent for ninety (90) days and at least ten (10) days before initiating a foreclosure action in Potawatomi Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting prominently on the unit, with a copy provided to the Potawatomi, as follows:

- (1) Advise the Borrower/Mortgagor that information regarding the loan and default will be given to credit bureaus.
- (2) Advise the Borrower/Mortgagor of home ownership counseling opportunities/programs available through the Lender or otherwise.
- (3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.
- (4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements when a Leasehold Mortgage is involved: (i) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains in default for more than ninety (90) days, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is a requirement of the governmental program; (ii) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government if the mortgage is assigned; and (iii) provide the Borrower/Mortgagor with names and address of government officials to whom further communications may be addressed, if any.

(E) If a Borrower/Mortgagor has been in default for ninety (90) days or more and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender\

Mortgagee may commence a foreclosure proceeding in the Potawatomi Court by filing a verified complaint as set forth in §38-5-104 of this Code.

Section 38-5-104 Foreclosure Complaint and Summons

- (A) The verified complaint in a mortgage foreclosure proceeding shall contain the following:
- (1) The name of the Borrower\Mortgagor and each person or entity claiming through the Borrower\Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Potawatomi with respect to a claim for a Potawatomi leasehold), as a defendant;
 - (2) A description of the property subject to the Mortgage;
 - (3) A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;
 - (4) True and correct copies of each promissory note, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (Appended as exhibits); “and
 - (5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations (2) Potawatomi codes, ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.
- (B) The complaint shall be verified by the Potawatomi Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

Section 38-5-105 Service of Process and Procedures

Service of process shall be performed according to the procedures set forth in Section 38-3-103 of this code.

Section 38-5-106 Cure of Default By Subordinate Lienholder

Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any Subordinate Lienholder who has cured a default shall thereafter have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

Section 38-5-107 Judgment and Remedy

This matter shall be heard and decided by the Potawatomi Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower\Mortgagor. If the alleged default has not been cured at the time of trial and the Potawatomi Court finds for the Lender\Mortgagee, the Potawatomi Court shall enter judgment:

- (A) Foreclosing the interest of the Borrower\Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage, and
- (B) Assigning the Mortgage to the Lender\Mortgagee or the Lender’s Designated Assignee; in the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender’s Designated Assignee, subject to the following provisions:
 - (1) The Lender shall give the Potawatomi the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender’s Designated Assignee.
 - (2) The Lender or Lender’s Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Potawatomi member, the Potawatomi, or the Potawatomi Housing Authority.
 - (3) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Potawatomi member, the Potawatomi, or the Potawatomi Housing Authority during the remaining period of the leasehold.

Section 38-5-108 Foreclosure Evictions

Foreclosure evictions shall be handled according to the general eviction process set forth in Chapter 3 of this Code, with the added provision that foreclosure eviction proceedings shall not occur until after the Borrower/Mortgagor, lessee, occupier has received thirty (30) calendar days notice, and remains in possession of the property contrary to the terms of the notice. All foreclosure evictions shall occur no later than sixty (60) days from the date of service of notice upon the Borrower/Mortgagor that foreclosure was completed.

Section 38-5-109 No Merger of Estates

There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Potawatomi Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

Section 38-5-110 Certified Mailing To Potawatomi and Lessor

Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Potawatomi or the Lessor(s) is not named as a defendant, a copy of the summons and complaint shall be mailed to the Potawatomi and to the Lessor(s) by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor(s) in care of the Superintendent of the applicable agency of the Bureau of Indian Affairs.

Section 38-5-111 Intervention

The Potawatomi or any Lessor may petition the Potawatomi Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Potawatomi, nor the granting of such a petition by the Potawatomi Court shall operate as a waiver of the sovereign immunity of the Potawatomi, except as may be expressly authorized by the Potawatomi.

Section 38-5-112 Appeals

Appeals under this Chapter shall be handled in accordance with the general Potawatomi appellate provisions.

**CHAPTER SIX
MISCELLANEOUS PROVISIONS**

Section 38-6-101 Effective Date

This Code shall take effect on the day, month and year that this code is enacted by an ordinance adopted by the Business Committee.

Section 38-6-102 Retroactive Effect

This Code shall apply to all rental agreements subject to the provisions of the Code, not matter when entered.

CITIZEN POTAWATOMI NATION
PUBLIC HUNTING AND FISHING
TITLE 39

RESERVED

CITIZEN POTAWATOMI NATION
**PUBLIC LAND DEVELOPMENT, PROTECTION,
 ZONING AND EMINENT DOMAIN
 TITLE 40**

<u>CHAPTER</u>	<u>SECTION</u>	Effective Date	
1. EMINENT DOMAIN		Approval	105
Who May Exercise Authority	101	Choice of Law	106
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CHAPTER ONE EMINENT DOMAIN

Section 40-1-101 Who May Exercise Authority

The Tribal Legislative Body, officer or Agency of the Tribe specifically authorized may obtain real or personal property by eminent domain proceedings.

Section 40-1-102 What Property May be Condemned by Eminent Domain

Except property exempt from eminent domain all property real and personal within Tribal jurisdiction, not owned by the Tribe and its agencies, shall be subject to eminent domain except title to property held in trust or property held by an Indian or Tribe subject to a restriction against alienation unless the United States has consented to the eminent domain. Any lease or tribally granted assignment, or other non-trust right to use such trust or restricted property conveyed by Tribal or federal law shall be subject to eminent domain.

Section 40-1-103 Condemnation of Property

- (A) Applicability of Other Rules:** The Rules of Civil Procedure govern procedure for the condemnation of real and personal property under the power of eminent domain, except as otherwise provided.
- (B) Joinder of Properties:** The plaintiff may join one or more separate pieces of property, whether the same or different ownership and whether or not sought for the same use.
- (C) Amount to be Paid:** The owner shall receive just compensation for all property or rights to property.

Section 40-1-104 Complaint

- (A) Caption:** The complaint shall contain a caption except the plaintiff shall name as defendants the property, designated by kind, quantity, and location, and at least one of the owners.
- (B) Contents:** The complaint shall contain a short and plain statement of the authority for the taking, the use for the property description of the property interests to be acquired, and to each separate piece a designation of the defendants who have been joined as owners or of some interest. The plaintiff need join as defendants only the persons having or claiming an interest in the property. Prior to any hearing involving compensation the plaintiff shall add all persons

having or claiming an interest who can be ascertained by a reasonable diligent search considering the character and value of the property and interest to be acquired. All others may be designated "Unknown Owners." Process shall be served upon all defendants, and a defendant may answer. The Court may order distribution of a deposit.

- (C) Filing:** The plaintiff shall furnish the clerk at least one copy for defendants and additional copies at the request of the clerk or defendant.

Section 40-1-105 Process in Eminent Domain

- (A) Notice; Delivery:** The plaintiff shall deliver to the clerk notices directed to defendants named, designated and defendants subsequently added. The delivery of the notice and its service have the same effect as the delivery and service of the summons.
- (B) Same; Form:** Each notice shall state the Court, the title of the action, the name of the defendant, the action is to condemn property, a description of the property sufficient for its identification, the interest to be taken, the authority for the taking, the uses for which the property is to be taken, the defendant may serve upon plaintiff's attorney an answer within twenty (20) days after service of the notice, and the failure constitutes a consent to the taking and to the authority of the Court to hear the action and fix the compensation. The notice shall conclude with the name of the plaintiff's attorney and address.

(C) Service of Notice:

- (1) Personal Service:** Personal service shall be made upon a defendant who resides within the United States or its territories or insular possessions and whose residence is known. A copy of the complaint may, but need not, be served.
- (2) Service by Publication:** Upon filing of a certificate stating Plaintiff believes a defendant cannot be personally served, because after diligent inquiry his place of residence cannot be ascertained or, if ascertained, that it is beyond the territorial limits of personal service as provided in this Section, service of the notice shall be made on that defendant by publication in a newspaper where Defendant is located or in a newspaper having a

general circulation where the property is located, once a week for not less than three successive weeks. Prior to the last publication, a copy of the notice shall be mailed to a defendant who cannot be personally served but whose place of residence is then known. Unknown owners may be served by publication by a notice addressed to "Unknown Owners."

(3) When Publication Service Complete: Service of publication is complete upon the date of the last publication. Proof of publication and mailing shall be made by certificate of the plaintiff's attorney, to which shall be attached a printed copy of the published notice with the name and dates of the newspaper marked.

(D) Return; Amendment: Proof of service of the notice shall be made and amendment of the notice or proof of its service allowed in the manner provided for the return and amendment of the summons.

Section 40-1-106 Appearance of Answer

If a defendant has no objection or defense, he may serve a notice of appearance designating the property in which he claims to be interested. Thereafter they shall receive notice of all proceedings. If a defendant has any objection or defense to the taking of their property, they shall serve an answer within 20 days after the service of notice. The answer shall identify the property, state the nature and extent of the interest claimed, and state all objections and defenses to the taking. A defendant waives all defenses and objection not presented, but at the trial of compensation, whether or not they have previously appeared or answered, they may present evidence as to the amount of compensation, and may share in the distribution. No other pleading or motion asserting any additional defense or objection shall be allowed.

Section 40-1-107 Amendment of Pleadings

Without leave of Court, the plaintiff may amend the complaint at any time before the trial of compensation. The plaintiff need not serve a copy of an amendment, but shall serve notice of the filing, upon any party affected who has appeared and, upon any party affected who has not appeared. The plaintiff shall furnish to the clerk for defendants use at least one copy of each amendment. Within time a defendant may serve his answer to the amended pleading.

Section 40-1-108 Substitution of Parties

If a defendant dies or becomes incompetent or transfers his interest, the Court may order substitution of the proper party and notice.

Section 40-1-109 Dismissal of Action

(A) As of Right: If no hearing has begun to determine compensation and plaintiff has not acquired title or a lesser interest or possession, the plaintiff may dismiss the action without Court order by filing a notice of dismissal setting forth a brief property description.

(B) By Stipulation: Before the entry of judgment, the action may be dismissed without Court order by filing a stipulation of dismissal by plaintiff and defendant.

(C) By Order of the Court: Any time before compensation has been determined and paid and after motion and hearing, the Court may dismiss the action except it shall not dismiss as to any part which the plaintiff has taken possession or title or lesser interest, without awarding compensation, or if the possession, title, or interest is to be returned to defendant upon plaintiff's dismissal the Court may award actual damages not to exceed One Thousand Dollars (\$1,000.00) in excess of fair rental value during plaintiff's possession or title notwithstanding the doctrine of sovereign immunity.

(D) Effect: Except as provided in the notice, or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

Section 40-1-110 Deposit and Its Distribution

The plaintiff shall deposit money required and may make a deposit when permitted. The Court and attorneys shall expedite the proceedings for the distribution of the money, ascertainment and payment of compensation. If the compensation awarded to any defendant exceeds the amount of the deposit, the Court shall enter judgment against plaintiff for the deficiency. If the compensation awarded to any defendant is less than the amount paid to him, the Court shall enter judgment against him for the overpayment.

Section 40-1-111 Costs

Costs shall normally be paid by Plaintiff in condemnation actions unless the Court, determines a defendant should pay their own costs, which may include a portion of plaintiff's costs because of inequitable conduct or other reason.

CHAPTER TWO FLOOD DAMAGE PREVENTION

SECTION 40-2-101 Citation

This Chapter shall be known as the “Flood Damage Prevention Chapter” and shall apply to tribally-owned lands of the Citizen Potawatomi Nation subject to periodic flooding.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

SECTION 40-2-102 Statutory Authorization

The Citizen Potawatomi Nation, pursuant to legislative authority granted by Article 4, Section 3 of the Citizen Potawatomi Nation Constitution, does ordain as follows:

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

SECTION 40-2-103 Findings of Fact

- (A) The flood hazard areas of Citizen Potawatomi Nation Tribal lands are subject to periodic inundation which results in loss of property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.
- (B) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazards areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

SECTION 40-2-104 Statement of Purpose

It is the purpose of this Chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (F) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

SECTION 40-2-105 Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter uses the following methods:

- (A) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;
- (D) Control filling, grading, dredging and other development which may increase flood damage;
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

SECTION 40-2-106 Definitions

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

ALLUVIAL FAN FLOODING - means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

APEX - means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

AREA OF SHALLOW FLOODING - means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD - is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

BASE FLOOD - means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT - means any area of the building having its floor subgrade (below ground level) on all sides.

CRITICAL FEATURE - means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

DEVELOPMENT - means any man-made change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING - means a non-basement building: (i) built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water; and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded

movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls if the breakaway walls met the standards of Section 60.3(e)(5) of the National Flood Insurance Program regulations.

EXISTING CONSTRUCTION - means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION - means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FLOOD OR FLOODING - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters.
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM) - means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY - is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the Flood Boundary-Floodway Map.

FLOODPLAIN OR FLOOD-PRONE AREA - means any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPLAIN MANAGEMENT - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

FLOODPLAIN MANAGEMENT REGULATIONS - means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOOD PROTECTION SYSTEM - means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within a community subject to a “special flood hazard” and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

FLOOD PROOFING - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY (REGULATORY FLOODWAY) - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE - means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- (4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:
 - (a) by an approved state program as determined by the Secretary of the Interior or;
 - (b) directly by the Secretary of the Interior in states without approved programs.

LEVEE - means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

LEVEE SYSTEM - means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

LOWEST FLOOR - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of Section 60.3 of the National Flood insurance Program regulations.

MANUFACTURED HOME - means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

MANUFACTURED HOME PARK OR SUBDIVISION - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MEAN SEA LEVEL - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

NEW CONSTRUCTION - means, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

NEW MANUFACTURED HOME PARK OR SUBDIVISION - means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

RECREATIONAL VEHICLE - means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use

START OF CONSTRUCTION - (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE - means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or;
- (2) Any alteration of a “historic structure”, pro-

vided that the alteration will not preclude the structure's continued designation as a "historic structure."

VARIANCE - is a grant of relief to a person from the requirement of this Chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this Chapter. (For full requirements see Section 60.6 of the National Flood Insurance Program regulations.)

VIOLATION - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

WATER SURFACE ELEVATION - means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

Section 40-2-107 General Provisions

A. LANDS TO WHICH THIS CHAPTER APPLIES

The Chapter shall apply to all tribally-owned lands of the Special Flood Hazard Areas of the Citizen Potawatomi Nation.

B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by FEMA in a scientific and engineering report entitled, "The Flood Insurance Study for Pottawatomie County, Oklahoma and Incorporated Areas" dated September 3, 2010, with the accompanying Flood Insurance Rate Map (FIRM) are hereby adopted on September 3, 2010, by reference and declared to be a part of this Chapter. However, until this date the current effective flood maps for the City of Shawnee dated April 2, 1992, shall be used for this purpose until September 3, 2010.

C. ESTABLISHMENT OF DEVELOPMENT PERMIT

A Development Permit shall be required to ensure conformance with the provisions of this Chapter.

D. COMPLIANCE

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this Chapter and other applicable regulations.

E. ABROGATION AND GREATER RESTRICTIONS

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. INTERPRETATION

In the interpretation and application of this Chapter, all provisions shall be:

- (1) considered as minimum requirements;
- (2) liberally construed in favor of the governing body; and
- (3) deemed neither to limit nor repeal any other powers granted under State statutes.

G. WARNING AND DISCLAIMER OR LIABILITY

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This Chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

Section 40-2-108 Administration

A. DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR

The Citizen Potawatomi Nation Floodplain Board shall

appoint the Floodplain Administrator to administer and implement the provisions of this Chapter and other appropriate sections of 44 CFR (National Flood Insurance Program Regulations) pertaining to floodplain management.

B. DUTIES & RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties and responsibilities of the Floodplain Administrator shall include, but shall not be limited to the following:

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this Chapter;
- (2) Review permit applications to determine whether proposed construction or other development, including the placement of manufactured homes, will be reasonably safe from flooding;
- (3) Review, approve or deny all applications for development permits required by adoption of this Chapter;
- (4) Review permits for proposed development to assure that all necessary permits have been obtained from those Federal, State or local governmental agencies (including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation;
- (6) When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a Federal, State or other source, in order to administer the provisions of Article 5; and
- (7) When a regulatory floodway has not been designated, the Floodplain Administrator must require that no new construction,

substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

C. PERMIT PROCEDURES

Application for a Development Permit shall be presented to the Floodplain Administrator on forms furnished by him/her and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (1) Elevation (in relation to mean sea level), of the lowest floor (including basement) of all new and substantially improved structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of Article 5, Section B(2);
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and
- (5) Maintain a record of all such information in accordance with Article 4, Section (B)(1).

Approval or denial of a Development Permit by the Floodplain Administrator shall be based on all of the provisions of this Chapter and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (3) The danger that materials may be swept onto other lands to the injury of others;
- (4) The compatibility of the proposed use with existing and anticipated development;
- (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
- (7) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
- (8) The necessity to the facility of a waterfront location, where applicable;
- (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

D. VARIANCE PROCEDURES

- (1) The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on requests for variances from the requirements of this Chapter.
- (2) The Citizen Potawatomi Nation Floodplain Board shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this Chapter.
- (3) Any person or persons aggrieved by the decision of the Citizen Potawatomi Nation Floodplain Board may appeal such decision in the Citizen Potawatomi Nation Tribal Court System.
- (4) The Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
- (5) Variances may be issued for the reconstruction, rehabilitation or restoration of

structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this Chapter.

- (6) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in Section C of this Article have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
- (7) Upon consideration of the factors noted above and the intent of this Chapter, the Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this Chapter (Article 1, Section C).
- (8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (10) Prerequisites for granting variances:
 - (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (b) Variances shall only be issued upon:
 - (1) showing a good and sufficient cause;
 - (2) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) a determination that the granting

of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

- (c) Any application to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (11) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that:
 - (a) the criteria outlined in Article 4, Section D(1)-(9) are met, and
 - (b) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

Section 40-2-109 Provisions for Flood Hazard Reduction

A. GENERAL STANDARDS

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters; and
- (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

SECTION B. SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Article 3, Section B the following provisions are required:

- (1) **Residential Construction** - new construction and substantial improvement of any residential structure shall have the lowest floor (including basement), elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in Article 4, Section C(1) is satisfied.
- (2) **Nonresidential Construction** - new construction and substantial improvements of any commercial, industrial, or other non-residential structure shall either have the lowest floor (including basement) elevated to or above the base flood level or together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage

of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained by the Floodplain Administrator.

- (3) Enclosures** - new construction and substantial improvements, with fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
- (b) The bottom of all openings shall be no higher than one foot above grade.
- (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(F) Manufactured Homes -

- (a) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and

anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

- (b) Require that manufactured homes that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM on sites: (i) outside of a manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Require that manufactured homes be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zones A1-30, AH and AE on the community's FIRM that are not subject to the provisions of paragraph (4) of this section be elevated so that either:
 - (1) the lowest floor of the manufactured home is at or above the base flood elevation, or
 - (2) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (1) **Recreational Vehicles** - Require that recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:

- (a) be on the site for fewer than 180 consecutive days,
- (b) be fully licensed and ready for highway use, or
- (c) meet the permit requirements of Article 4, Section C(1), and the elevation and anchoring requirements of "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

C. STANDARDS FOR SUBDIVISION PROPOSALS

- (1) All subdivision proposals including the placement of manufactured home parks and subdivisions shall be consistent with Article 1, Sections B, C, and D of this Chapter.
- (2) All proposals for the development of subdivisions including the placement of manufactured home parks and subdivisions shall meet Development Permit requirements of Article 3, Section C; Article 4, Section C; and the provisions of Article 5 of this Chapter.
- (3) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) All subdivision proposals including the placement of manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

Section 40-2-110. Penalties for Non-Compliance

A. GENERAL REQUIREMENTS

In accordance with Section 59.2(b) of CFR 44, Chapter 1, of the National Flood Insurance Program (NFIP) regulation, to qualify for the sale of federally-subsidized flood insurance, a community must adopt floodplain management regulation that meet or exceed the minimum standards of Section 60. "These regulations must include effective enforcement provisions."

In accordance with Section 60.1(b) of CFR 44, Chapter 1, of the NFIP regulations, "These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone (i.e. mudflow) or floodrelated erosion areas, and the community must provide that the regulations take precedence over less restrictive conflicting local laws, ordinances, or

B. ENFORCEMENT

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this Chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$10,000 or imprisoned for not more than 90 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Citizen Potawatomi Nation from taking such other lawful action as is necessary to prevent or remedy any violation.

Ordinance #11-01 enacted by the Citizen Potawatomi Legislature on June 28, 2010.

CHAPTER THREE

BUSINESS LEASING REGULATIONS

Section 40-3-101 Purpose and Applicability

- (A) The purposes of the ordinances enacted at Chapter 3 of Section 40 herein are to:
 - (1) Recognize the authority of the Citizen Potawatomi Nation to issue business site leases, and establish streamlined procedures for environmental review, approval, management and enforcement of leases;

- (2) Promote self-determination, encourage economic self-sufficiency, and increase business activity and employment on lands of the Citizen Potawatomi Nation;
- (3) Implement the *HEARTH Act of 2012*; and
- (4) Implement the *Citizen Potawatomi Nation Business Leasing Regulations Act*.

(B) The *Citizen Potawatomi Nation Business Site Leasing Act* mandates certain provisions to protect and preserve Citizen Potawatomi Nation Trust Land, provisions for trust asset accounting, provisions for record keeping, and title recording, and provisions for modern leasing practices. Accordingly, *Section 40-3-400 through Section 40-3-403* of these regulations set forth the business site leasing management system.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-102 Title

The regulations shall be referred to as the *Citizen Potawatomi Nation Business Leasing Regulations Act of 2012*.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-103 Definitions

(A) For purpose of these regulations:

- (1) **Assignment** means an agreement between a lessee and an assignee whereby the assignee acquires all of the lessee's rights and assumes all the lessee's obligations under a business site lease.
- (2) **Approving Entity** means the governmental entity that has statutory authority to perform the duties and responsibilities of the Lessor on behalf of the Citizen Potawatomi Nation, and to approve or disapprove leasing transactions, which include but are not limited to: lease issuance, lease amendment or modification, subleasing, lease assignment or transfer, tenant leases and lease terminations. The *Citizen Potawatomi Nation Business Site Leasing Act of 2012* gives the Tribal Executive Committee of the Citizen Potawatomi Nation the power to act in the capacity of the Approving Entity.

- (3) **Best Interest of the Citizen Potawatomi Nation** means the balancing interests in attaining the highest economic income, providing incentives to increase economic development, preserving and enhancing the value of Citizen Potawatomi Nation Trust Land, increasing employment and jobs on the trust lands of the Citizen Potawatomi Nation, and preserving the sovereignty of the Citizen Potawatomi Nation.
- (4) **Bond** means a security interest providing security for the performance of a duty or the payment of a debt. The bond can be furnished by the lessee or by a third-party surety.
- (5) **BIA** means the Bureau of Indian Affairs, United States Department of the Interior.
- (6) **Business Site Lease** means any lease for a business purpose issued upon Citizen Potawatomi Nation Trust Land under the authority of 25 U.S.C. § 415.
- (7) **Change in Land Use** means the change from commercial to industrial, or one commercial or industrial to another that significantly differs from the former use.
- (8) **Citizen Potawatomi Nation** means the Citizen Potawatomi Nation Government.
- (9) **Citizen Potawatomi Nation Environmental Review** (CPNER) comprises all of the documents relevant to the Environmental Review Process for a specific Leasing Decision. The Record is maintained by the Environmental Reviewer, and will be provided to the Approving Entity.
- (10) **Citizen Potawatomi Nation Law** means the body of Tribal law governing the land and activities occurring within the jurisdiction of the Citizen Potawatomi Nation.
- (11) **Citizen Potawatomi Nation Trust Land** means the surface estate of land or any interest therein held by the United States in trust for the Citizen Potawatomi Nation; land held by the Citizen Potawatomi Nation and subject to federal restrictions against alienation or encumbrance, and reserved for federal purposes; and land held by the United States in trust for Citizen Potawatomi

Nation corporation chartered under the *Indian Reorganization Act*.

(12) Development Period means the time period from when a lease is executed to when improvements are expected to be substantially completed.

(13) Executive Committee of the Citizen Potawatomi Nation means the Tribal Chairman, Tribal Vice-Chairman and the Tribal Treasurer granted the statutory authority to give final approval for all business site leases subject to confirmation by the Citizen Potawatomi Nation Tribal Legislature during the next regularly scheduled quarterly meeting of the Tribal Legislature to take place not less than thirty days, nor more than one hundred thirty days, after presentation to the Legislature for confirmation.

(14) Environmental Reviewer is the employee of the Citizen Potawatomi Nation Department of Environmental Services that has the authority set forth in §710.

(15) Equity means value of a business or a property, over and above the indebtedness against it, and includes tangible and intangible assets, including capital stock, options, franchises, trademarks, patents, copyrights, goodwill, contracts, facilities, infrastructure, and equipment.

(16) Executing Official means the Chairman of the Citizen Potawatomi Nation, or his designee, if properly delegated, who shall have the authority to execute all business site leases on the trust lands of the Citizen Potawatomi Nation and take all necessary and proper action on leases and subleases including amendments, modifications, assignments and cancellations of leases and subleases subject to confirmation as described above.

(17) Fair Annual Lease Value means the most probable dollar amount a property should bring in a competitive and open market reflecting all conditions and restrictions of the specified lease agreement including term, rental adjustment and revaluation, permitted uses, use restrictions, and expense obligations; the lessee and lessor each acting

prudently and knowledgeably, and assuming consummation of a lease contract as of a specified date and the passing of the leasehold from lessor to lessee under conditions whereby:

- (a) Lessee and lessor are typically motivated;
- (b) Both parties are well-informed or well-advised, and acting in what they consider their best interests;
- (c) A reasonable time is allowed for exposure in the open market;
- (d) The rent payment is made in terms of cash in United States dollars, and is expressed as an amount per time period consistent with the payment schedule of the lease contract; and
- (e) The rental amount represents the normal consideration for the property leased unaffected by special fees or concessions granted by anyone associated with the transaction.

Fair annual lease value may take into consideration all revenues (such as taxes, fees and other benefits of value) which the lease is likely to generate for the benefit of the Citizen Potawatomi Nation, including increased business opportunities for related industries.

(18) Human Environment means the connection between the people and their environment.

(19) Interested party means a person whose interest is adversely impacted by the Managing Entity's leasing decision.

(20) Lease means a written agreement or contract between the Lessor and a Lessee wherein the lessee is granted a right to possess Citizen Potawatomi Nation Trust Land for a specific purpose and duration. The written contract in which the rights to use and occupy land or structures are transferred by the owner to another for a specified period of time in return for a specified rent.

(21) Leasing Decision in the context of the Environmental Review Process means the following type of lease transactions that will be acted on by the Approving Entity: lease

issuance, lease amendment or modification, subleasing, lease assignment.

- (22) **Lessee** means a person or entity to whom property (Citizen Potawatomi Nation Trust Land) is leased under a Lease. One who has the right to use or occupy a property under a lease agreement, e.g., the leaseholder or tenant.
- (23) **Lessor** means the Citizen Potawatomi Nation.
- (24) **Managing Entity** means the Chairman of the Citizen Potawatomi Nation, or his designee, having the statutory authority to manage all business site leases, in accordance with an approved business site leasing management plan.
- (25) **Mortgage** means a written *instrument* that creates a *lien* upon the leasehold interest of real estate encumbered in a business site lease as *security* for the payment of a specified debt.
- (26) **Permit** means a written agreement between the Citizen Potawatomi Nation and the applicant for the permit, also referred to as a permittee, whereby the permittee is granted a revocable use privilege to use Citizen Potawatomi Nation Trust Land for a specified purpose.
- (27) **Secretary** means the Secretary of Interior, U.S. Department of Interior, or his authorized representative.
- (28) **Sublease** means a written agreement by which the lessee grants a person or entity a right of possession no greater than that held by the lessee under a business site lease, subject to the approval of the *Executing Official* and confirmation of the Citizen Potawatomi Nation Legislature.
- (29) **Surety** means one who guarantees the performance of another.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-104 Scope

These regulations apply to all actions taken subsequent to enactment of these regulations regarding private busi-

ness site leases (existing and future) approved or modified under the authority of 25 U.S.C. § 415, and to all actions and decisions taken in connection with those leases. Nothing herein shall be construed to affect the terms and conditions of existing leases.

Business site leases are mandatory for all private businesses operating from a permanent structure or fixed location, advertising itself as being open to the public, or collecting rent or money from vendors or other business activities, unless otherwise provided by Tribal law. Failure to comply with this section shall be addressed pursuant to Citizen Potawatomi Nation law.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-105 Effective Date

These regulations shall take effect upon approval by the Secretary or his authorized designee.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-106 Approval

The Lessor may issue a business site lease or permit, which is subject to approval from the Approving Entity and execution from the Executing Official, subject to the confirmation of the Citizen Potawatomi Nation Tribal Legislature, so long as the lease complies with these regulations, and is in the Best Interest of the Citizen Potawatomi Nation.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-107 Choice of Law

All disputes over leases shall be resolved under the laws of the Citizen Potawatomi Nation. Nothing in these regulations shall be construed to waive the Citizen Potawatomi Nation's sovereign immunity.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-108 Renewal

No lease shall be approved more than 12 months prior to the commencement of the term of the business site leases. The term of the Lease shall not exceed 25 years except that any such lease may include an option to renew for up to two additional terms, each of which may not exceed 25 years. The lessee shall notify the Managing

Entity of the intent to renew, at least one year before the lease is due to expire.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-201 Information

Information on obtaining business site leases shall be available from the Chairman of the Citizen Potawatomi Nation or his designee.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-202 Supporting Documents

All applicants for business site leases shall submit the following documents to the Managing Entity: (1) financial statement; (2) site survey and legal description consistent with BIA standards, if applicable; (3) environmental review; and (4) other documents as may be required by the Citizen Potawatomi Nation.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-203 Records

- (A) The Managing Entity shall record business site leases, subleases, assignments, amendments, encumbrances, renewals, modifications and cancellations with the: United States Department of Interior; Bureau of Indian Affairs Southern Plains Regional Office; Land Title and Records Office of competent jurisdiction.
- (B) The Managing Entity is responsible for disseminating recorded lease documents as follows:
 - (1) Citizen Potawatomi Nation Executive Committee
 - (2) Citizen Potawatomi Nation Tribal Legislature
 - (3) Citizen Potawatomi Nation Office of Real Estate Services
 - (4) Citizen Potawatomi Nation Accounting Department
 - (5) The Lessee
- (C) A copy of these leases and all amendments and renewals shall also be sent for information only to the Secretary of the Interior, Bureau of Indian Affairs.

Ordinance #13-03 enacted by the Citizen Potawatomi

Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-204 Ownership of Records

Records of activities taken pursuant to these regulations are the property of the Citizen Potawatomi Nation.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-301 Terms and Conditions

Leases shall be governed by the standard terms and conditions set forth in the lease not inconsistent with CPN and BIA regulations. The lease may be modified only in a manner consistent with the Tribal and Federal regulations and with the approval of the Executive Committee of the Citizen Potawatomi Nation. The Lessee is responsible for understanding these terms and conditions.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-302 Land Descriptions

Business site leases shall contain adequate site surveys and legal descriptions based on metes and bounds, rectangular or lot and block systems or other means developed by the Citizen Potawatomi Nation Department of Real Estate Services which clearly indicates the parcel of land being leased, its size and location, as approved by the Citizen Potawatomi Nation Tribal Legislature.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-303 Appraisal, Local Studies

- (A) The fair annual lease value shall be determined by an appraisal or equivalent procedure performed by the Managing Entity utilizing the following data: improvement cost, replacement cost, earning capacity, sales and lease data of comparable sites. An appraisal log reporting the methods of appraisal and value of trust land shall be attached to every business site lease. Lease provisions regarding land use restrictions and non-competition agreements may be considered in assessing the fair annual lease value.
- (B) Alternatively, the fair annual lease value shall be determined by an appraisal performed by a

licensed appraiser utilizing the *Uniform Standards of Professional Appraisal Practice* or commonly accepted method of appraisal. An appraisal log describing the method of appraisal and the value of the trust land shall be attached to every business site lease.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-304 Environmental Review Process

The Approving Entity shall not approve a business site lease until the proposed business site lease has completed the CPNER Process. Leases approved and executed without compliance with this section shall be null and void.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-305 Fair Annual Lease Value

(A) No lease shall be approved for less than the present fair annual lease value as set forth in the appraisal, except as follows:

- (1) The lease is in the development period;
- (2) The Managing Entity is providing an incentive for business to locate on the Citizen Potawatomi Nation, and must provide lease concessions, lease improvement credits, and lease abatements to attract such businesses; or
- (3) The Managing Entity determines such action is in the Best Interest of the Citizen Potawatomi Nation; and
- (4) The Citizen Potawatomi Nation Tribal Legislature is notified, in writing, of the discrepancy between the Fair Annual Lease Value and the actual annual lease amount along with a written justification for said discrepancy at the time of submission to the Tribal Legislature for confirmation of the lease.

(B) A lease may be structured at a flat lease rate.

(C) A lease may be structured at a flat lease rate plus a percentage of gross receipts, if the lessee is a business located in a shopping center, mall or area set aside for business.

(D) A lease may be structured based on a percentage of gross receipts or other market indicator.

(E) The lease shall provide for periodic review at least every five years.

(F) Leases for terms of less than five years may be structured to allow for lease rate adjustments. The lease shall specify how adjustments will be made, who will make such adjustments, when adjustments will go into effect, and how disputes shall be resolved.

(G) Leases may be amended to allow for lease rate adjustments.

(H) Leases may contain reasonable limitations on the adjustments of variable lease rates, provided those limitations are clear and unambiguous in the lease documents submitted to the Tribal Legislature for confirmation of the Lease.

(I) Leases may provide reimbursement or other protection from adverse governmental actions that may be taken by the Citizen Potawatomi Nation.

(J) The Managing Entity shall keep written records of the basis used in determining the fair annual lease value, as well as the basis for adjustments. These records shall be presented to the lessee for its review and acceptance or non-acceptance and included in any lease file.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013. Amended by Ordinance #14-01, by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-306 Bond

(A) The lessee shall obtain a satisfactory surety bond in an amount that reasonably assures performance on the lease. Such bond shall be for the purpose of guaranteeing:

- (1) The annual lease payment;
- (2) The estimated development cost of improvements; and
- (3) Any additional amount necessary to ensure compliance with the lease, applicable environmental standards, and the general protection of the health, safety and welfare of the Citizen Potawatomi Nation.

(B) The Managing Entity may waive the bond requirement, or reduce the amount, if doing so is in the Best Interest of the Citizen Potawatomi Nation. The Managing Entity shall maintain written records of waivers and reductions.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-307 Insurance

The lessee shall secure insurance from a nationally accredited insurance company with a financial strength rating of “A” or equivalent approved by the Managing Entity. It shall cover property business interruption, liability and casualty. The amount shall be sufficient to cover the improvements, personal injury or death, and reasonably foreseeable liabilities of the lessees, the Citizen Potawatomi Nation, and the United States. The insurance shall expressly identify the Lessor, the Citizen Potawatomi Nation, and the United States as the insured parties.

Ordinance #13-03 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 40-3-308 Improvements

- (A) Improvements to the premises shall become the property of the Lessor unless otherwise provided for in the lease. If improvements will be removed, the lease shall specify the maximum time allowed for such removal and restoration of site.
- (B) A Lease may provide that lessee may develop equity value in the improvements, and sell its interest in the lease based on the equity value, provided that all such sales shall be subject to the express written approval of the Tribal Chairman and confirmation of the Tribal Legislature. The Lessor has a right of first refusal to purchase the interest.
- (C) The Lease may provide that at expiration, cancellation or termination of the lease, the Lessor shall purchase improvements to the premises at fair market value.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-309 Subleases, Assignments, Amendments and Encumbrances

- (A) Subleases, assignments, amendments or encumbrances of any lease shall be by written consent of the Lessor and Lessee, as well as the sureties, unless otherwise provided herein.
- (B) The lease may authorize subleases, in whole or in part, with the approval of the Tribal Chairman. This shall in no way relieve the parties from carrying out their duties under the lease.

- (C) The lease may authorize encumbrances to the leasehold interest for the purpose of financing the development and improvement of the premises with the express written approval of the Tribal Chairman and the Tribal Executive Committee. If a sale, foreclosure, or conveyance of the leasehold interest occurs and the Lender is the purchaser, the Lender may further assign the lease without approval of the Tribal Executive Committee or Lessee, provided the assignee agrees in writing to be bound by all the terms and conditions of the lease. If the purchaser of the leasehold interest is a party other than the Lender, such transfer of the lease shall be subject to the approval of the Tribal Chairman and the Tribal Executive Committee and the purchaser of the leasehold interest must agree in writing to be bound by all terms and conditions of the lease.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-401 Management

- (A) The Managing Entity shall manage both existing business site leases, as well as those executed pursuant to these regulations.
- (B) The Managing Entity shall institute a business site leasing management plan that employs real estate management practices, addresses accounting, collections, monitoring, enforcement, relief and remedies.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-402 Accounting

- (A) The Tribal Chairman shall implement an accounting system that generates invoices in advance of the due dates, accounts for payments, and dates of when rate adjustments should be made.
- (B) The system shall include the following information: name of lessee, business site lease number, due dates, amounts due, payments made, late charges, collection efforts cancellation efforts, balance due, cumulative payments and cumulative balance due.
- (C) The Managing Entity shall provide an annual accounting to the Treasurer of the Citizen Potawatomi Nation.

Nothing in this section shall be construed to absolve the lessee of its duties under a lease.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-403 Administrative Fees

The Managing Entity may charge administrative fees for costs associated with issuing a lease, sublease, assignment, amendment, mortgage or other administrative transaction.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-501 Enforcement

The Tribal Chairman shall have all powers necessary and proper to enforce the lease terms, laws, ordinances, regulations, rules, policies, and covenants, consistent with their business site leasing management plans. This includes the power to enter the premises at a reasonable time, as may be defined in the Lease, assess penalties, and assess late payments.

In addition to the express terms of a lease, failure to properly and timely pay all applicable tribal taxes, the unauthorized change in use, or the commission of a public nuisance shall serve as an event of default for all tribal business leases.

The Chairman of the Citizen Potawatomi Nation may direct the Tribal Attorney or the Tribal Prosecutor to assist in enforcement of leases and these regulations.

Nothing herein shall remove, or limit, the Bureau of Indian Affairs ability, at its discretion, to enforce the provisions of, or cancel with cause, a Lease granted under these regulations.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-502 Defaults

(A) If the Managing Entity determines the lessee is in default, the Managing Entity shall send the lessee a notice of default. The notice of default may be provided by certified mail, return receipt requested.

(B) Within 10 days of the mailing, the lessee shall:

- (1) Cure the default and notify the Managing Entity in writing that the default has been cured.
- (2) Dispute the Managing Entity's determination that the lease is in default and explain why the lease should not be canceled; or

(3) Request additional time to cure the default.

(4) *Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.*

Section 40-3-503 Remedies

(A) If the lessee fails to cure the default within the prescribed period, the Managing Entity may:

- (1) Cancel the lease pursuant to these regulations;
- (2) Grant an extension of time to cure the default;
- (3) Pursue other remedies, including execution on bonds or collection of insurance proceeds;
- (4) Any combination of remedies listed above; or
- (5) Any other remedy set forth in the business site lease management plan.

(B) If the Tribal Chairman terminates this lease, the Chairman shall send the lessee a cancellation letter within a reasonable time period. The cancellation letter may be sent to the lessee by certified mail, return receipt requested. The cancellation letter shall:

- (1) Explain the grounds for cancellation;
- (2) Notify the lessee of unpaid amounts, interest charges or late payment penalties due under the lease;
- (3) Notify the lessee of its right to appeal; and
- (4) Order the Lessee to vacate the premises within 30 days of the Lessee's receipt of the cancellation letter, if Lessee has not filed an appeal within 10 days of the receipt of said notice of cancellation.

(C) A cancellation shall become effective 31 days after mailing. The filing of an appeal shall not change the effective date of the cancellation. Pending the outcome of an appeal, the lessee shall make all requisite payments, as well as comply with the terms of the lease.

(D) If the Managing Entity decides to grant an extension of time to cure a default, the lessee shall proceed diligently to perform and complete the corrective actions within a reasonable time period.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-504 Penalties

The lease shall specify the rate of interest to be charged if the lessee fails to make payments in a timely manner. The lease shall identify additional late payment penalties. Unless the lease provides otherwise, interest charges and late payment penalties shall apply in the absence of any specific notice to the lessee from the Managing Entity, and the failure to pay such amount shall be treated as a breach of the lease.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-505 Harmful or Threatening Activities

If a lessee or other party causes or threatens to cause immediate and significant harm to the premises, or undertakes criminal activity thereon, the Managing Entity may take appropriate emergency action, which includes securing judicial relief.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-506 Holdover

If a lessee remains in possession after the expiration of a lease, or the termination of a lease and the conclusion of associated appeals, the Tribal Chairman shall treat such occupation as a trespass. The Tribal Chairman shall take action to recover possession and pursue additional remedies. Filing shall be pursuant to tribal laws, or the Tribal Chairman may request the BIA for resolution under federal laws; such request shall be in writing by certified mail.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-507 Trespass

If a person occupies the premises without the Managing Entity's approval, the Managing Entity may pursue appropriate remedies, including the filing of a trespass action to regain possession under Citizen Potawatomi Nation law.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-601 Appeals

- (A) The lessee or interested party may appeal a decision to terminate a lease by the Managing Entity, within ten days of the notice of determination. Appeals may be filed with the Citizen Potawatomi Nation Tribal Court. Such appeals

shall be effectuated by: the filing of an appeal bond where a stay of enforcement is requested, a written notice setting forth the basis for the appeal, a short statement indicating the nature and circumstances of the appeal, and a short statement indicating the remedy being sought.

- (B) An appeal bond shall protect the party whose remedy has been stayed, from all financial losses that may occur as result of the appeal. Appeal bond requirements shall not be separately appealed, but may be contested during the cancellation appeal.
- (C) The Tribal Court shall review whether the determination was arbitrary, capricious, or an abuse of discretion; not supported by substantial evidence in the record; or otherwise, not in accordance with the law.
- (D) These regulations are not intended to create an individual right to appeal tribal decisions resulting in the Nation declining entering into a lease with individuals or entities seeking the use of tribal lands. There shall be no individual right to the use of tribal lands prior to the Nation entering into an approved Lease as provided by these regulations or Federal law.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-602 Appeals to the Citizen Potawatomi Nation Supreme Court

Decisions of the District Court may be appealed to the Citizen Potawatomi Nation Supreme Court. Review shall be limited to issues of law and the record. *De novo* review is not allowed.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-701 Threshold Determination

Lessee Not Subject to Environmental Review Process (ERP): If the Environmental Reviewer determines that the Leasing Decision does not and will not affect the biological and cultural resources of the Citizen Potawatomi Nation under any reasonable standard of review, the Leasing Decision is exempt from additional requirements of the Environment Review Process, subject to the environmental record requirements of § 709.

Lessee Subject to Environmental Review Process: If the Environmental Reviewer determines that the Leasing Decision might be expected to i) impact, ii) alter,

iii) disturb, or iv) otherwise cause physical disturbances to the biological or natural resources of the Nation, the Lessee must fulfill the requirements of the Environmental Review Process. The physical disturbances must be direct, such as land clearing, new building construction, or discharge of emission or effluent associated with the project.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-702 Action on Leasing Decision Subject to Completion of ERP

If the ER determines that the Leasing Decision is subject to the Environmental Review Process, the Approving Entity may not consider the Leasing Decision until the Environmental Reviewer closes the ERP in accordance with § 711.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-703 Lessee Responsible for Environmental Compliance

(A) The Lessee, as the entity that will occupy and operate a business on the leased land is primarily responsible for compliance review, decision-making and action in accordance with applicable environmental laws. Therefore, pursuant to this Subchapter, Lessee must provide to Environmental Reviewer with respect to each of the environmental laws listed below, if applicable, a Compliance Determination for the Leasing Decision including, but not limited to:

- (1) Cultural Heritage and Historic
- (2) Floodplain Management
- (3) Wetlands Protection
- (4) Endangered Species Act
- (5) Air Quality
- (6) Water Quality
- (7) Sole Source Aquifer
- (8) Abandoned Mine Lands
- (9) Citizen Potawatomi Nation's Solid Waste Act
- (10) Farmland Protection Policy Act
- (11) Noise Abatement and Control
- (12) Toxic or Hazardous Substances and Radioactive Materials

(B) Lessee's responsibility to comply with these laws is in addition to and separate from its obligations under this Subchapter and Lessee's compliance obligations under those laws are not extinguished upon complying with the ERP.

(C) Lessee's obligation to provide the Environmental Reviewer with Compliance Determinations is not complete until the ER, in accordance with § 706, has determined that the Lessee has completed the Compliance Determination process.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-704 Compliance Determinations

(A) The Lessee may request a Compliance Determination from the appropriate Citizen Potawatomi Nation Department as determined by the Environmental Reviewer in accordance with § 712 and for providing that department with the information it requires to make the Compliance Determination.

(B) The Compliance Determination must clearly describe the Leasing Decision under consideration and provide an evaluation of the Leasing Decision's impact on the resource or condition regulated by the particular environmental law for which the Lessee requests a Compliance Determination.

(C) The Compliance Determination must also include a finding by the relevant department of the Citizen Potawatomi Nation as to whether the Leasing Decision will comply with the particular environmental law. This finding must be signed by the individual who is officially responsible for determining a project's impact on the resources or conditions regulated by that particular law.

(D) The completion of the Compliance Determination will be timely if the ER receives the Compliance Determination within 20 working days after the later of two events: 1) the Citizen Potawatomi Nation's departmental receipt of Lessee's request for a Compliance Determination; or 2) the Citizen Potawatomi Nation's departmental receipt of all of the information it requires to complete the Compliance Determination.

(E) If the Environmental Reviewer does not receive a completed Compliance Determination in a

timely manner from a Citizen Potawatomi department, the ER may conclude the ERP without that department's Determination, provided the ER documents the following conditions:

- (1) The ER has made reasonable efforts to obtain the Compliance Determination from the Citizen Potawatomi department; and
- (2) Delay is not the fault of the Lessee.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-705 Compliance Determinations in Earlier or Concurrent Environmental Review Documents

- (A) If the Leasing Decision pertains to an existing lease that has undergone an environmental review pursuant to the Nation's Business Site Leasing Regulations or the National Environmental Policy Act (NEPA) the Lessee may use those earlier environmental review documents to meet its Compliance Determination obligations under this Subchapter, subject to the Environmental Reviewer's determination that the Compliance Determination adequately evaluates the impacts of the Leasing Decision.
- (B) As early in the process as possible, the ER should review the earlier environmental review documents and assess whether the Compliance Determinations in those documents sufficiently evaluate the impacts of the Leasing Decision. If disturbances associated with the Leasing Decision were not evaluated by the Compliance Documents, the Lessee must obtain a compliance update or amendment from the Citizen Potawatomi department that has regulatory responsibility for the resource that has not been adequately evaluated.
- (C) In the event a Federal agency requires the Lessee to conduct an environmental review under NEPA in connection with a Federal decision that is related to the Leasing Decision, the ER may use those NEPA documents provided the documents meet the requirements of this Subchapter.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-706 Determination That Lessee Has Completed Compliance Determination Process

- (A) Before the Environmental Reviewer may close the ERP, they must affirmatively find the following:
 - (1) The Lessee has fully complied with the requirements of § 703 and § 704.
 - (2) The Lessee has submitted all Compliance Determinations required by this Subchapter; and
 - (3) The Compliance Determinations adequately evaluate the impacts expected from the Leasing Decision.
 - (4) Request public comments and complete consideration in a manner consistent with § 708.
- (B) Upon making these findings, the ER will place in the Environmental Review Record a statement to the effect the Lessee has completed the Compliance Determination process.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-707 Compliance Determination

- (A) After the Environmental Reviewer certifies that the Lessee has completed the Compliance Determination process, the ER will prepare a summary of the compliance findings. The summary will contain the following information:
 - (1) The date of the Compliance Determination, and the identification of the source of the Compliance Determination if contained in an earlier environmental review;
 - (2) A summary of the government department's compliance determination for each law, including conditions of compliance, if any; and
 - (3) A copy of the Compliance Determination.
- (B) The summary will be signed and dated by the Environmental Reviewer, and the document will be included in the Environmental Review Record.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-708 Public Notice Requirements

The Environmental Reviewer shall publish in a general

circulation newspaper a notice of the Nation's intent to certify that a Lessee has completed the environmental review process of the Nation's business site leasing program.

The Notice must provide for a comment period, and state that public comments timely received will be considered before the Environmental Reviewer closes the ERP. The Notice will also provide information about the Environmental Review Record and tell the public how the Record may be reviewed.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-709 Environmental Review Record

(A) An Environmental Review Record (ERR) must be maintained for every Leasing Decision reviewed by the Environmental Reviewer, including Leasing Decisions the Environmental Reviewer finds to be exempt pursuant to § 701. The ERR must be maintained in a written format and be available for public review.

(B) The Environmental Review Record must contain all documents relevant to the Environmental Review Process, including but not limited to, the following:

- (1) Determinations (in writing) made by ER pursuant to this Subchapter;
- (2) Correspondence with Lessee and government agencies;
- (3) Compliance Determinations including source documents and supporting documents;
- (4) The Compliance Determination Summary;
- (5) Public notices;
- (6) Public comments, if applicable;
- (7) Responses to relevant and substantive public comments. (For consideration of public comment, the "public" shall be defined as "all members of the Citizen Potawatomi Nation" (unless, or until, such time as the Bureau of Indian Affairs or other Federal agent of competent jurisdiction determines otherwise).

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-710 Environmental Reviewer's Authorities and Duties

- (A) The Environmental Reviewer will maintain an Environmental Review Record (ERR) in which all documents relevant to the Environmental Review Process for a particular Leasing Decision will be kept.
- (B) The ER has the authority to carry out all the acts that are committed to their discretion in this Subpart.
- (C) The ER may act as Lessee's agent for the purposes of assisting the Lessee complete the requirements of this Subchapter.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-711 Environmental Reviewer's Closure Procedures

Upon determining the following the ER will conclude the Environmental Review Process, whereupon the ER will transfer the Environmental Review Record to the Approving Entity:

- (A) The Environmental Review Record contains all documents required by § 709;
- (B) The public comment period has passed, if applicable;
- (C) The review process has been completed pursuant to tribal and federal law; and
- (D) The Lessee has complied with all requirements of this Subchapter.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-712 Environmental Reviewer Required to Consult with Citizen Potawatomi Nation Departments

- (A) Upon the final approval of these regulations, the Environmental Reviewer will consult with the relevant Citizen Potawatomi Nation departments, and determine which department will be responsible for making the compliance finding referenced in § 704 for each of the environmental laws referenced in § 703.
- (B) The Environmental Reviewer has authority under this Subchapter to establish procedures aimed at expediting the Compliance Determination process. The ER is required to consult with the relevant Citizen Potawatomi departments

Title 40

in the development and implementation of any such procedures.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-801 Amendments

The Citizen Potawatomi Nation Tribal Legislature may amend these tribal regulations without the Secretary's approval, so long as the amendment is for clarification or administrative convenience, and is consistent with federal and tribal law.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

Section 40-3-802 Severability

If the Citizen Potawatomi Nation's court of competent jurisdiction determines a provision in these regulations or a lease is invalid, void or unenforceable, the remainder shall remain in full force and effect without regard to the stricken portion.

Ordinance #14-01 enacted by the Citizen Potawatomi Legislature on July 1, 2013.

CITIZEN POTAWATOMI NATION
PUBLIC PROPERTY, BUILDINGS, PARKS AND WORKS
TITLE 41

<u>CHAPTER</u>	<u>SECTION</u>
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**CITIZEN POTAWATOMI NATION
PUBLIC PROPERTY, BUILDINGS, PARKS AND
WORKS
TITLE 41**

PARKS AND RECREATION AUTHORITY

Enacted by Ordinance #17-05 by the Citizen Potawatomi Legislature on December 8, 2016.

41-1-101 Short Title. This Act shall be known and may be cited as the “Citizen Potawatomi Nation Parks and Recreation Authority Act”.

41-1-102 Purpose of Authority. The Citizen Potawatomi Nation Parks and Recreation Authority is hereby created for the purpose of providing, maintaining and conducting parks and recreational facilities for the Citizen Potawatomi Nation.

41-1-103 Board of Directors.

The Authority shall be managed by a board of directors comprised of the Chairman of the Citizen Potawatomi Nation, the Vice Chairman of the Citizen Potawatomi Nation, and the Secretary/Treasurer of the Citizen Potawatomi Nation. The Chairman of the Citizen Potawatomi Nation shall be the Chairman of the Board. The Board may appoint non-voting advisory members. The directors and advisory-members shall receive no salary. The board shall keep detailed minutes of its proceedings. It shall keep suitable records of its financial transactions, and it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the Citizen Potawatomi Legislature.

41-1-104 Powers of the Authority. The Authority shall be deemed to be performing essential governmental functions providing for the public health and welfare, and is authorized and empowered:

- (1) 1. To employ employees as may be deemed proper to carry out in Section 102 of this Act;
- (2) 2. To acquire and maintain equipment, land, buildings or other recreational facilities and make capital improvements;
- (3) To acquire, purchase, lease as lessee, including leases governed by 25 U.S.C. §§ 415 et seq., construct, reconstruct, improve, extend, operate and maintain parks and recreational facilities within, or partly within and partly outside the Citizen Potawatomi Nation;

- (4) To regulate the uses of all lands and facilities under control of the Authority;
- (5) To accept grants and gifts from the Citizen Potawatomi Nation, the federal government or any other governmental bodies or political subdivisions, and from any other person;
- (6) To enter into contracts with the Citizen Potawatomi Nation, the federal government or any other governmental bodies or political subdivisions, and from any other person relating to the furnishing of parks or recreational services or facilities;
- (7) To contract with the Citizen Potawatomi Nation, the federal government or any other governmental bodies or political subdivisions, for the construction, operation and maintenance of any park which is partly in the Citizen Potawatomi Nation and partly in such adjoining territory;
- (8) To exercise the same rights for acquiring property for the construction or improvement, maintenance or operation of a park or recreational facility as the Citizen Potawatomi Nation may exercise. The Citizen Potawatomi Nation is authorized and empowered to transfer jurisdiction over, to lease, lend, grant or convey to the Authority, upon the request of the Authority, upon such terms and conditions as the governing body of the Citizen Potawatomi Nation may agree with the Authority as reasonable and fair, real or personal property as may be necessary or desirable in connection with the acquisition, construction, improvement, operation or maintenance of a park or recreational facility. Agreements may be entered into by the Authority with the Citizen Potawatomi Nation, or any agency acting on behalf of the Citizen Potawatomi Nation, for the acquisition of any lands or property, owned or controlled by the Citizen Potawatomi Nation, for the purposes of construction or improvement, maintenance or operation of a park or recreational facility;
- (9) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this Act;

- (10) To do all acts and things necessary or convenient to carry out the powers granted by this Act;
 - (11) To borrow, at such rates of interest as the law authorizes, from the federal government or any agency thereof, individuals, partnerships, or private or municipal corporations, for the purpose of acquiring parklands and improvements thereon; to issue its notes or other obligations; to secure such obligations by mortgage or pledge of the property and improvements being acquired and the income derived therefrom; and to use any revenues and other income of the Authority for payment of interest and retirement of principal of such obligations. The Citizen Potawatomi Nation may lend money to the Authority. Notes or other obligations issued under this subdivision shall not be deemed to constitute a debt of the Citizen Potawatomi Nation or of any political subdivision of the Citizen Potawatomi Nation or a pledge of the faith and credit of the Citizen Potawatomi Nation or of any political subdivision of the Citizen Potawatomi Nation; and
 - (12) To adopt such rules and regulations from time to time, not in conflict with the laws of this Citizen Potawatomi Nation, concerning the use of properties under its control as will tend to the protection of such property and the public thereon.
 - (13) To sue and be sued and to prosecute and defend, at law or in equity, any action or proceeding seeking to enforce any provision of this Act. Any action or proceeding seeking to enforce any provision of this Act, or based on any right arising out of this Act, shall be brought against any of the parties only in the courts of the Citizen Potawatomi Nation, and each of the parties hereto consents to the exclusive jurisdiction of the Citizen Potawatomi Nation District Court and the appropriate appellate courts in any such proceeding, waives any objection to venue laid therein and agrees not to plead or claim in any such courts that such proceedings brought therein has been brought in any inconvenient forum;
 - (14) All appropriations for the purposes set forth in this subchapter shall be made solely by the Legislature of the Citizen Potawatomi Nation.
- 41-1-105 Annual Report, Rules, Regulations.** The Authority shall make quarterly reports, shall adopt rules and regulations, and establish general policies for the conduct of its business and for the operation of public recreational activities and services. It shall make a quarterly report to the Legislature of the Citizen Potawatomi Nation and such special reports as may be requested in writing by the Legislature.
- 41-1-106. Exemption from taxation.** The Authority is hereby declared to be performing a public function on behalf of the Citizen Potawatomi Nation with respect to which the Authority is created and to be a public instrumentality thereof. Accordingly, the income, including any profit made by the Authority, shall at all times be exempt from all taxation by the State of Oklahoma, any political subdivision thereof, including, county and city taxation.
- 41-1-107. Authority to be nonprofit; excess earnings**
The Authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall enure to the benefit of any individual, firm or corporation, except that if the Board of Directors of the Authority determines that sufficient provision has been made for the full payment of the expenses and other obligations of the Authority then any net earnings of the Authority thereafter accruing shall be paid to the Citizen Potawatomi Nation. However, nothing herein contained shall prevent the Board of Directors from transferring all or any part of its facilities or properties in accordance with the terms of any contract entered into by the Authority.”

CITIZEN POTAWATOMI NATION
RAILROADS
TITLE 42

RESERVED

CITIZEN POTAWATOMI NATION
**SHIPPING
TITLE 43**

RESERVED

CITIZEN POTAWATOMI NATION
TAXATION AND REVENUE
TITLE 44

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PREFACE

Section 44-0-001 Citation

This Act may be cited as the General Revenue and Taxation Act of 1984.

Section 44-0-002 Purpose

It being necessary to strengthen the Tribal Government by licensing and regulating certain conduct within the Tribal jurisdiction, to provide financing for expansion of Tribal Government and to provide financing for expansion of Tribal Government operations and services in order for the Citizen Potawatomi Nation to efficiently and effectively exercise its confirmed governmental responsibilities within the Indian Country subject to the jurisdiction of the Citizen Potawatomi Nation, the purpose of this Act is to provide simple, fair, straightforward and efficient procedures, to provide for the licensing and registration of certain conduct, and the levy and collection of certain revenue and taxes.

CHAPTER ONE

POTAWATOMI TAX COMMISSION

Section 44-1-101 Tax Commission Created

There is hereby created, ordained and chartered with respect to the Citizen Potawatomi Nation a public body politic to be known as the "CITIZEN POTAWATOMI NATION TAX COMMISSION" which shall be an agency of the Citizen Potawatomi Nation subordinate to the Tribal Legislature, possessing all powers, duties, rights, and functions hereinafter defined, and as are now or may hereafter be conferred upon it by law.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-102 Composition of Tax Commission

The members of the Citizen Potawatomi Nation Tax Commission shall consist of the duly elected members of the Tribal Legislature. The Tribal Chairman is designated to act as the Chairman of the Tax Commission.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-103 Seal

The Citizen Potawatomi Nation Tax Commission is authorized, directed to acquire and use a seal which shall be circular in form, with the words "TAX COMMISSION – CITIZEN POTAWATOMI NATION" around the edge thereof, and the word "seal" in its

center. The seal shall be imposed upon the originals or certified copies of all licenses, orders, rules, and other official documents of the Commission as evidence of their authenticity and authority.

Section 44-1-104 through 44-1-110 Reserved

Section 44-1-111 General Powers of the Tax Commission

The Citizen Potawatomi Nation Tax Commission shall generally be charged with the administration and enforcement of the Tribal tax laws, the Tax Commission shall have the power to:

- (A) Assess, collect, and issue receipts for such taxes as are imposed by ordinance of the Tribal Legislature and to bring actions on behalf of the Tribe in the Tribal Court for the collection of Tribal taxes, penalties and interest, and the enforcement of the Tribal tax laws, all such actions shall be styled: the Citizen Potawatomi Nation, ex rel, Tax Commission, vs. _____;
- (B) Administer oaths, conduct hearings, and, by subpoena, to compel the attendance of witnesses and the production of any books, records, and papers of any taxpayer relating to the enforcement of the Tribal tax laws;
- (C) Make, or cause to be made by its agents or employees, an examination or investigation of the place of business, equipment, facilities, tangible personal property, and the books, records, papers, vouchers, accounts, documents, and financial statements of any taxpayer, upon reasonable notice, during normal business hours, at any other time agreed to by said taxpayer, or at any time pursuant to a search warrant signed by the Tribal Court;
- (D) Examine, under oath either orally or in writing any taxpayer or any agent, officer, or employee of any taxpayer, or any other witness in respect to any matter relative to the Tribal tax laws;
- (E) Exercise all other authority delegated or conferred upon it by law, or as may be reasonably necessary in the administration or enforcement of any Tribal tax laws.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-112 Rulemaking Authority

- (A) The Tax Commission shall have the authority to prescribe, promulgate, and enforce written rules and regulations not inconsistent with this ordinance to provide for its internal operational procedures; or to interpret or apply any Tribal tax laws as may be necessary to ascertain or compute the tax owing by any taxpayer, or for the filing of any reports or returns required by any Tribal tax laws, or as shall be reasonably necessary for the efficient performance of its duties, or as may be required or permitted by law.
- (B) The Tax Commission shall have the authority by rule to adopt and promulgate a schedule of fees and charges for services rendered relating to transcripts and certificates of records; for transcripts for appeal and other services involving the furnishing of copies of proceedings, files, and records; and, in the case or transcripts of records for appeal, the Commission may prescribe a reasonable charge therefore to be paid by the party demanding the record, which said fees and charges shall be credited to the miscellaneous receipts of the Commission.
- (C) No rule or regulation of the Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signatures of at least two members of the Tax Commission and the official seal of the Tax Commission shall have been filed for record in the office of the Secretary-Treasurer and the office of the Clerk of the Tribal Court.
- (D) The Tribal Court shall take judicial notice of all rules of the Tax Commission promulgated pursuant to this Act.

Section 44-1-113 Forms

The Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its functions and which are not otherwise provided for by this Ordinance.

Section 44-1-114 Tax Stamps and Licenses

- (A) The Tax Commission shall provide for the form, size, color, and identifying characteristics of all licenses, permits, tax stamps, tags, receipts, or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Tax Commission or otherwise

showing compliance with the tax laws of the Citizen Potawatomi Nation.

- (B) Such stamps or licenses shall contain at least the following information:
 - (1) The words: "Citizen Potawatomi Nation"
 - (2) The words: "Tax Commission"
 - (3) The monetary amount for which the tax or license was issued.
 - (4) Wording which indicates the type of tax imposed.
 - (5) If the instrument is a license, permit, or receipt, wording indicating the type of license, permit, or receipt, its effective dates, and the name and address of the taxpayer to whom issued.
- (C) The Tax Commission shall provide for the manufacture, delivery, storage, and safeguarding of such stamps, licenses, permits, tags, receipts, or other documents and shall safeguard such instruments against theft and counterfeiting.
- (D) When the Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.
- (E) The Tax Commission may exchange new stamps for damaged, out-of-date, or other unusable stamps under such rules and regulations as the Tax Commission shall prescribe.

Section 44-1-115 Records

- (A) The Tax Commission shall keep and maintain accurate, complete, and detailed records which reflect all taxes, penalties, and interest levied, due, and paid, all licenses issued, and each and every official transaction, communication, or action of the Commission.
- (B) Such records shall be maintained at the Tribal building and shall not be removed from said building absent the consent of the Tribal Legislature by resolution.
- (C) Such records shall be subject to audit at any time upon the direction of the Tribal Legislature and shall be audited not less than once each year by the Tax Commission.
- (D) Any record of the Tax Commission, (except the record of an official decision or opinion rendered upon an administrative appeal), which relates to

the individual business or personal activities of a named particular taxpayer or taxpayers shall not be open to public inspection and shall be released only to the taxpayer involved, tribal officials who have a legitimate official need for such records, or upon order of the Tribal Court for good cause shown.

- (E) Any record of the Tax Commission which does not relate to the individual business or personal activities of a named particular taxpayer or taxpayers, and all decisions or opinions rendered upon an administrative appeal, shall be public records of the Tribe and shall be available for public inspection during regular business hours. Copies of such records may be obtained by payment of such copying cost as may be established by rule of the Commission, provided, that names and other identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of subsection (b) above would allow release of such information.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-116 Bookkeeping

There shall be established and kept such financial record books as may be necessary under generally applicable accounting standards to adequately account for all funds and monies received by the Commission, on behalf of the Tribe. Separate books shall be maintained for each type of tax imposed by this ordinance.

Section 44-1-117 General Fund-Deposits

- (A) There is hereby authorized and directed to be established an account in some federally insured financial banking institution or the Bureau of Indian Affairs to be known as the Potawatomi Tax Fund Account.
- (B) The Tax Fund Account shall be an interest bearing account and the funds therein may be invested and reinvested as may be approved by the Tribal Legislature.
- (C) No monies shall be released or expended from this account except upon written resolution of the Tribal Legislature appropriating a specific amount of the monies contained therein for the use of a particular department, agency, or program of the Tribe, expenditures from this ac-

count shall be made only by direct transfer to the account of the receiving department, agency, or program named in such appropriate resolution.

- (D) All tax monies, license fees, penalties, interest, service fees or charges or other monies collected by the Tax Commission in the administration and enforcement of this Act, except as otherwise specifically authorized by law, shall be deposited in the Tax Fund Account.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-118 through Section 44-1-120

Reserved

Section 44-1-121 Tax Commission Employees and Expenses

- (A) The Tax Commission may employ such employees and incur such expenses as may be necessary for the proper discharge of its duties subject to the limitations and restrictions herein set out.
- (B) The Tax Commission shall, to the maximum extent feasible, utilize regular tribal staff in exercising the duties and responsibilities in this ordinance set out, and may delegate to the tribal staff by rule such of its functions as may be necessary to efficiently administer this ordinance, provided, that the Commission rule making authority may not be delegated.
- (C) The tribal administrator is authorized and directed to cause such regular staff assistance as is feasible to be given to the Tax Commission.
- (D) The total amount dispersed by the Tax Commission in any one fiscal year for the payment of salaries, expenses, and incidentals shall not exceed the amount appropriated therefore by the Tribal Legislature. The Tax Commission shall submit, to the Tribal Legislature, a line item proposed budget for the next fiscal year not later than the 15th day of June in each year.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-122 Bonds

- (A) The Tax Commission may require each of its employees who shall be required to handle public monies, revenue, or tax stamps, or who shall be responsible therefore, to give bonds for the

honest and faithful performance of their duties, in such amounts as may be fixed by the Commission.

- (B) The premiums on any bonds required by this section of the Tax Commission members and its employees shall be paid from funds authorized in the Tax Commission budget.

Section 44-1-123 Nepotism

- (A) It shall be unlawful for the Tax Commission to employ, appoint, or elect any person related to any member of the Tax Commission, by blood or marriage within the third degree, to any office or position of profit with the Tax Commission, or to any position as an outside or independent contractor. This provision shall not prohibit any officer, appointee, or employee already in the service of the Commission from continuing and being promoted therein after the appointment or election of a relative to membership on the Tax Commission as provided by law.
- (B) Each member of the Tax Commission who approves, votes for, or authorized any employment, appointment, or election in violation of this Section and the person employed, appointed, or elected in violation of this Section shall be jointly and severally liable to the Citizen Potawatomi Nation for any and all salaries, wages, commissions, bonuses, fees, expenses, reimbursements, or other thing of value received by virtue of the unlawful appointment of the person so employed, appointed or elected.
- (C) If it is in the best interests of the Tribe, the Tribal Legislature may, by written resolution explaining the reasons therefore, provided a waiver of this Section in individual cases at the request of the Commission.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-124 through Section 44-1-130 Reserved

Section 44-1-131 Collection of Taxes

The Tax Commission is hereby authorized to bring any necessary action in any appropriate Court for the collection of any taxes, penalties or interest assessed and unpaid. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment. Any civil remedies, including but

not limited to garnishment, attachment, and execution, shall be available for the collection of any monies due the Tribe. The Tax Commission may request the Tribal Attorney to bring any necessary action for the collection of any taxes, penalties, or interest assessed and unpaid with the approval of the Tribal Legislature. In all other cases, the Tax Commission shall be represented in the Tribal Court by the Attorney General.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-132 Other Remedies

- (A) In addition to the remedies available for the collection of monies, the Tax Commission is authorized to bring an action in any appropriate Court to enjoin the beginning or operation of any unlicensed business, activity, or function when Tribal law requires a license be issued for such business, activity, or function.
- (B) In addition to the remedies available for the collection of monies, the Tax Commission, by and through the members and staff assigned thereto, is authorized, when accompanied by a police officer, to seize any property which is declared contraband by any section of this ordinance, or upon which any tax levied is in excess of 60 days past due under the same condition, limitations and exceptions as evidence of crimes may be searched for and seized, provided, that within ten (10) days of such seizure, the Tax Commission shall cause to be filed an action against said property alleging the nonpayment of tax or other lawful reason for such seizure and forfeiture, and upon proof, the Court shall order such property forfeited for nonpayment of taxes and title thereto vested in the Citizen Potawatomi Nation, provided further, that any person claiming ownership, the right to possession other interest in said property may intervene in said action and raise any defenses which he may have, and such persons shall be served with process if they are known prior to the beginning of the action, provided further, that such persons may redeem said property at any time prior to the entry of a final judgment of forfeiture by depositing all taxes, penalties, and interest assessed or owing with the Court.

Section 44-1-133 Inventory of Seized Property

Whenever any authorized person shall seize any

property pursuant to Section 132 of this ordinance he shall inventory and appraise such property and leave a copy thereof with the person from whom it was seized, or, if such person cannot be found, at the place from which said property was seized, and deliver a copy of said inventory to the Tax Commission and the Tribal Prosecutor.

Section 44-1-134 Public Sale of Forfeited Property

- (A) Upon a final order of forfeiture entered by the Tribal Court, the Tax Commission shall circulate an inventory of said property to all divisions of the Tribal government. Any agency of the Tribal government may submit a request to the Tribal Legislature that such portion of said property as they can use be retained for the benefit of the Tribe. The Tribal Legislature shall determine which property will be retained and shall order the Tax Commission to conduct a public sale of the remainder, or to destroy any property which is illegal to possess in all circumstances.
- (B) The property to be sold shall be sold at public auction at the Administrative headquarters of the Citizen Potawatomi Nation. Not less than twenty (20) days notice of such sale shall be posted in the Tribal Administrative headquarters building and published at least twice in a newspaper of general circulation in the Shawnee, Oklahoma, area not less than ten (10) days prior to said sale. All funds received at said sale after payment of the cost of said sale shall be deposited in the general fund.
- (C) The Tax Commission may conduct such sales at such times as it deems sufficient property has accumulated to make such sale profitable and shall conduct such sales upon direction of the Tribal Legislature.
- (D) The seizure, forfeiture, and sale of contraband property shall not reduce or eliminate the tax liability of any person from whom such property was seized. The seizure, forfeiture, and sale of any other property shall reduce the tax liability of the person from whom such property was seized, and such person shall be entitled to receive payment for any monies derived from such sale in excess of the costs of the sale, any court fees or costs due, and the amount of taxes, penalties, and interest due.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-135 Exempt Property

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties, and interest due the Citizen Potawatomi Nation:

- (A) Three-fourths (3/4) of the net wages earned per week by the person of an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater.
- (B) One automobile of fair market value equity not exceeding one thousand dollars (\$1,000.00).
- (C) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.
- (D) Actual trust or restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States but not including leasehold or other possessory interests in such property.
- (E) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.
- (F) Household goods, furniture, wearing apparel, personal effects but not including televisions, radios, photographs, tape recorders, more than two (2) firearms, works of art, and other recreational or luxury items.
- (G) One horse, one bridle, and one saddle.
- (H) All implements of husbandry used upon the homestead.
- (I) All ceremonial or religious items.

**Section 44-1-136 through Section 44-1-150
Reserved**

Section 44-1-151 Administrative Appeals

Any taxpayer against whom the Tax Commission has assessed taxes, penalties, or interest pursuant to a taxation ordinance of the Citizen Potawatomi Nation, or who has paid under written protest any taxes, penalties, or interest assessed by the Tax Commission who believes those taxes, penalties, or interest to be wrongfully assessed or collected, may appeal in writing for a full hearing before the Tax Commission under such rules and regulations as the Tax Commission may prescribe.

Section 44-1-152 Limitations on Administrative Appeals

Any administrative appeal as provided for in Section 44-1-151 of this ordinance must be begun by filing a written request for a hearing with the Tax Commission within ninety (90) days of the assessment or payment of the taxes, penalties, or interests in controversy, provided that failure to file an administrative appeal shall not prevent the taxpayer from defending any collection action by the Tax Commission in the Tribal Court.

Section 44-1-153 Exhaustion of Administrative Remedies

- (A) Upon a final decision of an appeal pursuant to Section 151 of this ordinance.
- (B) If the Tax Commission shall fail to schedule and hold a hearing on the merits of the administrative appeal within ninety (90) days after receipt of a written request for a hearing unless a delay is requested or approved by the taxpayer.
- (C) If the Tax Commission shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayers administrative appeal.

Section 44-1-154 Suits Against the Tax Commission

The Tax Commission, as a governmental agency of the Citizen Potawatomi Nation, its commissioners, and employees shall be immune from any suit in law or equity while performing their lawful duties within the scope of the authority delegated to them, provided, that any taxpayer or other person against whom the Tax Commission has assessed taxes, penalties, or interest or who has paid under written protest any taxes, penalties, or interest may bring an action in the Tribal Court after exhaustion of administrative remedies, to enjoin the Tax Commission from collecting any taxes, penalties, or interest assessed, or for the recovery of any taxes, penalties, or interest paid under written protest which the Court finally determines to have been wrongfully assessed or collected.

Section 44-1-155 Limitations on Suits Against the Tax Commission

- (A) Any suit against the Tax Commission authorized by Section 154 must be commenced by filing a petition in the Tribal Court within thirty (30) days after the date of exhaustion of their administrative remedies.
- (B) In no event shall the Court be authorized to

award or to order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the amount of the taxes, penalties, or interest in controversy unless an additional remedy is specifically provided by this ordinance.

- (C) All amounts found to be wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded.

Section 44-1-156 Refunds to Taxpayers

- (A) Whenever any taxpayer shall establish in administrative or Court proceedings that they are entitled to a refund of any taxes, penalties, or interest previously paid, the Tax Commission shall immediately cause a certified copy of the order and transcript of any administrative action, or judgment of the Court to be filed with the Tribal Legislature.
- (B) Upon receipt of such order and transcript, or judgment of the Tribal Court, the Tribal Legislature shall appropriate to the account of the Tax Commission such amounts, as may be necessary to pay such refund, from otherwise unappropriated money in the General Fund. The Tax Commission shall thereafter issue a refund to the taxpayer.
- (C) When it appears reasonably certain that the taxpayer to whom a refund is due will incur further tax liability within the next twelve months after such refund is due in an amount in excess of such refund, the Tax Commission, in lieu of subsections (A) and (B) of this section, may credit the amount of such refund, with lawful interest, against the future liability of the taxpayer, provided that any amounts not used within twelve months shall be refunded at the request of the taxpayer.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-157 through Section 44-1-190 Reserved

Section 44-1-191 Forgery of Stamps, Etc.

Any person who, without authorization of the Tax Commission, falsely, or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be misapplied or counterfeits any stamps, tags, licenses, or other instrument evidencing payment

of taxes prescribed for use in this ordinance or who shall use, pass, tender as true, or otherwise be in possession of any unauthorized, false, altered, forged, counterfeited, or previously used instrument for the purpose of evading the payment of taxes imposed by this ordinance shall forfeit a civil penalty as provided in Section 193 of this ordinance. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall constitute a separate violation.

Section 44-1-192 Offenses

Any natural Indian person who violates any provisions of this ordinance for the purpose of evading the payment of taxes imposed by this ordinance shall be guilty of an offense and shall be punished by imprisonment in the tribal jail for a term not to exceed six (6) months or a fine not to exceed five hundred dollars (\$500.00) or by both such fine and imprisonment.

Section 44-1-193 General Penalties

Any person who files any false report or return, or who fails to file any report or return, or who otherwise violates any of the provisions of this ordinance for the purpose of evading the payment of taxes imposed by this ordinance shall forfeit a civil penalty of not more than five hundred dollars (\$500.00) for such violation in addition to any other penalties prescribed by law.

Section 44-1-194 Referrals for Federal Prosecution

It shall be the duty of all members of the Tax Commission, any police officer, and the prosecutor, upon receiving reliable information that probable cause may exist to believe that any person has violated Section 191 of this ordinance, to report the facts and circumstances known to him to be the appropriate federal officials and to request that a federal investigation be commenced to determine whether 18 U.S.C. Section 1163 has been violated.

Section 44-1-195 Banishment

Any natural person or any corporation, partnership, association, company, firm, joint venture, estate, or trust or other person who violates any provision of this ordinance for the purpose of evading payment of taxes imposed by this ordinance, in addition to any civil penalties or the civil penalties of seizure and forfeiture imposed by this ordinance, may be banished and excluded from carrying on any business within the jurisdiction of the Citizen Potawatomi Nation for a period not to exceed five (5) years, by order of the

Tribal Court, provided, that such garnishment as may be imposed may be suspended by the Judge of the tribal Court conditioned upon strict compliance with all ordinances and laws of the Citizen Potawatomi Nation. An order of banishment not suspended, shall by operation of law cancel all permits, licenses, and other authority of the person to carry on any business within the tribal jurisdiction during its terms.

Section 44-1-196 Cancellation of Leases upon Banishment

Whenever any person or business is banished and excluded from the jurisdiction of the Citizen Potawatomi Nation and the order of banishment is not suspended, and such person or business holds a lease to realty within the jurisdiction of the Citizen Potawatomi Nation for other than residential purposes, said lease may be canceled by the lessor within sixty (60) days of the order of banishment at his option by sending written notice to lessee or his attorney by registered or certified mail, return receipt requested, at his last known address. A true and correct copy of the notice of lease cancellation shall be delivered by certified mail, return receipt requested, to the Superintendent of the Potawatomi Indian Agency, the Tribal Legislature, and the Tax Commission at the same time the notice is sent to the lessee. Such cancellation shall entitle lessor to full use and possession of the premises and render the lease absolutely void from that date forward and shall relieve lessor and lessee from all future obligations under such lease, provided, that such cancellation shall not relieve lessor or lessee from any obligation incurred prior to the date of cancellation.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-1-197 Interest

All taxes, fees, or other charges, of the Citizen Potawatomi Nation not paid when due shall bear interest at the rate of twenty percent (20%) per annum from the date said taxes or fees become due until the date paid.

Section 44-1-198 Commencement of Actions

Filing a written request for refund with the Tax Commission shall commence an action for refund within the meaning of the Civil Statute of Limitations if such request be diligently prosecuted according to law.

Section 44-1-199 Taxes Erroneously Paid to be Refunded

Taxes erroneously paid due to a mistake of fact or law

may be refunded upon application even though no written protest was made at the time of payment. The taxpayer shall file an application for refund with the Tax Commission and may appeal the determination of the Commission to the Tribal Court.

CHAPTER TWO TOBACCO TAX

Section 44-2-101 Definitions

- (A) The term “cigarette” is defined to mean and include all rolled tobacco or any substitute therefore, wrapped in paper or any substitute therefore and weighing not to exceed three (3) pounds per thousand (1000) cigarettes.
- (B) The term “person” is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this ordinance can be applied.
- (C) The term “wholesaler” is defined to mean and include any jobber or person organized and existing or doing business primarily to sell cigarettes or tobacco products to and render services to retailers and who renders such services to retailers within the jurisdiction of the Citizen Potawatomi Nation; that at least 75% of the whole gross sales within the jurisdiction of the Tribe are made at wholesale. Irrespective of the foregoing requirements, any jobber of a person who is recognized and licensed as a wholesaler in the jurisdiction wherein said jobber or person resides, is incorporated, or has its principle place or business shall be a wholesaler as defined by this ordinance, and any operator of four (4) or more cigarette vending machines shall be a wholesaler as defined by this ordinance.
- (D) The term “retailer” is defined to mean and include any person who comes into possession of cigarettes or tobacco products for the purpose of selling or who sells them at retail, any person not coming with the definition of a wholesaler having possession of more than one thousand (1000) cigarettes, and any person operating one, two, or three vending machines.
- (E) The term “consumer” is defined to mean and include any person who receives or comes into possession of cigarettes or tobacco products for the purpose of consuming or otherwise disposing of them in any way except by an exchange for value.
- (F) The term “Tax Commission” is defined to mean and include the Tax Commission of the Citizen Potawatomi Nation.
- (G) The term “sale” or “sales” is defined to mean and include all sales, barter, exchanges or other transfers of ownership of cigarettes or tobacco products from one person to another, or the use or consumption within the tribal jurisdiction in the first instance of cigarettes or tobacco products from outside the tribal jurisdiction upon which the tribal tax has not been paid.
- (H) The term “stamp” is defined to mean and include the stamp or stamps produced by the Tax Commission by which the tax levied hereunder is paid.
- (I) The term “tobacco products” is defined to mean and include any product of any species of the tobacco plant, including smoking tobacco suitable for smoking in pipes or rolling into cigarettes, chewing tobacco of any description including snuff, any roll of tobacco for smoking irrespective of size or shape or adulteration which has a wrapper made chiefly of tobacco and includes but is not limited to those items commonly known as cigars, cheroots, or stogies, and any articles or products made from tobacco or any substitute therefore except cigarettes.
- (J) The term “vending machines” is defined to mean and include any coin operated machine by means of which cigarettes, or tobacco products, are sold or dispensed.
- (K) The term “use” is defined to mean and include the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof except sales of cigarettes or tobacco products in the regular course of business.
- (L) The term “within the Tribal jurisdiction” shall mean all geographical areas within the territorial jurisdiction for the Citizen Potawatomi Nation as defined by 18 U.S.C. 1151.

Section 44-2-102 Tax on Cigarettes

There is hereby levied upon the sale, use, gift, possession or consumption of cigarettes within the tribal jurisdiction a tax of three cents (.03) for each

individual package of cigarettes and thirty cents (.30) on each carton of cigarettes.

Section 44-2-103 Tax on Tobacco Products

There is hereby levied upon the sale, use, gift, possession, or consumption of tobacco products within the tribal jurisdiction a tax of three cents (.03) for each separate, individual tobacco item.

Section 44-2-104 Tax in Lieu of other Taxes

The taxes levied by Sections 44-2-102 and 44-2-103 of this ordinance on cigarettes, and tobacco products respectively shall be in lieu of all other forms of tax including sales and other general taxes imposed by law.

Section 44-2-105 Tax Paid Once

Such taxes pursuant to Sections 44-2-102 and 44-2-103 shall be paid only once on any cigarettes sold, used, received, or possessed within the tribal jurisdiction.

Section 44-2-106 Evidence of Tax

Payment of the tobacco tax shall be evidenced by stamps applied to each taxable package containing tobacco which shall be furnished by and purchased from the Tax Commission or by an impression of such stamp by use of a metering device approved by the Tax Commission.

Section 44-2-107 Impact of Tax

The impact of the taxes imposed by this chapter is declared to be on the consumer, user, or possessor and when such tax is paid by any other person that a payment shall be considered an advance payment and shall be added to the prices to be recovered from the ultimate user, possessor, or consumer. Every wholesaler who has paid such taxes shall, and every retailer who has paid such taxes may show the amount of such taxes as a separate item on any invoices which they may issue.

Section 44-2-108 Payment of Tax

(A) Every wholesaler who shall operate within the tribal jurisdiction a warehouse, supply house, storage house, truck or other point from which distribution of cigarettes, or tobacco products to retailers or vending machines will be made shall upon withdrawal from storage, and prior to placing in a vending machine or making any sale, distribution, or transfer of possession or ownership of any such cigarettes, or tobacco products, cause the same to have affixed thereto such stamp or stamps as are required by this ordinance.

(B) Every retailer who comes into possession or

ownership of any cigarettes, or tobacco products from any source which does not have affixed thereto the proper stamps, shall within seventy-two (72) hours of receipt thereof excluding Sundays and legal holidays and prior to making any sale or distribution for consumption, cause the same to have affixed thereto such stamp or stamps as are required by this ordinance.

(C) Every consumer who shall come into possession or ownership of cigarettes, or tobacco products from any source which does not have affixed thereto the proper stamp or stamps shall within seventy-two (72) hours and prior to the consumption, gift, or other use thereof cause the same to have affixed thereto such stamps or stamps as are required by this ordinance.

Section 44-2-109 Exclusions from Taxations

(A) Notwithstanding the provisions of paragraph (C) of Section 44-2-108 of this ordinance or any other provision of law, any natural person who shall come into possession or ownership of cigarettes or tobacco products outside the territorial jurisdiction of the tribe for personal use and consumption only, and upon which is affixed evidence showing that any taxes imposed by the jurisdiction from which said cigarettes or tobacco products were acquired to have been paid shall have exempted from payment of taxes pursuant to this ordinance the following amounts of each of the following in possession and/or ownership at any one time:

- (1) Cigarettes – one thousand (1000) individual cigarettes
- (2) Cigars – five hundred (500) individual cigars
- (3) Other tobacco products – no more than two pounds total

(B) Notwithstanding the provisions of paragraph (C) of Section 44-2-108 of this ordinance or any other provision of law, possession, gift, or use of noncommercial privately produced tobacco for religious or ceremonial use shall be exempt from taxation. Provided, that if such tobacco is old, such sale shall be prima facie evidence that the tobacco is not intended for religious or ceremonial use.

(C) Section 44-2-110 Unstamped Tobacco Contraband

- (D) Any unstamped cigarettes or tobacco products found in the custody or control of any person upon which a tax stamp is required to have been placed by this ordinance and any vehicles or tangible personal property including vending machines used in their transportation, storage, consumption, or concealment are hereby declared to be contraband and subject to seizure or forfeiture and sale.
- (E) The forfeiture provisions of this section with regard to vehicles and other personal property shall apply only to persons in possession of cigarettes or tobacco products with the intent to sell, barter, give away, or exchange the same for value, provided, that possession of more than one thousand (1000) cigarettes or five hundred (500) cigars, or two (92) pounds of tobacco products shall create a rebuttable presumption and be prima facie evidence that such cigars, cigarettes, or tobacco products are possessed with the intent to sell, barter, give away, or exchange the same for value.

Section 44-2-111 Records

The Tax Commission shall promulgate rules requiring that all wholesalers and retailers of tobacco within the tribal jurisdiction shall maintain for not less than three years complete and adequate records, including invoices, of all tobacco received and sold or otherwise disposed of, and tax stamps purchased. The Tax Commission may inspect said records at any time to determine whether sufficient stamps have been purchased to account for all tobacco received and sold or otherwise disposed of by said wholesaler or retailer.

Section 44-2-112 Reports

Every wholesaler or retailer of tobacco shall submit quarterly reports to the Tax Commission on forms prescribed and furnished by the Tax Commission disclosing the opening and closing inventories of unstamped tobacco; stamped tobacco; tobacco stamps; purchases of tobacco including the invoice number, name and address of seller, date and amount of each type of tobacco purchased and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require; and sales of tobacco; including, if sold for resale, invoice number, name and address of buyer, date and amount of each type of tobacco sold and such other information pertinent to their business done within the tribal jurisdiction as the Tax Commission shall require.

Section 44-2-113 Wholesale and Retail Stocks to be Separate

Every person who is both a wholesaler and retailer of tobacco shall keep separate records, make separate reports, and keep all stock of tobacco separated and identifiable for the wholesale and retail portions of his business.

Section 44-2-114 through Section 44-2-150 Reserved

Section 44-2-151 Wholesaler Licensing

Every wholesaler of tobacco must apply for and receive from the Tax Commission a "Tobacco Wholesaler License" prior to establishing any place of business, warehouse, or wholesale outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

Section 44-2-152 Tobacco Wholesaler License

The Tobacco Wholesaler License shall be valid for one calendar year from the date of issue and shall be nontransferable and non-assignable. A separate license shall be required for each separate location at which a wholesaler may establish a place of business, warehouse, or wholesale outlet. The license shall be conspicuously posted in a public area in each such place of business, warehouse, or wholesale outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

Section 44-2-153 through Section 44-2-160 Reserved

Section 44-2-161 Retailer Licensing

Every retailer of tobacco must apply for and receive from the Tax Commission a "Tobacco Retailer License" prior to establishing any place of business or retail outlet for the sale of tobacco within the tribal jurisdiction. Forms for such application and license shall be provided by the Tax Commission.

Section 44-2-162 Tobacco Retailer License

The Tobacco Retailer License shall be valid for one calendar year from the date of issue and shall be nontransferable and non-assignable. A separate license shall be required for each separate location at which a retailer may establish a place of business or retail outlet. The license shall be conspicuously posted in a public area in each such place of business or retail outlet. A license fee of twenty dollars (\$20.00) shall be paid for each new or renewal license issued.

Section 44-2-163 through Section 44-2-170

Reserved

Section 44-2-171 Tobacco Retailer License

- (A) Every wholesaler or retailer of tobacco must apply for and receive from the Tax Commission a "Tobacco Vending Machine Permit" prior to operating any vending machine within the tribal jurisdiction. Forms for such applications and permits shall be provided by the Tax Commission.
- (B) The Vending Machine Permit shall be valid for one calendar year from the date of issue and shall be non-transferable and non-assignable. A separate permit shall be required for each separate vending machine. The permit shall be attached to the vending machine in such a manner as to be clearly visible to the public and to persons purchasing tobacco therefrom. A fee of ten dollars (\$10.00) shall be paid for each new or renewal permit issued.
- (C) Any operating vending machine from which tobacco may be purchased not having a Tobacco Vending Machine Permit attached thereto is contraband within the tribal jurisdiction and is subject to seizure and sale as is provided by law.

Section 44-2-172 through Section 44-2-200

Reserved

**CHAPTER THREE
SALES TAX**

Section 44-3-101 Definitions

- (A) The term "person" is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this ordinance can be applied.
- (B) The term "retailer" is defined to mean and include any person who in the ordinary course of business sells any property to another, whether such sale would be described as "wholesale" or "retail" sale.
- (C) The term "consumer" is defined to mean and include any person who receives or comes into possession of property from a retailer by means of a sale of such property.
- (D) The term "property" is defined to mean and

include all tangible personal property of every kind and description.

- (E) The term "Tax Commission" is defined to mean and include the Tax Commission of the Citizen Potawatomi Nation.
- (F) The term "sale" or "sales", and their derivatives, is defined to mean and include all sales, barter, trades, exchanges, or other transfer of ownership for value of property from a retailer to any person no matter how characterized.

Section 44-3-102 Tax on Sales

There is hereby levied upon the sale of property within the tribal jurisdiction a tax of 8.995% of the actual sales price thereof exclusive of any rebates. If a sale is consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

- (A) The impact of the taxes imposed by this chapter is declared to be on the consumer and shall be added to the purchase price of the property sold and recovered from the consumer.
- (B) Every retailer shall show the amount of such taxes paid as a separate item on any invoices or receipts which they may issue.

Amended by Ordinance # 17-01 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-3-103 Reserved

Section 44-3-104 Payment of Tax

- (A) Every retailer shall submit to the Tax Commission within fourteen (14) calendar days after the end of each calendar month a report on such form as the sales and gross amount of sales taxes collected during that calendar month.
- (B) Every retailer shall pay the gross sales taxes collected during a calendar month to the Tax Commission at the same time as the report for that calendar month is submitted.

Section 44-3-105 Records

Every retailer shall maintain for not less than three (3) years complete and adequate records including invoices showing all property received and sold or otherwise disposed of, the prices at which sold, and the amount of sales taxes collected and paid.

Section 44-3-106 Penalties

- (A) Every retailer who shall fail to collect the taxes

imposed by this article, shall be liable for the full amount of the tax owed plus interest at the statutory rate until paid.

- (B) Willful failure to collect or pay over the taxes imposed by this article shall make the retailer liable for an additional penalty of one hundred percent (100%) of the taxes due plus interest of the statutory rates until paid.

Section 44-3-107 State and Local Government Sales Tax on Trust Lands

The Citizen Potawatomi Nation Tax Commission is the taxing authority with tax jurisdiction on the trust lands of the Citizen Potawatomi Nation.

All sales occurring on the trust lands of the Citizen Potawatomi Nation are hereby exempt from state, county and municipal taxation and that no tribal resources are to be used to assist the state or local governments in the collection of any state or local tax.

No tribal employee or elected tribal official shall use or expend tribal resources to gather, assemble or maintain information, report, collect, or assist the state, or local governments in the collection of any state or local tax.

Enacted by Ordinance #14-06, by the Citizen Potawatomi Legislature on May 22, 2014.

Section 44-3-108 through Section 44-3-400 Reserved

CHAPTER FOUR EARNINGS TAX

Sections 44-4-101 through 44-4-109.

Repealed by Ordinance #17-03 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-4-110 through Section 44-4-499 Reserved

CHAPTER FIVE FUEL TAX

Section 44-5-101 Purpose

A recent court decision has held that the fuel taxes levied by the State of Oklahoma cannot apply to sales of fuel to Indian tribes in Indian country. The purpose of this chapter is to stabilize the price of gas sold by the Citizen Potawatomi Nation in the event that the judicial decision becomes effective and the Oklahoma fuel tax burden on sales to the tribe is removed.

Section 44-5-102 Tax

If the fuel taxes of the State of Oklahoma are not imposed on sale of fuel to the tribe, the following taxes are levied on sales in Indian country:

- (A) Fifteen cents (.15) per gallon on gasoline; and
- (B) Twelve cents (.12) per gallon for diesel fuel.

Section 44-5-104 Effective

This chapter shall become effective when adopted, but the tax shall not become effective until and unless the contingency hereinbefore described occurs.

CHAPTER SIX HOTEL OCCUPANCY TAX

Section 44-6-101 Definitions

- (A) The term “person” is defined to mean and include any natural individual, company, partnership, firm, joint venture, association, corporation, estate, trust, political entity or other identifiable entity to which this ordinance can be applied.
- (B) The term “provider” is defined to mean and include any person who in the ordinary course of business sells or rents accommodation for the purpose of lodging.
- (C) The term “hotel or motel” is defined to mean and include any establishment that provides lodging and usually meals, entertainment, and various personal services for the public.
- (D) The term “Tax Commission” is defined to mean and include the Tax Commission of the Citizen Potawatomi Nation (now the Appropriations Committee of the Citizen Potawatomi Legislature).
- (E) The term “sale” or “sales”, and their derivatives, is defined to mean and include all sales, barter, trades, exchanges of goods for the use of property located at the hotel or motel.

Ordinance #13-02 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 44-6-102 Tax on Sale of Occupancy

There is hereby imposed a tax upon the retail sale of all lodging services provided at any commercial hotel, motel or similar establishment located within the boundaries of the Citizen Potawatomi Nation on lands under the Nation’s jurisdiction. The rate of tax shall be 7.77% of the amount paid or charged on the sale on the lodging service.

The incidence of the tax imposed above shall be on the person purchasing the lodging services. The responsibility for collecting and remitting the tax shall fall on the provider of the lodging service. All taxes so collected shall be remitted to the Citizen Potawatomi Nation Tax Commission by the end of the month following the month in which the taxes were collected.

Ordinance #13-02 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 44-6-103 Exemptions

No tax shall be imposed upon:

- (A) Any tribal, federal or state officer or employee when on official business
- (B) Any officer or employee of a foreign government who is exempt by reason of express provision of Federal law or international treaty.
- (C) Persons who have the right to use or possess a hotel room for at least 30 consecutive days
- (D) Nothing in this hotel occupancy tax code shall be construed as imposing tax on the government of the Citizen Potawatomi Nation, its agencies or any wholly-owned subdivision or economic enterprise of the government of the Citizen Potawatomi Nation.

Ordinance #13-02 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

Section 44-6-104 Use of Taxes Collected

All hotel occupancy taxes collected pursuant to this ordinance shall be used exclusively to promote tourism, economic development and community partnership within the boundaries of the Citizen Potawatomi Nation and its neighboring communities.

Ordinance #13-02 enacted by the Citizen Potawatomi Legislature on February 28, 2013.

CHAPTER SEVEN WAGERING TAX

Section 44-7-101 Definitions

For the purpose of this chapter, unless a different meaning is clearly indicated from the context, the term:

- (A) “Gaming” means any game or session of wagering as defined in the Gaming Ordinance of the Citizen Potawatomi Nation.
- (B) “Gaming Operator” means any corporation li-

censed to conduct gaming within the jurisdiction of the Citizen Potawatomi Nation pursuant to Chapter Three of the Gaming Ordinance.

- (C) “Gross Receipts” means all receipts and other income of the gaming operator directly or indirectly received through or as a result of conduct of wagering pursuant to the operator’s gaming license. This term shall not include income of a corporation received as a result of activities unrelated to the conduct of wagering. This term specifically includes income generated as a result of admission prices, concessions, parking fees, and other incidental receipts flowing from the conduct of wagering which are required to be reported by Section 372 of the Gaming Ordinance of the tribe.
- (D) “Net Receipts” means the gross wagering receipts less any deductions authorized by this chapter.
- (E) Wagering – means participating in a game of chance in exchange for the opportunity to win cash prizes.

Amended by Ordinance # 17-02 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-7-102 Deductions from Gross Wagering Receipts

The gaming operator shall be entitled to deduct from his gross receipts for purposes of the wagering tax imposed by this chapter the following items:

- (A) The fair rental value of any premises rented for the conduct of wagering. In an arms length transaction, the fair rental value shall be presumed to be the actual rental price paid subject, however, to review by the Tax Commission.
- (B) All prizes actually awarded to the winner or winners of wagering games.
- (C) The purchase price of all consumable tangible personal property purchased for resale at games or wagering, but not including the price of such property reassigned for other purposes.
- (D) Any charges for utilities separately charged on the premises rented for the conduct of wagering.
- (E) Salaries and other compensation for employee engaged in the conduct of wagering, provided, however, that the deduction allowed for any employee who is also a major stockholder of

the gaming operator, or who is related by blood or marriage within the third degree to a major stockholder shall not exceed one and one-half times the federal minimum wage.

(F) The actual purchase price of all wagering equipment may be depreciated over not less than five years by the straight line depreciation method as the Tax Commission may by rule provide.

(G) Any other reasonable and necessary business expenses directly related to the conduct of wagering as may be established by rule of the Tax Commission.

Amended by Ordinance # 17-02 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-7-103 Wagering Tax Levied

There is hereby levied upon the gross sales less payouts of the Citizen Potawatomi Nation Gaming Center, a tax of eight and one half percent (8 ½%).

Amended by Ordinance # 17-02 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-7-104 Due Date of Wagering Tax

The wagering taxes levied and reports required under this chapter shall be due and payable monthly on the last day of each calendar month following the calendar month of operations for which the report is filed.

Amended by Ordinance # 17-02 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-7-105 Reports Required

With each monthly payment, the gaming operator shall submit a return in substantially the following form:

CITIZEN POTAWATOMI NATION TAX
COMMISSION
1601 S. GORDON COOPER DRIVE
SHAWNEE, OK 74801

WAGERING TAX RETURN

1. Gaming operator's name, address, and license number:

License Number

2. Gaming operator's gross receipts:

a. Month of _____, 20____.
\$ _____

3. Gaming operator's total deductions:

- a. rentals paid on gaming premises \$ _____
- b. prizes actually awarded \$ _____
- c. consumable personal property purchased \$ _____
- d. utility charges paid \$ _____
- e. salaries and employee compensation \$ _____
- f. allowable depreciation \$ _____
- g. other (itemize) \$ _____
- h. other (itemize) \$ _____
- i. other (itemize) \$ _____
- j. Total deductions \$ _____

4. Net receipts (line 2(d) – line 3(j)) \$ _____

5. Wagering tax

- a. (.085 x line 4) \$ _____
- b. less corporate income taxes paid \$ _____
- c. Tax paid with this return \$ _____

I, _____, file this return on behalf of _____ a licensed gaming operator, and affirm under penalty of law that I have examined this return and that to the best of my knowledge, information, and belief the facts stated herein are true, correct, and complete.

Date: _____

Signature

Printed name

Title

Amended by Ordinance # 17-02 of the Citizen Potawatomi Legislature on June 27, 2016.

Section 44-7-106 Audits

The books, records, receipts, expenditures, and operations of every gaming operator within the tribal jurisdiction shall be subject to examination, investigation, and audit by the Tax Commission or

Title 44

its duly authorized agents or employees pursuant to
Section 44-1-111 of this ordinance.

*Amended by Ordinance # 17-02 of the Citizen
Potawatomi Legislature on June 27, 2016.*

CITIZEN POTAWATOMI NATION
TELEPHONES AND COMMUNICATIONS
TITLE 45

RESERVED

CITIZEN POTAWATOMI NATION
TERRITORIES AND INSULAR POSSESSIONS
TITLE 46

RESERVED

CITIZEN POTAWATOMI NATION
TRANSPORTATION
TITLE 47

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CHAPTER ONE TRANSPORTATION

Section 47-1-101 Short Title

This chapter is known as the Citizen Potawatomi Registration of Motor Vehicles.

Section 47-1-102 Definitions

For purposes of this chapter:

- (A) “Actual Retail Purchase Price” means the actual sale price before any discounts, credits for trade-ins, or imposition of sales taxes.
- (B) “Administrative Fees” means any costs associated with handling the registration, title or other documents for individuals, businesses or other organizations.
- (C) “Farm Truck” means any pickup truck or truck tractor owned and operated by one or more farmers primarily for farm use, provided a farm tractor, farm combine, and similar self-propelled implements of husbandry (not including trucks) used exclusively for farm purposes will not be considered a farm truck or motor vehicle.
- (D) “Motor Vehicle” means any wheeled conveyance for carrying persons or property capable of being propelled under its own power through the use of an internal combustion engine of greater than fifty cubic centimeters displacement.
- (E) “Motorcycle” or “Motorized Bicycle” means any motor vehicle having either two or three wheels.
- (F) “Passenger Automobile” means any motor vehicle of the car, station wagon, van, pickup or similar type constructed and not having a payload capacity of more than one ton.
- (G) “Recreational Vehicle” means any self-propelled or towed vehicle that is equipped to serve as temporary living quarters for recreational, camping or travel purposes and is used solely as a family or personal convenience.
- (H) “Trailer” means any vehicle that does not have the means of propelling itself and is designed to be towed behind a Motor Vehicle.
- (I) “Vehicle” means every motor vehicle, farm truck, motorcycle, motorized bicycle, manufactured home, recreational vehicle, trailer, and boat.

Section 47-1-103 Application

(A) Enrolled Citizen Potawatomi Tribal members residing in the State of Oklahoma shall have the option of maintaining the registration of their vehicles with the Citizen Potawatomi Nation or the State of Oklahoma.

(B) No tags will issue unless at least one (1) person on the title is a Citizen Potawatomi Tribal member.

Section 47-1-104 Fee Imposed on Passenger Automobiles, Motorcycles or Motorized Bicycles

For those persons who exercise the option of registration with the Citizen Potawatomi Nation, there is hereby levied an annual registration fee as set forth in the fee schedule in the Tag Agency.

Section 47-1-105 Fee Imposed on Farm Trucks

For those persons who exercise the option of registration with the Citizen Potawatomi Nation, there is hereby levied an annual registration fee as set forth in the fee schedule in the Tag Agency.

Section 47-1-106 Fee Imposed on Recreational Vehicles

Reserved

Section 47-1-107 Fee Imposed on Trailers

Reserved

Section 47-1-108 Fee Imposed on Commercial Vehicles

Reserved

Section 47-1-109 Fee Imposed on Boats

Reserved

Section 47-1-110 Collector Tags

As tags have value as collector’s items, this section allows for the sale of vehicle tags to collectors. The tags will cost Two Hundred Fifty Dollars (\$250.00) plus any shipping and handling charges. Purchasers will be required to sign a statement that the tag is for collector display purposes only. Any collector’s tag found in use on a vehicle will subject the owner to a penalty of double the amount of the tag Five Hundred Dollars (\$500.00) plus attorney’s fees and other costs of collection.

Section 47-1-111 Certificates of Title

Prior to the initial registration of the vehicle, the owner shall apply to the Tag Agency, on such form

as the Agency shall by rule direct, for a Certificate of Title for said vehicle. Prior to issuance of a Certificate of Title for said vehicle, the Tag Agency shall require the applicant to furnish proof of purchase from a bona fide new or used dealer, or a bona fide document (Bill of Sale) from a previous owner, and a properly endorsed vehicle Certificate of Title issued by this or some other jurisdiction. A notice of lien against said vehicle shall be placed upon said Certificate of Title upon request of the lending institution.

Section 47-1-112 Form of Certificate of Title

The Certificate of Title issued by the Tag Agency shall be printed on safety paper and be in substantially the same form as that found in the Appendix to this chapter.

Section 47-1-113 Original Transfer and Duplicate Certificate of Title

(A) A Certificate of Title shall be labeled or otherwise identified as follows:

- (1) An "Original Title" shall be issued to the first purchaser of a vehicle from a new vehicle dealer.
- (2) A "Transfer Title" shall be the title issued to a second or a subsequent owner of a vehicle, whether purchased from an individual or a dealer.
- (3) A "Duplicate Title" shall be the title issued to the owner of record to replace a lost, stolen or mutilated original or transfer title. Duplicate titles shall be issued by the Tag Agency according to such rules concerning proof of ownership as the Tag Agency shall prescribe.

(B) Each Certificate of Title shall bear a number composed of numbers, letters, or a combination thereof, and no two Certificates of Titles shall be the same.

Section 47-1-114 Certificates of Title Fees

The Tag Agency shall charge a fee as set forth in the Tag Agency fee schedule.

Section 47-1-115 Certificates of Registration and Tags

Upon payment of the annual registration fee, presentation of the vehicle Certificate of Title and previous year's Certificate of Registration for inspection, and inspection of the vehicle identification number affixed to the vehicle by the manufacturer, the

Tag Agency shall issue a Certificate of Registration, and a tag or decals to be placed upon the registered vehicle.

Section 47-1-116 Form of Certificate of Registration

The Certificate of Registration shall be in substantially the same form as that found in the Appendix to this chapter.

Section 47-1-117 Form of Tags

Each vehicle registered shall be issued a tag to be properly displayed on the rear of said vehicle. The tag shall be in such form as the Tag Agency shall prescribe.

Section 47-1-118 Personalized Tags

The Tag Agency is authorized, in its discretion and pursuant to such rules as it may establish, to provide a personalized tag upon the owner's request for the fees as set forth in the Tag Agency fee schedule. Thereafter, the registrant shall pay the regular annual registration fees. The Tag Agency may charge such additional fees for such personalized tags and decals as may be necessary to defray the initial cost of production and administration of said tag.

Section 47-1-119 Form of Decals

When a vehicle is first registered pursuant to this chapter, the Tag Agency shall issue two decals to be placed upon the tag affixed to the registered vehicle. One decal shall indicate the month of expiration of annual registration. The other decal shall bear the year of the expiration and the decal control number. The decals shall be color coded at the discretion of the Tag Agency.

Section 47-1-120 Other Requirements for Motor Vehicles

(A) Every operator of a Motor Vehicle upon the public streets, roadways or highways shall have in their possession a currently valid state of Oklahoma driver's license and shall exhibit such license to any law enforcement officer upon request.

(1) Every owner of a Motor Vehicle operated upon the public streets, roadways, or highways shall maintain insurance pursuant to the compulsory insurance laws of Oklahoma.

(B) On and after the date of enactment of this Section:

(1) The operator of a Motor Vehicle reg-

istered with the Citizen Potawatomi Tribe shall carry in such vehicle at all times a current operator's security verification form listing the vehicle which has been issued by a bona fide insurance company registered to do business within Oklahoma, and shall produce such form upon request for inspection by any law enforcement officer or representative of the Tag Agency and, in case of a collision, the form shall be shown upon request to any person affected by said collision.

- (2) Every Person registering a Motor Vehicle with the Citizen Potawatomi Tribe, at the time of registration of such vehicle, shall certify the existence of security with respect to such vehicle by surrendering to the Tag Agency or other registering agency a current operator's security verification form or an equivalent form issued by a bona fide insurance company registered to do business in the State of Oklahoma. The Tag Agency or other registering agency shall require the surrender of such form prior to processing an application of registration or renewal.
- (3) Any vehicle owned by Citizen Potawatomi Nation shall not be required to carry an owner's or operator's security verification form or an equivalent form during operation of the vehicle and shall not be required to surrender such form for vehicle registration purposes.
- (4) Any Native American who knowingly issues or promulgates false or fraudulent information in connection with either an owner's or operator's security verification form or an equivalent form shall be guilty of an offense and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.
- (5) Any Native American who operates, or allows to be operated a Motor Vehicle owned by him in violation of the provisions of this section, shall be guilty of an offense, and shall be subject to a fine not exceeding one

thousand dollars (\$1,000.00) or imprisonment for not more than one (1) year, or both such fine and imprisonment.

- (6) Any Motor Vehicle operated in violation of the provisions of this Section shall be a public nuisance and a civil violation of the contract between tag owner and the Citizen Potawatomi Nation. All tags shall remain the property of the Citizen Potawatomi Nation and any violation of the tribal code shall be grounds for seizure and repossession of the tag. Subsequent possessors of tribal tags shall remain subject to all tribal laws regarding such tags. In such cases, the Tag Agency shall seize any tribal tag placed upon such vehicle and not allow its return or re-registration of the vehicle until a security verification form is filed with the Agency or other action as ordered by the Agency is taken to verify that such vehicle will not be used in violation of this Section. If such vehicle has been in an accident, any law enforcement officer shall impound such vehicle until a security verification form or other appropriate action as ordered by the Agency is filed with the Agency. If no form is filed within six (6) months, the prosecutor shall file appropriate forfeiture proceedings to forfeit such vehicle to the Tribe.
- (7) It shall be an absolute defense to any proceeding under this Section that a current driver's license or insurance policy was in fact in effect at the date of the incident, and in such cases, the action will be dismissed.
- (8) Displaying a tribal tag on any motor vehicle or trailer shall constitute the consent of the person in possession of the tag to the civil jurisdiction of the Citizen Potawatomi Tribal Courts. The duty to abide by this code shall run with the tribal tag and shall pass to subsequent owners and possessors of such tags. Any violation of this code shall constitute a violation of the contract between the owner of the tag, subsequent owners and possessors, and the Citizen Potawatomi Nation. Any criminal violation of this code shall also constitute a civil violation of the laws of the Citizen Potawatomi Nation subject to civil – regulatory fines and liquidated

damages in the amount of the criminal penalty and the costs of collection.

Section 47-1-121 Tribal Owned Vehicles

The Tag Agency or Director of the Tribal Motor Pool shall issue, without charge, a Certificate of Title, Certificate of Registration, tag and decal for any vehicle owned by the Citizen Potawatomi Nation or its subdivisions, agencies, and any consortium of which the Tribe is a member. Tribally owned vehicles are exempt from the fees imposed by this Chapter. Title to all such vehicles shall be in the Citizen Potawatomi Nation, and such vehicles may be disposed of only by action of the Tribal Legislature. If the particular agency, subdivision or consortium has been authorized to purchase and dispose of property in the agency's name by resolution of the Tribal Legislature, the agency may hold title to a vehicle purchased through an authorized budget line item in its own name, and dispose of the vehicle pursuant to its authorized powers, unless the purchase was made with appropriated tribal funds. If the purchase was made with appropriated tribal funds, the Tribal Legislature must concur by resolution in the sale of any such vehicle.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 47-1-122 Authorized Signature

The Tribal Court Administrator and/or the Tag Agency shall designate those individuals or officers who are empowered to sign the Certificates of Title and Certificate of Registration on behalf of the Tag Agency.

Section 47-1-123 Penalties

- (A) Any owner of a vehicle who fails to register the vehicle and/or transfer the title within thirty (30) days of the notary/expiration date shall be subject to a penalty as set forth in the Tag Agency fee schedule. Failure to do so may subject the owner to a civil penalty.
- (B) After thirty (30) days from the expiration date for annual registration of a vehicle under this Chapter, the Citizen Potawatomi Tribal Police shall have the authority to seize and take into custody any expired license plate issued by the Citizen Potawatomi Nation. The procedures involved shall be as follows:
 - (1) The Tag Agency shall notify the owner of the violation under this chapter by cer-

tified mail, return receipt requested, to the last known address of the owner. Such notification shall state the expiration date of the expired license plate and that the license plate will be seized in the event full payment, including fees and penalties, is not received within twenty (20) days from the date of the mailing of the notice.

- (2) If the owner fails to make full payment within the twenty (20) days prescribed, then the Tag Agency shall have the authority to proceed with the seizure of the license plate. The seizure shall be affected by an order of the Tribal Court to the Tribal Police to seize the license plate from the vehicle while said vehicle is parked on Tribal owned or Tribal trust land, or while said vehicle is parked at the residence of the owner.
- (3) Any such license plate seized shall not be released to the owner until all fees and penalties due are paid in full. In the event the owner of the license plate seized fails to pay such fees and penalties due within ten (10) days after seizure of expired license plate, the Tag Agency shall have the authority to seize the vehicle involved and sell the vehicle, by posting not less than five (5) notices of sale in five (5) different public places in the county where the vehicle is located, one of such notices to be posted at the place where the vehicle is stored; provided further, that a copy of the notice shall also be sent at least seven (7) days prior to the date of the sale, by certified mail, restricted delivery, with return receipt requested, to the last known address of the registered owner of such vehicle in question. Such vehicle shall be sold at such sale subject to the following terms and conditions:
 - (a) In the event the sale price is equal to, or greater than, the total costs of sale, seizure and the fee and penalty, the purchaser shall be issued a certificate of purchase, license plate, or Manufactured Home registration receipt and decal and Certificate of Registration;

- (b) In the event that sale price is less than the total costs of sale, seizure and the fee and penalty, such vehicle shall be sold as junk to the highest bidder, whereupon the successful bidder shall receive a certificate of purchase; and if such vehicle be dismantled, the record to such junked vehicle shall be canceled. If not dismantled, the same shall be immediately registered; or
- (c) Any residue remaining unclaimed by the delinquent owner shall be paid into the Tribal treasury to be designated toward police and fire protection.
- (4) Any Person convicted of violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000.00).

Section 47-1-124 Other Offenses

- (A) It shall be unlawful for any Person to commit any of the following acts:
 - (1) To lend or sell to, or knowingly permit the use of by one not entitled thereto, any Certificate of Title, license plate or decal issued to or in the custody of the Person so lending or permitting the use thereof
 - (2) To alter or in any manner change a Certificate of Title, Certificate of Registration, license plate or decal issued under the laws of the Citizen Potawatomi Nation.
 - (3) To operate a vehicle without proper license plate or decal or on which all taxes or fees due the Citizen Potawatomi Nation have not been paid.
 - (4) To buy, sell or dispose of, or have in his possession for sale, use or store, any second-hand or used vehicle on which the registration or license fee has not been paid, as required by law, and on which vehicle said Person neglects, fails or refuses to display at all times the license plate or decal assigned to it.
 - (5) To give a fictitious name or fictitious address or make any misstatement of facts in appli-

cation for Certificate of Title and Certificate of Registration of a vehicle.

- (6) To operate a vehicle within the jurisdiction of the Citizen Potawatomi Nation after the registration deadline for that vehicle without a proper license plate, as prescribed by this chapter for the current year.
- (B) Any Person convicted of violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000.00).

Section 47-1-125 Recognition of Foreign Certificate of Titles and Certificate of Registrations

It shall not be unlawful by reason of this chapter for any Person to possess or operate a vehicle within the jurisdiction of the Citizen Potawatomi Nation so long as the vehicle is properly registered and tagged by the jurisdiction in which such Person resides or in which the vehicle is principally garaged and such jurisdiction extends like or similar recognition to the vehicle tags, certificates of title and certificates of registration issued by the Citizen Potawatomi Nation.

CITIZEN POTAWATOMI NATION
TREATIES OF THE POTAWATOMI PEOPLE
TITLE 48

A copy of Title 48 is maintained at the Citizen Potawatomi Nation Tribal Court.

TREATIES WITH THE POTAWATOMI

Wyandot of 1789

Wyandot of 1795

Delaware of 1803

Wyandot of 1805

Delaware of 1805

Ottawa of 1807

Chippewa of 1808

Delaware of 1809

Wyandot of 1814

Potawatomi of 1815

Wyandot of 1815

Ottawa of 1816

Wyandot of 1817

Potawatomi of 1818

Kickapoo of 1819

Ottawa of 1821

Sioux of 1825

Potawatomi of 1826

Potawatomi of 1827

Menominee of 1831

Chippewa of 1864

Winnebago of 1828

Potawatomi of 1828

Chippewa of 1829

Winnebago of 1829

Potawatomi of October 26, 1832

Potawatomi of October 26, 1832, second treaty of
 Potawatomi of October 27, 1832

Chippewa of 1833

Potawatomi of December 4, 1834

Potawatomi of December 10, 1834

Potawatomi of December 16, 1834

Potawatomi of December 17, 1834

Potawatomi of March 26, 1836

Potawatomi of March 29, 1836

Potawatomi of April 11, 1836

Potawatomi of April 22, 1836

Potawatomi of April 22, 1836, second treaty of
 Potawatomi of August 5, 1836

Potawatomi of September 3, 1836

Potawatomi of September 20, 1836

Potawatomi of September 22, 1836

Chippewa of 1837

Potawatomi of 1837

Potawatomi of 1846

Potawatomi of 1861

Potawatomi of 1866

Potawatomi of 1867

Agreement with the Citizen Band of Potawatomi
 of 1890

Agreement with the Absentee Shawnee of 1890

CITIZEN POTAWATOMI NATION
UNIFORM COMMERCIAL CODE
TITLE 49

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CHAPTER ONE UNIFORM COMMERCIAL CODE

Section 49-1-101 Short Titles

- (A) Sections 49-1-101 through 49-7-709 of this title shall be known and may be cited as the “Uniform Commercial Code”.
- (B) This article shall be known and may be cited as “Uniform Commercial Code-- General Provisions”.

Section 49-1-102 Scope of Article

This article applies to a transaction to the extent that it is governed by another article of the Uniform Commercial Code.

Section 49-1-103 Construction of Uniform Commercial Code to Promote Its Purposes and Policies--Applicability of Supplemental Principles of Law

Construction of Uniform Commercial Code to Promote Its Purposes and Policies; Applicability of Supplemental Principles of Law.

- (A) The Uniform Commercial Code shall be liberally construed and applied to promote its underlying purposes and policies, which are:
- (1) to simplify, clarify and modernize the law governing commercial transactions;
 - (2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and
 - (3) to make uniform the law among the various jurisdictions.
- (B) Unless displaced by the particular provisions of the Uniform Commercial Code, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Section 49-1-104 Construction Against Implicit Repeal

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Section 49-1-105 Use of Singular and Plural—Gender

In the Uniform Commercial Code, unless the statutory context otherwise requires:

- (A) words in the singular number include the plural, and in the plural include the singular; and
- (B) words of any gender include any other gender.

Section 49-1-106 Section Captions

Section captions are part of the Uniform Commercial Code.

Section 49-1-107 Relationship to Electronic Signatures in Global and National Commerce Act

Chapter 1 of the Uniform Commercial Code modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001 et seq., except that nothing in this article modifies, limits or supersedes Section 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section 7003(b) of that Act.

Section 49-1-108 General Definitions and Principles of interpretation

- (A) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof, have the meanings stated.
- (B) Subject to definitions contained in other articles of the Uniform Commercial Code that apply to particular articles or parts thereof:
- (1) “Action” in the sense of a judicial proceeding includes a recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.
 - (2) “Aggrieved party” means a party entitled to pursue a remedy.
 - (3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact as found in their language or inferred from other circumstances including course of performance, course of dealing, or usage of trade.
 - (4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

- (5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of an instrument, negotiable tangible document of title, or certificated security payable to bearer or endorsed in blank.
- (6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.
- (7) “Branch” includes a separately incorporated foreign branch of a bank.
- (8) “Burden of establishing” means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.
- (9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or total or partial satisfaction of a money debt.
- (10) “Conspicuous”, with reference to a term means so written, displayed, or presented that a reasonable person against whom it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:
 - (a) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of same or lesser size; and
 - (b) language in the body of a record or display in larger type than the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.
- (11) “Consumer” means an individual who enters into a transaction primarily for personal, family, or household purposes.
- (12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by the provisions of the Uniform Commercial Code as supplemented by any other applicable laws.
- (13) “Creditor” includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor’s or assignor’s estate.
- (14) “Defendant” includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.
- (15) “Delivery” with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper means voluntary transfer of possession.
- (16) “Document of title” means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and that purports to be issued by or

addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

- (17) "Fault" means a default, breach, or wrongful act or omission.
- (18) "Fungible goods" means:
 - (a) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
 - (b) goods that by agreement are treated as equivalent.
- (19) "Genuine" means free of forgery or counterfeiting.
- (20) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (21) "Holder" means:
 - (a) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
 - (b) the person in possession of a document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
 - (c) the person in control of a negotiable electronic document of title.
- (22) "Insolvency proceeding" includes any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.
- (23) "Insolvent" means:
 - (a) having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;
 - (b) being unable to pay debts as they become due; or

(c) being insolvent within the meaning of the federal bankruptcy law.

- (24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
- (25) "Organization" means a person other than an individual.
- (26) "Party", as distinguished from "third party", means a person who has engaged in a transaction or made an agreement subject to the Uniform Commercial Code.
- (27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.
- (29) "Purchase" means taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.
- (30) "Purchaser" means a person who takes by purchase.
- (31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
- (33) "Representative" means a person empowered to act for another, including an agent,

an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

- (34) “Right” includes remedy.
- (35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 7 of this title. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under 49-2-401 of this title, but a buyer may also acquire a “security interest” by complying with the provisions of Article 9 of this title. Except as otherwise provided in 49-2-505 of this title, the right of a seller or lessor of goods under Chapter 2 or 3 of this title to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with Chapter 7 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Chapter 49-2-401 of this title is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates security interest is determined pursuant to Section 1-203 of this title.
- (36) “Send” in connection with any writing, record, or notice means:
- (a) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none, to any address reasonable under the circumstances; or
 - (b) in any other way to cause to be received any record or notice within the time at which it would have arrived if properly sent.

- (37) “Signed” includes any symbol executed or adopted with present intention to adopt or accept a writing.
- (38) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (39) “Surety” includes guarantor or other secondary obligor.
- (40) “Term” means a portion of an agreement which relates to a particular matter.
- (41) “Unauthorized signature” means a signature made without actual, implied or apparent authority. The term includes a forgery.
- (42) “Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.
- (43) “Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.

Section 49-1-109 notice--Knowledge

- (A) Subject to subsection (F) of this section, a person has “notice” of a fact if the person:
- (1) has actual knowledge of it;
 - (2) has received a notice or notification of it; or
 - (3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.
- (B) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.
- (C) “Discover” or “learn” or a word or phrase of similar import refers to knowledge rather than to reason to know.
- (D) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course whether or not the other person actually comes to know of it.
- (E) Subject to subsection (F) of this section, a person “receives” a notice or notification when:
- (1) it comes to the attention of the person; or
 - (2) it is duly delivered in a form reasonable under the circumstances at the place of busi-

ness through which the contract was made or at another location held out by that person as the place for receipt of such communications.

- (F) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and, in any event, from the time it would have been brought to the attention of the individual if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the regular duties of the individual or unless the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Section 49-1-110 Lease Distinguished from Security interest

- (A) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
- (B) A transaction creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and:
- (1) the original term of the lease is equal to or greater than the remaining economic life of the goods;
 - (2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;
 - (3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or
 - (4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(C) A transaction in the form of a lease does not create a security interest merely because:

- (1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;
- (2) the lessee assumes risk of loss of the goods;
- (3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;
- (4) the lessee has an option to renew the lease or to become the owner of the goods;
- (5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or
- (6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(D) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

- (1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or
- (2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(E) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

Section 49-1-111 “Value”

Except as otherwise provided in the Uniform Commercial Code, a person gives value for rights if the person acquires them:

- (A) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;
- (B) as security for, or in total or partial satisfaction of, a preexisting claim;
- (C) by accepting delivery under a preexisting contract for purchase; or
- (D) in return for any consideration sufficient to support a simple contract.

Section 49-1-112 Reasonable Time--Seasonableness

- (A) Whether a time for taking an action required by the Uniform Commercial Code is reasonable depends on the nature, purpose, and circumstances of the action.
- (B) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Section 49-1-113 Presumptions

Whenever the Uniform Commercial Code creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

CHAPTER TWO SALES

SECTION ONE

SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Section 49-2-101 Short Title

This article shall be known and may be cited as Uniform Commercial Code--Sales.

Section 49-2-102 Scope; Certain Security and Other Transactions Excluded from this Article

Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to

consumers, farmers or other specified classes of buyers.

Section 49-2-103 Definitions and index of Definitions

(A) In this article unless the context otherwise requires:

- (1) “Buyer” means a person who buys or contracts to buy goods.
- (2) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
- (3) “Receipt” of goods means taking physical possession of them.
- (4) “Seller” means a person who sells or contracts to sell goods.

(B) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

- (1) “Acceptance” Section 49-2-606
- (2) “Banker’s credit” Section 49-2-325
- (3) “Between merchants” Section 49-2-104
- (4) “Cancellation” Section 49-2-106(4)
- (5) “Commercial unit” Section 49-2-105
- (6) “Confirmed credit” Section 49-2-325
- (7) “Conforming to contract” Section 49-2-106
- (8) “Contract for sale” Section 49-2-106
- (9) “Cover” Section 49-2-712
- (10) “Entrusting” Section 49-2-403
- (11) “Financing agency” Section 49-2-104
- (12) “Future goods” Section 49-2-105
- (13) “Goods” Section 49-2-105
- (14) “Identification” Section 49-2-501
- (15) “Installment contract” Section 49-2-612
- (16) “Letter of credit” Section 49-2-325
- (17) “Lot” Section 49-2-105
- (18) “Merchant” Section 49-2-104
- (19) “Overseas” Section 49-2-323
- (20) “Person in position of seller” Section 49-2-707
- (21) “Present sale” Section 49-2-106
- (22) “Sale” Section 49-2-106

(23) "Sale on approval" Section 49-2-326

(24) "Sale or return" Section 49-2-326

(25) "Termination" Section 49-2-106

(C) The following definitions in other chapters apply to this chapter:

(1) "Consignee" Section 49-7-102

(2) "Consignor" Section 49-7-102

(3) "Consumer goods" Section 49-7-102

(D) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 49-2-104 Definitions: "Merchant"; "Between Merchants"; "Financing Agency"

(A) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(B) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 49-2-707).

(C) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Section 49-2-105 Definitions: Transferability; "Goods"; "Future" Goods; "Lot"; "Commercial Unit"

(A) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale

other than the money in which the price is to be paid, investment securities and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 49-2-107).

(B) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(C) There may be a sale of a part interest in existing identified goods.

(D) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(E) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(F) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Section 49-2-106 Definitions: "Contract"; "Agreement"; "Contract for Sale"; "Sale"; "Present Sale"; "Conforming" to Contract; "Termination"; "Cancellation"

(A) In this article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price

(Section 49-2-401). A “present sale” means a sale which is accomplished by the making of the contract.

- (B) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.
- (C) “Termination” occurs when either party purports to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.
- (D) “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

Section 49-2-107 Goods to be Severed from Realty: Recording

- (A) A contract for the sale of minerals or the like, including oil and gas, or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller, but until severance, a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.
- (B) A contract for the sale, apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto, but not described in subsection (A) of this section or of timber to be cut is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.
- (C) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer’s rights under the contract for sale.

**SECTION TWO
FORM, FORMATION AND READJUSTMENT
OF CONTRACT**

Section 49-2-201 formal Requirements: Statute of Frauds

- (A) Except as otherwise provided in this section a contract for the sale of goods for the price of Five Hundred Dollars (\$500.00) or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.
- (B) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (A) against such party unless written notice of objection to its contents is given within ten (10) days after it is received.
- (C) A contract which does not satisfy the requirements of subsection (A) but which is valid in other respects is enforceable
 - (1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller’s business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or
 - (2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
 - (3) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 49-2-606).

Section 49-2-202 Final Written Expression: Parole or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

- (A) by course of dealing or usage of trade or by course of performance; and
- (B) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 49-2-203 Seals inoperative

The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 49-2-204 formation in General

- (A) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.
- (B) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.
- (C) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 49-2-205 Firm offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three (3) months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 49-2-206 offer and Acceptance in formation of Contract

- (A) Unless otherwise unambiguously indicated by the language or circumstances

- (1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;
- (2) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

- (B) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 49-2-207 Additional Terms in Acceptance or Confirmation

- (A) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.
- (B) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:
 - (1) the offer expressly limits acceptance to the terms of the offer;
 - (2) they materially alter it; or
 - (3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.
- (C) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

Section 49-2-208 Course of Performance or Practical Construction

- (A) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.
- (B) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade.
- (C) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

Section 49-2-209 Modification, Rescission and Waiver

- (A) An agreement modifying a contract within this article needs no consideration to be binding.
- (B) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.
- (C) The requirements of the statute of frauds section of this article (Section 49-2-201) must be satisfied if the contract as modified is within its provisions.
- (D) Although an attempt at modification or rescission does not satisfy the requirements of subsection (B) or (C) it can operate as a waiver.
- (E) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 49-2-210 Delegation of Performance; assignment of Rights

- (A) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.
- (B) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.
- (C) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.
- (D) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.
- (E) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 49-2-609).

**SECTION THREE
GENERAL OBLIGATION AND CONSTRUCTION
OF CONTRACT**

Section 49-2-301 General Obligations of Parties

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Section 49-2-302 Unconscionable Contract or Clause

- (A) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
- (B) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Section 49-2-303 Allocation or Division of Risks

Where this article allocates a risk or a burden as between the parties “unless otherwise agreed”, the agreement may not only shift the allocation but may also divide the risk or burden.

Section 49-2-304 Price Payable in Money, Goods, Realty, or Otherwise

- (A) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.
- (B) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller’s obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor’s obligations in connection therewith.

Section 49-2-305 Open Price Term

- (A)(A) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if:
 - (1) nothing is said as to price; or
 - (2) the price is left to be agreed by the parties and they fail to agree; or
 - (3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.
- (B) A price to be fixed by the seller or by the buyer

means a price for him to fix in good faith.

- (C) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as canceled or himself fix a reasonable price.
- (D) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

Section 49-2-306 Output, Requirements and Exclusive Dealings

- (A) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.
- (B) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Section 49-2-307 Delivery in Single Lot or Several Lots

Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Section 49-2-308 Absence of Specified Place for Delivery

Unless otherwise agreed,

- (A) the place for delivery of goods is the seller’s place of business or if he has none his residence; but
- (B) in a contract for sale of identified goods which

to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

- (C) documents of title may be delivered through customary banking channels.

Section 49-2-309 Absence of Specific Time Provisions; notice of Termination

- (A) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.
- (B) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.
- (C) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Section 49-2-310 Open Time for Payment or Running of Credit; Authority to Ship Under Reservation

Unless otherwise agreed,

- (A) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and
- (B) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 49-2-513); and
- (C) if delivery is authorized and made by way of documents of title otherwise than by subsection (B) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and
- (D) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

Section 49-2-311 Options and Cooperation Respecting Performance

- (A) An agreement for sale which is otherwise sufficiently definite (subsection (C) of Section 49-2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.
- (B) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (A)(3) and (C) of Section 49-2-319 specifications or arrangements relating to shipment are at the seller's option.
- (C) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies
- (1) is excused for any resulting delay in his own performance; and
 - (2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Section 49-2-312 Warranty of Title and Against infringement; Buyer's Obligation Against infringement

- (A) Subject to subsection (B) there is in a contract for sale a warranty by the seller that
- (1) the title conveyed shall be good, and its transfer rightful; and
 - (2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.
- (B) A warranty under subsection (A) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

- (C) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Section 49-2-313 Express Warranties by Affirmation, Promise, Description, Sample

- (A) Express warranties by the seller are created as follows:

- (1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.
- (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.
- (3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

- (B) It is not necessary to the creation of an express warranty that the seller use formal words such as “warrant” or “guarantee” or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller’s opinion or commendation of the goods does not create a warranty.

Section 49-2-314 Implied Warranty: Merchantability; Usage of Trade

- (A) Unless excluded or modified (Section 49-2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.
- (B) Goods to be merchantable must be at least such as
- (1) pass without objection in the trade under the contract description; and

- (2) in the case of fungible goods, are of fair average quality within the description; and
- (3) are fit for the ordinary purposes for which such goods are used; and
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and
- (5) are adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to the promises or affirmations of fact made on the container or label if any.

- (C) Unless excluded or modified (Section 49-2-316) other implied warranties may arise from course of dealing or usage of trade.

Section 49-2-315 Implied Warranty: Fitness for Particular Purpose

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Section 49-2-316 Exclusion or Modification of Warranties

- (A) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but, subject to the provisions of this article on parole or extrinsic evidence (Section 49-2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.
- (B) Subject to subsection (C), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that “There are no warranties which extend beyond the description on the face hereof.”
- (C) Notwithstanding subsection (B)

- (1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like “as is”, “with all faults” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty; and
- (2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and
- (3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and
- (4) the implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young, provided that seller offers sufficient evidence that all tribal, state and federal regulations pertaining to the health of such animals were complied with; provided, however, that the implied warranties of merchantability and fitness shall apply to the sale or barter of horses.

(D) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (Section 49-2-718 and 49-2-719).

Section 49-2-317 Cumulation and Conflict of Warranties Express or Implied

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

- (A) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (B) A sample from an existing bulk displaces inconsistent general language of description.
- (C) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 49-2-318 Third Party Beneficiaries of Warranties Express or Implied

- (A) A seller’s warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty.
- (B) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a buyer to other persons.
- (C) The operation of this section may not be excluded, modified, or limited by a seller, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the buyer is also effective against any beneficiary designated under this section.

Section 49-2-319 F.O.B. and F.A.S. Terms

- (A) Unless otherwise agreed the term F.O.B. (which means “free on board”) at a named place, even though used only in connection with the stated price, is a delivery term under which
 - (1) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (Section 49-2-504) and bear the expense and risk of putting them into the possession of the carrier; or
 - (2) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (Section 49-2-503);
 - (3) when under either (A) or (B) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this article on the form of bill of lading (Section 49-2-323).
- (B) Unless otherwise agreed the term F.A.S. vessel (which means “free alongside”) at a named port, even though used only in connection with

the stated price, is a delivery term under which the seller must

- (1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and
- (2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(C) Unless otherwise agreed in any case falling within subsection (A)(1) or (3) or subsection (B) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of co-operation under this article (Section 49- 2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(D) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 49-2-320 C.I.F. and C. & F. Terms

(A) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(B) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to:

- (1) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and
- (2) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(3) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(4) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(5) forward and tender with commercial promptness all the documents in due form and with any endorsement necessary to perfect the buyer's rights.

(C) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(D) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Section 49-2-321 C.I.F. or C. & F.: "Net Landed Weights"; "Payment on Arrival"; Warranty of Condition on Arrival

Under a contract containing a term C.I.F. or C. & F:

(A) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(B) An agreement described in subsection (A) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale

or delivery or on the passing of the risk of loss.

- (C) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Section 49-2-322 Delivery “Ex-Ship”

- (A) Unless otherwise agreed a term for delivery of goods “ex-ship” (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.
- (B) Under such a term unless otherwise agreed
- (1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and
 - (2) the risk of loss does not pass to the buyer until the goods leave the ship’s tackle or are otherwise properly unloaded.

Section 49-2-323 form of Bill of Lading Required in Overseas Shipment; “Overseas”

- (A) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.
- (B) Where in a case within subsection (A) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set
- (1) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (A) of Section 49-2-508); and
 - (2) even though the full set is demanded, if the documents are sent from abroad the person

tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

- (C) A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Section 49-2-324 “No Arrival, No Sale” Term

Under a term “no arrival, no sale” or terms of like meaning, unless otherwise agreed,

- (A) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and
- (B) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 49-2-613).

Section 49-2-325 “Letter of Credit” Term; “Confirmed Credit”

- (A) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.
- (B) The delivery to seller of a proper letter of credit suspends the buyer’s obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.
- (C) Unless otherwise agreed the term “letter of credit” or “banker’s credit” in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term “confirmed credit” means that the credit must also carry the direct obligation of such an agency which does business in the seller’s financial market.

Section 49-2-326 Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

- (A) Unless otherwise agreed, if delivered goods

may be returned by the buyer even though they conform to the contract, the transaction is

- (1) a “sale on approval” if the goods are delivered primarily for use, and
- (2) a “sale or return” if the goods are delivered primarily for resale.

(B) Except as provided in subsection (C), goods held on approval are not subject to the claims of the buyer’s creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer’s possession.

(C) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as “on consignment” or “on memorandum”. However, this subsection is not applicable if the person making delivery:

- (1) complies with an applicable law providing for a consignor’s interest or the like to be evidenced by a sign, or
- (2) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or
- (3) complies with the filing provisions of the article on Secured Transactions (Chapter Seven).

(D) Any “or return” term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (Section 49-2-201) and as contradicting the sale aspect of the contract within the provisions of this article on parole or extrinsic evidence (Section 49-2-202).

Section 49-2-327 Special incidents of Sale on Approval and Sale or Return

(A) Under a sale on approval unless otherwise agreed

- (1) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and
- (2) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and
- (3) after due notification of election to return, the return is at the seller’s risk and expense but a merchant buyer must follow any reasonable instructions.

(B) Under a sale or return unless otherwise agreed

- (1) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably, and
- (2) the return is at the buyer’s risk and expense.

Section 49-2-328 Sale by Auction

- (A) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.
- (B) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.
- (C) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer’s announcement of completion of the sale, but a bidder’s retraction does not revive any previous bid.
- (D) If the auctioneer knowingly receives a bid on the seller’s behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid

prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

SECTION FOUR TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Section 49-2-401 Passing of Title; Reservation for Security; Limited Application of this Section

Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

- (A) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 49-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on Secured Transactions (Chapter Seven), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.
- (B) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading
 - (1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
 - (2) if the contract requires delivery at destination, title passes on tender there.
- (C) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

- (1) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or
- (2) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

- (D) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance re-vests title to the goods in the seller. Such re-vesting occurs by operation of law and is not a "sale".

Section 49-2-402 Rights of Seller's Creditors Against Sold Goods

- (A) Except as provided in subsections (B) and (C), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (Section 49-2-502 and 49-2-716).
- (B) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state or Indian country where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.
- (C) Nothing in this article shall be deemed to impair the rights of creditors of the seller.
 - (1) under the provisions of the article on Secured Transactions (Chapter Seven); or
 - (2) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security or the like and is made under circumstances which under any rule of law of the state or Indian country where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

Section 49-2-403 Power to Transfer; Good Faith Purchase of Goods; “Entrusting”

- (A) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:
- (1) the transferor was deceived as to the identity of the purchaser, or
 - (2) the delivery was in exchange for a check which is later dishonored, or
 - (3) it was agreed that the transaction was to be a “cash sale”, or
 - (4) the delivery was procured through fraud punishable as larcenous under the criminal law.
- (B) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.
- (C) “Entrusting” includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor’s disposition of the goods have been such as to be larcenous under the criminal law.
- (D) The rights of other purchasers of goods and of lien creditors are governed by the articles on Secured Transactions (Chapter 7).

**SECTION FIVE
PERFORMANCE**

Section 49-2-501 insurable interest in Goods; Manner of Identification of Goods

- (A) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to

by the parties. In the absence of explicit agreement identification occurs,

- (1) when the contract is made if it is for the sale of goods already existing and identified;
 - (2) if the contract is for the sale of future goods other than those described in paragraph three (3), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;
 - (3) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve (12) months after contracting or for the sale of crops to be harvested within twelve (12) months or the next normal harvest season after contracting whichever is longer.
- (B) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.
- (C) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Section 49-2-502 Buyer’s Right to Goods on Seller’s insolvency

- (A) Subject to subsection (B) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten (10) days after receipt of the first installment on their price.
- (B) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Section 49-2-503 Manner of Seller’s Tender of Delivery

- (A) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification rea-

sonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular (a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but (b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

- (B) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.
- (C) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (A) and also in any appropriate case tender documents as described in subsections (D) and (E) of this section.
- (D) Where goods are in the possession of a bailee and are to be delivered without being moved
 - (1) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but
 - (2) tender to the buyer of a nonnegotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.
- (E) Where the contract requires the seller to deliver documents
 - (1) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection B of Section 49-2-323); and
 - (2) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection.

Section 49-2-504 Shipment by Seller

Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must:

- (A) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and
- (B) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and
- (C) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (C) or to make a proper contract under paragraph (A) is a ground for rejection only if material delay or loss ensues.

Section 49-2-505 Seller's Shipment Under Reservation

- (A) Where the seller has identified goods to the contract by or before shipment:
 - (1) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.
 - (2) a nonnegotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (B) of Section 49-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.
- (B) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

Section 49-2-506 Rights of Financing Agency

- (A) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.
- (B) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

Section 49-2-507 Effect of Seller's Tender; Delivery on Condition

- (A) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.
- (B) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

Section 49-2-508 Cure by Seller of Improper Tender or Delivery; Replacement

- (A) Where any tender or delivery by the seller is rejected because nonconforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.
- (B) Where the buyer rejects a nonconforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Section 49-2-509 Risk of Loss in the Absence of Breach

- (A) Where the contract requires or authorizes the seller to ship the goods by carrier

- (1) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 49-2-505); but
- (2) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

- (B) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

- (1) on his receipt of a negotiable document of title covering the goods; or
- (2) on acknowledgment by the bailee of the buyer's right to possession of the goods; or
- (3) after his receipt of a nonnegotiable document of title or other written direction to deliver, as provided in subsection (D)(2) of Section 49-2-503.

- (C) In any case not within subsection (A) or (B), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

- (D) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Section 49-2-327) and on effect of breach on risk of loss (Section 49-2-510).

Section 49-2-510 Effect of Breach on Risk of Loss

- (A) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.
- (B) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.
- (C) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance cover-

age treat the risk of loss as resting on the buyer for a commercially reasonable time.

Section 49-2-511 Tender of Payment by Buyer; Payment by Check

- (A) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.
- (B) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.
- (C) Subject to the provisions of this act on the effect of an instrument on an obligation (Section 49-3-140), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Section 49-2-512 Payment by Buyer Before inspection

- (A) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless
 - (1) the nonconformity appears without inspection; or
 - (2) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act.
- (B) Payment pursuant to subsection (A) of this section does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 49-2-513 Buyer's Right to inspection of Goods

- (A) Unless otherwise agreed and subject to subsection (C), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.
- (B) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(C) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (C) of Section 49-2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

- (1) or delivery "C.O.D." or on other like terms; or
- (2) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(D) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Section 49-2-514 When documents Deliverable on Acceptance; When on Payment

Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment.

Section 49-2-515 Preserving Evidence of Goods in Dispute

In furtherance of the adjustment of any claim or dispute

- (A) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and
- (B) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

**SECTION SIX
BREACH, REPUDIATION AND EXCUSE**

Section 49-2-601 Buyer's Rights on Improper Delivery

Subject to the provisions of this article on breach in

installment contracts (Section 49-2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 49-2-718 and 49-2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may:

- (A) reject the whole; or
- (B) accept the whole; or
- (C) accept any commercial unit or units and reject the rest.

Section 49-2-602 Manner and Effect of Rightful Rejection

- (A) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.
- (B) Subject to the provisions of the two following sections on rejected goods (Sections 49-2-603 and 49-2-604),
 - (1) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and
 - (2) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (C) of Section 49-2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but,
 - (3) the buyer has no further obligations with regard to goods rightfully rejected.
- (C) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (Section 49-2-703).

Section 49-2-603 Merchant Buyer's Duties as to Rightfully Rejected Goods

- (A) Subject to any security interest in the buyer (subsection (C) of Section 49-2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's

account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

- (B) When the buyer sells goods under subsection (A), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten percent (10%) on the gross proceeds.
- (C) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Section 49-2-604 Buyer's Options as to Salvage of Rightfully Rejected Goods

Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reshipe them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Section 49-2-605 Waiver of Buyer's Objections by Failure to Particularize

- (A) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach
 - (1) where the seller could have cured it if stated seasonably; or
 - (2) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
- (B) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

Section 49-2-606 What Constitutes Acceptance of Goods

- (A) Acceptance of goods occurs when the buyer

- (1) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or
- (2) fails to make an effective rejection (subsection (A) of Section 49-2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
- (3) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(B) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 49-2-607 Effect of Acceptance; notice of Breach; Burden of Establishing Breach After Acceptance; notice of Claim or Litigation to Person Answerable Over

- (A) The buyer must pay at the contract rate for any goods accepted.
- (B) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for nonconformity.
- (C) Where a tender has been accepted
 - (1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and
 - (2) if the claim is one for infringement or the like (subsection (C) of Section 49-2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.
- (D) The burden is on the buyer to establish any breach with respect to the goods accepted.
- (E) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

- (1) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound
- (2) if the claim is one for infringement or the like (subsection (C) of Section 49-2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

- (F) The provisions of subsections (C), (D) and (E) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (C)(2) of Section 49-2-312).

Section 49-2-608 Revocation of Acceptance in Whole or in Part

- (A) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it
 - (1) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
 - (2) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.
- (B) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.
- (C) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Section 49-2-609 Right to Adequate assurance of Performance

- (A) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.
- (B) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.
- (C) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.
- (D) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty (30) days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Section 49-2-610 Anticipatory Repudiation

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may:

- (A) for a commercially reasonable time await performance by the repudiating party; or
- (B) resort to any remedy for breach (Section 49-2-703 or Section 49-2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
- (C) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 49-2-704).

Section 49-2-611 Retraction of Anticipatory Repudiation

- (A) Until the repudiating party's next performance is due he can retract his repudiation unless the

aggrieved party has since the repudiation canceled or materially changed his position or otherwise indicated that he considers the repudiation final.

- (B) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (Section 49-2-609).
- (C) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 49-2-612 "installment Contract"; Breach

- (A) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.
- (B) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (C) and the seller gives adequate assurance of its cure the buyer must accept that installment.
- (C) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Section 49-2-613 Casualty to Identified Goods

Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 49-2-324) then

- (A) if the loss is total the contract is avoided; and
- (B) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided

or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Section 49-2-614 Substituted Performance

- (A) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.
- (B) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Section 49-2-615 Excuse by Failure of Presupposed Conditions

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

- (A) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.
- (B) Where the clauses mentioned in paragraph (A) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

- (C) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (B), of the estimated quota thus made available for the buyer.

Section 49-2-616 Procedure on notice Claiming Excuse

- (A) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (Section 49-2-612), then also as to the whole,
 - (1) terminate and thereby discharge any unexecuted portion of the contract; or
 - (2) modify the contract by agreeing to take his available quota in substitution.
- (B) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty (30) days the contract lapses with respect to any deliveries affected.
- (C) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

SECTION SEVEN REMEDIES

Section 49-2-701 Remedies for Breach of Collateral Contracts not Impaired

Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article.

Section 49-2-702 Seller's Remedies on Discovery of Buyer's insolvency

- (A) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (Section 49-2-705).
- (B) Where the seller discovers that the buyer has received goods on credit while insolvent he may

reclaim the goods upon demand made within ten (10) days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three (3) months before delivery the ten-day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

- (C) The seller's right to reclaim under subsection (B) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this article (Section 49-2-403). Successful reclamation of goods excludes all other remedies with respect to them.

Section 49-2-703 Seller's Remedies in General

Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 49-2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (A) withhold delivery of such goods;
- (B) stop delivery by any bailee as hereafter provided (Section 49-2-705);
- (C) proceed under the next section respecting goods still unidentified to the contract;
- (D) resell and recover damages as hereafter provided (Section 49-2-706);
- (E) recover damages for nonacceptance (Section 49-2-708) or in a proper case the price (Section 49-2-709);
- (F) cancel.

Section 49-2-704 Seller's Right to Identify Goods to the Contract notwithstanding Breach or to Salvage Unfinished Goods

- (A) An aggrieved seller under the preceding section may
- (1) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
 - (2) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

- (B) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Section 49-2-705 Seller's Stoppage of Delivery in Transit or Otherwise

- (A) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 49-2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.
- (B) As against such buyer the seller may stop delivery until:
- (1) receipt of the goods by the buyer; or
 - (2) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (3) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
 - (4) negotiation to the buyer of any negotiable document of title covering the goods.
- (C) (1) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (2) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.
 - (3) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.
 - (4) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Section 49-2-706 Seller's Resale including Contract for Resale

- (A) Under the conditions stated in Section 49-2-703 on seller's remedies, the seller may resell the

goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this section (Section 49-2-710), but less expenses saved in consequence of the buyer's breach.

(B) Except as otherwise provided in subsection (C) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(C) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(D) Where the resale is at public sale:

- (1) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and
- (2) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and
- (3) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and
- (4) the seller may buy.

(E) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(F) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 49-2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (C) of Section 49-2-711).

Section 49-2-707 "Person in the Position of a Seller"

(A) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(B) A person in the position of a seller may as provided in this article withhold or stop delivery (Section 49-2-705) and resell (Section 49-2-706) and recover incidental damages (Section 49-2-710).

Section 49-2-708 Seller's Damages for Non-Acceptance or Repudiation

(A) Subject to subsection (B) and to the provisions of this article with respect to proof of market price (Section 49-2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (Section 49-2-710), but less expenses saved in consequence of the buyer's breach.

(B) If the measure of damages provided in subsection (A) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (Section 49-2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Section 49-2-709 Action for the Price

(A) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

- (1) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and
- (2) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(B) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and the payment of the judgment entitles him to any goods not resold.

(C) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (Section 49-2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

Section 49-2-710 Seller's incidental Damages

Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Section 49-2-711 Buyer's Remedies in General; Buyer's Security interest in Rejected Goods

(A) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 49-2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

- (1) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or
- (2) recover damages for nondelivery as provided in this article (Section 49-2-713).

(B) Where the seller fails to deliver or repudiates the buyer may also

- (1) if the goods have been identified recover them as provided in this article (Section 49-2-502); or
- (2) in a proper case obtain specific performance or replevy the goods as provided in this article (Section 49-2-716).

(C) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (Section 49-2-706).

Section 49-2-712 "Cover"; Buyer's Procurement of Substitute Goods

(A) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(B) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 49-2-715), but less expenses saved in consequence of the seller's breach.

(C) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Section 49-2-713 Buyer's Damages for Non-Delivery or Repudiation

(A) Subject to the provisions of this article with respect to proof of market price (Section 49-2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (Section 49-2-715), but less expenses saved in consequence of the seller's breach.

(B) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Section 49-2-714 Buyer's Damages for Breach in Regard to Accepted Goods

- (A) Where the buyer has accepted goods and given notification (subsection (C) of Section 49-2-607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.
- (B) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.
- (C) In a proper case any incidental and consequential damages under the next section may also be recovered.

Section 49-2-715 Buyer's incidental and Consequential Damages

- (A) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.
- (B) Consequential damages resulting from the seller's breach include
 - (1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
 - (2) injury to person or property proximately resulting from any breach of warranty.

Section 49-2-716 Buyer's Right to Specific Performance or Replevin

- (A) Specific performance may be decreed where the goods are unique or in other proper circumstances.
- (B) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.
- (C) The buyer has a right of replevin for goods iden-

tified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

Section 49-2-717 Deduction of Damages from the Price

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

Section 49-2-718 Liquidation or Limitation of Damages; Deposits

- (A) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.
- (B) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds
 - (1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (A), or
 - (2) in the absence of such terms, twenty percent (20%) of the value of the total performance for which the buyer is obligated under the contract or Five Hundred Dollars (\$500.00), whichever is smaller.
- (C) The buyer's right to restitution under subsection (B) is subject to offset to the extent that the seller establishes
 - (1) a right to recover damages under the provisions of this article other than subsection (A), and
 - (2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.
- (D) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the pur-

poses of subsection (B); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (Section 49-2-706).

Section 49-2-719 Contractual Modification or Limitation of Remedy

(A) Subject to the provisions of subsections (B) and (C) of this section and of the preceding section on liquidation and limitation of damages,

(1) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(2) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(B) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

(C) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Section 49-2-720 Effect of "Cancellation" or "Rescission" on Claims for Antecedent Breach

Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Section 49-2-721 Remedies for Fraud

Remedies for material misrepresentation or fraud include all remedies available under this article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Section 49-2-722 Who Can Sue Third Parties for Injury to Goods

Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(A) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(B) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(C) either party may with the consent of the other sue for the benefit of whom it may concern.

Section 49-2-723 Proof of Market Price: Time and Place

(A) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 49-2-708 or Section 49-2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(B) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(C) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Section 49-2-724 Admissibility of Market Quotations

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Section 49-2-725 Statute of Limitations in Contracts for Sale

- (A) An action for breach of any contract for sale must be commenced within five (5) years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one (1) year but may not extend it.
- (B) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.
- (C) Where an action commenced within the time limited by subsection (A) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within one (1) year after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.
- (D) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

CHAPTER THREE LEASES

Section 49-3-101 Short Title

This chapter shall be known and may be cited as the Uniform Commercial Code--Leases.

Section 49-3-102 Scope

This chapter applies to any transaction, regardless of form, that creates a lease of goods.

Section 49-3-103 Definitions and index of Definitions

- (A) In this chapter unless the context otherwise requires:
 - (1) "Buyer in the ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in the ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
 - (2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.
 - (3) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.
 - (4) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.
 - (5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do

not exceed Forty-five Thousand Dollars (\$45,000.00).

- (6) “Fault” means wrongful act, omission, breach, or default.
- (7) “Finance lease” means a lease with respect to which:
 - (a) the lessor does not select, manufacture or supply the goods;
 - (b) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and
 - (c) one of the following occurs:
 - (i) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;
 - (ii) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;
 - (iii) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or
 - (iv) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee

is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

- (8) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (Section 49-3-309 of this title), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.
- (9) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.
- (10) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.
- (11) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.
- (12) “Lease contract” means the total legal obligation that results from the lease agreement

as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

- (13) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.
- (14) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.
- (15) “Lessee in the ordinary course of business” means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in the ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.
- (16) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
- (17) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.
- (18) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.
- (19) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.
- (20) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.
- (21) “Present value” means the amount as of a

date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

- (22) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.
- (23) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.
- (24) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.
- (25) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.
- (26) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.
- (B) Other definitions applying to this article and the sections of this title in which they appear are:
 - (1) “Accessions” Subsection (A) of Section 49-3-140
 - (2) “Construction mortgage” Paragraph (4) of subsection (A) of Section 49-3-139
 - (3) “Encumbrance” Paragraph (5) of subsection (A) of Section 49-3-139
 - (4) “Fixtures” Paragraph (1) of subsection (A) of Section 49-3-139
 - (5) “Purchase money lease” Paragraph (3) of subsection (A) of Section 49-3-139
- (C) The following definitions in other articles apply to this article:
 - (1) “Account” Section 49-7-106
 - (2) “Between merchants” Subsection (C) of Section 49-2-104
 - (3) “Buyer” Paragraph (1) of subsection (A) of

Section 49-2-103

- (4) “Chattel paper” Section 49-7-105
- (5) “Consumer goods” Subsection (A) of Section 49-9-109
- (6) “Entrusting” Subsection (C) of Section 49-2-403
- (7) “General intangibles” Section 49-9-106
- (8) “Good faith” Paragraph (2) of subsection (A) of Section 49-2-103
- (9) “Merchant” Subsection (A) of Section 49-2-104
- (10) “Receipt” Paragraph (3) of subsection (A) of Section 49-2-103
- (11) “Sale” Subsection (A) of Section 49-2-106
- (12) “I” Section 49-2-326
- (13) “Sale or return” Section 49-2-326
- (14) “Seller” Paragraph (4) of subsection (A) of Section 49-2-103

(D) In addition, Chapter One of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 49-3-104 Leases Subject to Other Law

- (A) A lease, although subject to this chapter, is also subject to any applicable:
 - (1) certificate of title statute of the Potawatomi;
 - (2) certificate of title statute of another jurisdiction (Section 49-3-105 of this title); or
 - (3) consumer protection statute of the Potawatomi, or final consumer protection decision of the Potawatomi Tribal Court.
- (B) In case of conflict between this article, other than Section 49-3-105, and a statute or decision referred to in subsection (A) of this section, the statute or decision controls.
- (C) Failure to comply with an applicable law has only the effect specified therein.

Section 49-3-105 Territorial Application of Article to Goods Covered by Certificate of Title

With respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance

or noncompliance with a certificate of title statute are governed by the law, including the conflict of laws rules, of the jurisdiction issuing the certificate until the earlier of:

- (A) surrender of the certificate, or
- (B) four (4) months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Section 49-3-106 Limitation on Power of Parties to Consumer Lease to Choose Applicable Law and Judicial forum

- (A) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within thirty (30) days thereafter or in which the goods are to be used, the choice is not enforceable.
- (B) If the judicial forum chosen by the parties to a consumer lease is a forum that would not otherwise have jurisdiction over the lessee, the choice is not enforceable.

Section 49-3-107 Waiver or Renunciation of Claim or Right After Default

Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Section 49-3-108 Unconscionability

- (A) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.
- (B) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(C) Before making a finding of unconscionability under subsection (A) or (B) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof, or of the conduct.

(D) In an action in which the lessee claims unconscionability with respect to a consumer lease:

- (1) If the court finds unconscionability under subsection (A) or (B) of this section, the court shall award reasonable attorney's fees to the lessee.
- (2) If the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made.
- (3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (A) and (B) of this section is not controlling.

Section 49-3-109 Option to Accelerate at Will

(A) A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import must be construed to mean that he has power to do so only if he in good faith believes that the prospect of payment or performance is impaired.

(B) With respect to a consumer lease, the burden of establishing good faith under subsection (A) of this section is on the party who exercised the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Section 49-3-110 Statute of Frauds

(A) A lease contract is not enforceable by way of action or defense unless:

- (1) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than One Thousand Dollars (\$1,000.00); or
- (2) there is a writing, signed by the party against whom enforcement is sought or by that par-

ty's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(B) Any description of leased goods or of the lease term is sufficient and satisfies paragraph (2) of subsection (A) of this section, whether or not it is specific, if it reasonably identifies what is described.

(C) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under paragraph (2) of subsection (A) of this section beyond the lease term and the quantity of goods shown in the writing.

(D) A lease contract that does not satisfy the requirements of subsection (A) of this section, but which is valid in other respects, is enforceable:

- (1) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;
- (2) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or
- (3) with respect to goods that have been received and accepted by the lessee.

(E) The lease term under a lease contract referred to in subsection (D) of this section is:

- (1) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;
- (2) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or
- (3) a reasonable lease term.

Section 49-3-111 Final Written Expression; Parole or Extrinsic Evidence

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

- (A) by course of dealing or usage of trade or by course of performance; and
- (B) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 49-3-112 Seals inoperative

The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Section 49-3-113 formation in General

- (A) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.
- (B) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.
- (C) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

Section 49-3-114 Firm offers

An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three (3) months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 49-3-115 offer and Acceptance in formation of Lease Contract

- (A) Unless otherwise unambiguously indicated by

the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

- (B) If the beginning of a requested performance is a reasonable mode of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Section 49-3-116 Course of Performance or Practical Construction

- (A) If a lease contract involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection is relevant to determine the meaning of the lease agreement.
- (B) The express terms of a lease agreement and any course of performance, as well as any course of dealing and usage of trade, must be construed whenever reasonable as consistent with each other; but if that construction is unreasonable, express terms control course of performance, course of performance controls both course of dealing and usage of trade, and course of dealing controls usage of trade.
- (C) Subject to the provisions of Section 49-3-117 of this act on modification and waiver, course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

Section 49-3-117 Modification, Rescission and Waiver

- (A) An agreement modifying a lease contract needs no consideration to be binding.
- (B) A signed lease agreement that excludes modification or rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.
- (C) Although an attempt at modification or rescission does not satisfy the requirements of subsection (B) of this section, it may operate as a waiver.
- (D) A party who has made a waiver affecting an ex-

ecutory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 49-3-118 Lessee Under Finance Lease as Beneficiary of Supply Contract

- (A) The benefit of the supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.
- (B) The extension of the benefit of a supplier's promises and of warranties to the lessee (subsection (A) of this section) does not:
 - (1) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise, or
 - (2) impose any duty or liability under the supply contract on the lessee.
- (C) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they existed and were available to the lessee before modification or rescission.
- (D) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under subsection (A) of this section, the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

Section 49-3-119 Express Warranties

- (A) Express warranties by the lessor are created as follows:
 - (1) Any affirmation of fact or promise made by the lessor to the lessee which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.
 - (2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.
 - (3) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.
- (B) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee", or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

Section 49-3-120 Warranties Against interference and Against infringement; Lessee's Obligation Against infringement

- (A) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor, other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.
- (B) Except in a finance lease, there is in a lease contract by a lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.
- (C) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim by way of infringement or the like that arises out of compliance with the specifications.

Section 49-3-121 Implied Warranty of Merchantability

- (A) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease

contract if the lessor is a merchant with respect to goods of that kind.

(B) Goods to be merchantable must be at least such as:

- (1) pass without objection in the trade under the description in the lease agreement;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which goods of that type are used;
- (4) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged, and labeled as the lease agreement may require; and
- (6) conform to any promises or affirmations of fact made on the container or label.

(C) Other implied warranties may arise from course of dealing or usage of trade.

Section 49-3-122 Implied Warranty of Fitness for Particular Purpose

Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods will be fit for that purpose.

Section 49-3-123 Exclusion or Modification of Warranties

(A) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed wherever reasonable as consistent with each other; but, subject to the provisions of Section 49-3-111 act on parole or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(B) Subject to subsection (C) of this section, to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability", be by a writing, and be conspicuous. Subject to subsection (C) of this section, to exclude or modify any implied

warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(C) Notwithstanding subsection (B) of this section, but subject to subsection (D) of this section:

- (1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", or "with all faults", or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;
- (2) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and
- (3) an implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

(D) To exclude or modify a warranty against interference or against infringement (Section 49-3-120) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

Section 49-3-124 Cumulation and Conflict of Warranties Express or Implied

Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

- (A) Exact or technical specifications displace an inconsistent sample or model or general language of description.
- (B) A sample from an existing bulk displaces inconsistent general language of description.

- (C) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Section 49-3-125 Third Party Beneficiaries of Express and Implied Warranties

- (A) A warranty to or for the benefit of a lessee under this article, whether express or implied, extends to any natural person who is in the family or household of the lessee or who is a guest in the lessee's home if it is reasonable to expect that such person may use, consume, or be affected by the goods and who is injured in person by breach of the warranty.
- (B) This section does not displace principles of law and equity that extend a warranty to or for the benefit of a lessee to other persons.
- (C) The operation of this section may not be excluded, modified, or limited, but an exclusion, modification, or limitation of the warranty, including any with respect to rights and remedies, effective against the lessee is also effective against any beneficiary designated under this section.

Section 49-3-126 Identification

Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

- (A) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;
- (B) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing and identified; or
- (C) when the young are conceived, if the lease contract is for a lease of unborn young of animals.

Section 49-3-127 insurance and Proceeds

- (A) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.
- (B) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or noti-

fication to the lessee that identification is final, may substitute other goods for those identified.

- (C) Notwithstanding a lessee's insurable interest under subsections (A) and (B) of this section, the lessor retains an insurable interest until an option to buy has been exercised by the lessee and risk of loss has passed to the lessee.
- (D) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.
- (E) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

Section 49-3-128 Risk of Loss

- (A) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.
- (B) Subject to the provisions of this article on the effect of default on risk of loss (Section 49-3-129), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:
- (1) If the lease contract requires or authorizes the goods to be shipped by carrier:
 - (a) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but
 - (b) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.
 - (2) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of the goods.
 - (3) In any case not within paragraph (A) or (C) of this subsection, the risk of loss passes to the lessee on the lessee's receipt of the goods if the lessor, or, in the case of a fi-

nance lease, the supplier, is a merchant; otherwise the risk passes to the lessee on tender of delivery.

Section 49-3-129 Effect of Default on Risk of Loss

(A) Where risk of loss is to pass to the lessee and the time of passage is not stated:

- (1) If a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance.
- (2) If the lessee rightfully revokes acceptance, he, to the extent of any deficiency in his effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(B) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in his effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Section 49-3-130 Casualty to Identified Goods

If a lease contract requires goods identified when the lease contract is made, and the goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee pursuant to the lease agreement or Section 49-3-129, then:

- (A) if the loss is total, the lease contract is avoided; and
- (B) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at his option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

Section 49-3-131 Enforceability of Lease Contract

Except as otherwise provided in this article, a lease

contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

Section 49-3-132 Title to and Possession of Goods

Except as otherwise provided in this article, each provision of this article applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Section 49-3-133 Alienability of Party's interest Under Lease Contract or of Lessor's Residual interest in Goods; Delegation of Performance; Transfer of Rights

(A) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Chapter Seven of this title, Secured Transactions, by reason of paragraph (2) of subsection (A) of Section 49-7-102 of this title.

(B) Except as provided in subsections (C) and (D) of this section, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies provided in subsection (E) of this section, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(C) A provision in a lease agreement which (i) prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision. Neither the granting nor the enforcement of a security interest in (i) the lessor's interest under the lease contract or (ii) the lessor's residual interest in the goods is

a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the lessee within the purview of subsection (E) of this section unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.

(D) A provision in a lease agreement which (i) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (ii) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract within the purview of subsection (E) of this section.

(E) Subject to subsections (C) and (D) of this section:

- (1) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in subsection (B) of Section 49-3-149 of this title; or
- (2) if paragraph (1) of this subsection is not applicable and if a transfer is made that (i) is prohibited under a lease agreement or (ii) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(F) A transfer of "the lease" or of "all my rights under the lease", or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

(G) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(H) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Section 49-3-134 Subsequent Lease of Goods by Lessor

(A) Subject to Section 49-3-133 of this title, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided in subsection (B) of this section and subsection (D) of Section 49-3-175 of this title, takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

- (1) the lessor's transferor was deceived as to the identity of the lessor;
- (2) the delivery was in exchange for a check which is later dishonored;
- (3) it was agreed that the transaction was to be a "cash sale"; or
- (4) the delivery was procured through fraud punishable as larcenous under the criminal law.

(B) A subsequent lessee in the ordinary course of

business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

- (C) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 49-3-135 Sale or Sublease of Goods by Lessee

- (A) Subject to the provisions of Section 49-3-133 act, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided in subsection (B) of this section and subsection (D) of Section 49-3-159 of this act, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent provided for a buyer or sublessee from the lessee of goods under an existing lease contract. When goods have been delivered under a transaction of lease the lessee has that power even though:

- (1) the lessor was deceived as to the identity of the lessee;
- (2) the delivery was in exchange for a check which is later dishonored; or
- (3) the delivery was procured through fraud punishable as larcenous under the criminal law.

- (B) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and

lessee's rights to the goods, and takes free of the existing lease contract.

- (C) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Section 49-3-136 Priority of Certain Liens Arising by Operation of Law

If a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this article unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Section 49-3-137 Priority of Liens Arising by Attachment or Levy on, Security interests in, and Other Claims to Goods

- (A) Except as otherwise provided in Section 49-3-136 of this title, a creditor of a lessee takes subject to the lease contract.
- (B) Except as otherwise provided in subsections (C) and (D) of this section and in Section 49-3-136 and 49-3-138 of this title, a creditor of a lessor takes subject to the lease contract unless:
- (1) the creditor holds a lien that attached to the goods before the lease contract became enforceable;
 - (2) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or
 - (3) the creditor holds a security interest in the goods which was perfected (Section 49-7-133 of this title) before the lease contract became enforceable.
- (C) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (Section 49-7-133 of this title) and the lessee knows of its existence.

- (D) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than forty-five (45) days after the lease contract becomes enforceable, whichever first occurs, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

Section 49-3-138 Special Rights of Creditors

- (A) A creditor of a lessor in possession of goods subject to a lease contract may treat the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent.
- (B) Nothing in this article impairs the rights of creditors of a lessor if the lease contract:
- (1) becomes enforceable, not in current course of trade but in satisfaction of or as security for a preexisting claim for money, security, or the like, and
 - (2) is made under circumstances which under any statute or rule of law apart from this article would constitute the transaction a fraudulent transfer or voidable preference.
- (C) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Section 49-3-139 Lessor's and Lessee's Rights When Goods Become Fixtures

- (A) In this section:
- (1) goods are “fixtures” when they become so related to particular real estate that an interest in them arise under real estate law;

- (2) a “fixture filing” is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures;
 - (3) a lease is a “purchase money lease” unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;
 - (4) a mortgage is a “construction mortgage” to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and
 - (5) “encumbrance” includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.
- (B) Under this article a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this article of ordinary building materials incorporated into an improvement on land.
- (C) This article does not prevent creation of a lease of fixtures pursuant to real estate law.
- (D) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:
- (1) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within ten (10) days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or
 - (2) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.
- (E) The interest of a lessor of fixtures, whether or

not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

- (1) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or
 - (2) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or
 - (3) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or
 - (4) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.
- (F) Notwithstanding paragraph (1) of subsection (D) of this section but otherwise subject to subsections (D) and (E) of this section, the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.
- (G) In cases other than those described in subsections (A) through (F) of this section, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

- (H) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (i) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this article, or (ii) if necessary to enforce other rights and remedies of the lessor or lessee under this article, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.
- (I) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the Uniform Commercial Code-Secured Transactions.

Section 49-3-140 Lessor's and Lessee's Rights When Goods Become Accessions

- (A) Goods are "accessions" when they are installed in or affixed to other goods.
- (B) The interest of a lessor or a lessee under a lease contract entered into before the goods became accessions is superior to all interests in the whole except as stated in subsection (D) of this section.
- (C) The interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions is superior to all subsequently acquired interests in the whole except as stated in subsection (D) of this section but is subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in

writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(D) The interest of a lessor or a lessee under a lease contract described in subsection (B) or (3) of this section is subordinate to the interest of:

- (1) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or
- (2) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(E) When under subsections (B) or (C), and (D) of this section a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee:

- (1) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this article, or
- (2) if necessary to enforce his other rights and remedies under this article,

may remove the goods from the whole, free and clear of all interests in the whole, but he must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Section 49-3-141 Priority Subject to Subordination

Nothing in this article prevents subordination by agreement by any person entitled to priority.

Section 49-3-142 insecurity; Adequate assurance of Performance

- (A) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.
- (B) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the

insecure party receives that assurance, if commercially reasonable the insecure party may suspend any performance for which he has not already received the agreed return.

- (C) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed thirty (30) days after receipt of a demand by the other party.
- (D) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.
- (E) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Section 49-3-143 Anticipatory Repudiation

- (A) If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:
 - (1) for a commercially reasonable time, await retraction of repudiation and performance by the repudiating party;
 - (2) make demand pursuant to Section 49-3-142, and await assurance of future performance adequate under the circumstances of the particular case; or
 - (3) resort to any right or remedy upon default under the lease contract or this article, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction.
- (B) In addition, whether or not the aggrieved party is pursuing one of the remedies provided for in subsection (A) of this section, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this article on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 49-3-172).

Section 49-3-144 Retraction of Anticipatory Repudiation

- (A) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has cancelled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.
- (B) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 49-3-142.
- (C) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Section 49-3-145 Substituted Performance

- (A) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered and accepted.
- (B) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:
 - (1) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and
 - (2) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Section 49-3-146 Excused Performance

Subject to Section 49-3-145 on substituted performance, the following rules apply:

- (A) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (B) and (C) of this section is not a default under the lease contract if perfor-

mance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

- (B) If the causes mentioned in paragraph (A) of this section affect only part of the lessor's or the supplier's capacity to perform, he shall allocate production and deliveries among his customers but at his option may include regular customers not then under contract for sale or lease as well as his own requirements for further manufacture. He may so allocate in any manner that is fair and reasonable.
- (C) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (B) of this section, of the estimated quota thus made available for the lessee.

Section 49-3-147 Procedure on Excused Performance

- (A) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 49-3-146, the lessee, by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 49-3-510) may:
 - (1) terminate the lease contract (subsection (B) of Section 49-3-153); or
 - (2) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.
- (B) If, after receipt of a notification from the lessor under Section 49-3-146, the lessee fails so to modify the lease agreement within a reasonable time not exceeding thirty (30) days, the lease contract lapses with respect to any deliveries affected.

Section 49-3-148 Irrevocable Promises; Finance Leases

- (A) In the case of a finance lease that is not a consumer lease the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods.
- (B) A promise that has become irrevocable and independent under subsection (A) of this section:
 - (1) is effective and enforceable between the parties, and by or against third parties including assignees of the parties, and
 - (2) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.
- (C) This section does not affect the validity under any other law of a covenant in any lease contract making the lessee's promises irrevocable and independent upon the lessee's acceptance of the goods.

Section 49-3-149 Default; Procedure

- (A) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.
- (B) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.
- (C) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.
- (D) Except as otherwise provided in this article or the lease agreement, the rights and remedies referred to in subsections (B) and (C) of this section are cumulative.
- (E) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's

rights and remedies in respect of the real property, in which case this Part does not apply.

Section 49-3-150 notice After Default

Except as otherwise provided in this article or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Section 49-3-151 Modification or Impairment of Rights and Remedies

- (A) Except as otherwise provided in this article, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article.
- (B) Resort to a remedy provided under this article or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail of its essential purpose, or provision for an exclusive remedy is unconscionable, remedy may be had as provided in this article.
- (C) Consequential damages may be liquidated under Section 49-3-152 of this title, or may otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.
- (D) Rights and remedies on default by the lessor or the lessee with respect to any obligation or promise collateral or ancillary to the lease contract are not impaired by this article.

Section 49-3-152 Liquidation of Damages

- (A) Damages payable by either party for default, or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission.
- (B) If the lease agreement provides for liquidation of damages, and such provision does not com-

ply with subsection (A) of this section, or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this article.

(C) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 49-3-173 or 49-3-174), the lessee is entitled to restitution of any amount by which the sum of his payments exceeds:

- (1) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with subsection (A) of this section; or
- (2) in the absence of those terms, twenty percent (20%) of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease, the lesser of such amount or Five Hundred Dollars (\$500.00).

(D) A lessee's right to restitution under subsection (C) of this section is subject to offset to the extent the lessor establishes:

- (1) a right to recover damages under the provisions of this article other than subsection (A) of this section; and
- (2) the amount of value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Section 49-3-153 Cancellation and Termination and Effect of Cancellation, Termination, Rescission, or Fraud on Rights and Remedies

(A) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(B) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on prior default or performance survives.

(C) Unless the contrary intention clearly appears, expressions of "cancellation", "rescission", or the like of the lease contract may not be construed as a renunciation or discharge of any

claim in damages for an antecedent default.

(D) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this article for default.

(E) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Section 49-3-154 Statute of Limitations

(A) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four (4) years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one (1) year.

(B) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(C) If an action commenced within the time limited by subsection (A) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six (6) months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(D) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this article becomes effective.

Section 49-3-155 Proof of Market Rent; Time and Place

(A) Damages based on market rent (Section 49-3-167 or 49-3-176 of this title) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Section 49-3-167 and 49-3-176 of this title.

- (B) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this article is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.
- (C) Evidence of a relevant rent prevailing at a time or place or for a lease term other than the one described in this article offered by one party is not admissible unless and until he has given the other party notice the court finds sufficient to prevent unfair surprise.
- (D) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

Section 49-3-156 Lessee's Remedies

- (A) If a lessor fails to deliver the goods in conformity to the lease contract (Section 49-3-157 of this title) or repudiates the lease contract (Section 49-3-143 of this title), or a lessee rightfully rejects the goods (Section 49-3-157 of this title) or justifiably revokes acceptance of the goods (Section 49-3-165 of this title), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 49-3-158 of this title), the lessor is in default under the lease contract and the lessee may:
- (1) cancel the lease contract (subsection (A) of Section 49-3-153 of this title);
 - (2) recover so much of the rent and security as has been paid and is just under the circumstances;
 - (3) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Section 49-3-166

and 49-3-168 of this title), or recover damages for nondelivery (Section 49-3-167 and 49-3-168 of this title);

- (4) exercise any other rights or pursue any other remedies provided in the lease contract.
- (B) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:
- (1) if the goods have been identified, recover them (Section 49-3-170 of this title); or
 - (2) in a proper case, obtain specific performance or replevy the goods (Section 49-3-169 of this title).
- (C) If a lessor is otherwise in default under a lease contract, the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in subsection (C) of Section 49-3-167 of this title.
- (D) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (subsection (D) of Section 49-3-167 of this title).
- (E) On rightful rejection or justifiable revocation or acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to subsection (E) of Section 49-3-175 of this title.
- (F) Subject to the provisions of Section 49-3-148 of this title, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or any part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Section 49-3-157 Lessee's Rights on Improper Delivery; Rightful Rejection

- (A) Subject to the provisions of Section 49-3-159, a lessee, on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

- (B) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

Section 49-3-158 Installment Lease Contracts; Rejection and Default

- (A) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (B) of this section and the lessor or the supplier gives adequate assurance of its cure, the lessee must accept that delivery.
- (B) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But, the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Section 49-3-159 Merchant Lessee's Duties as to Rightfully Rejected Goods

- (A) Subject to any security interest of a lessee (subsection (E) of Section 49-3-156), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in his possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.
- (B) If a merchant lessee (subsection (A) of this section) or any other lessee (Section 49-3-160) disposes of goods, he is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the ex-

penses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding ten percent (10%) of the gross proceeds.

- (C) In complying with this section or Section 49-3-160, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.
- (D) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 49-3-160 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this article.

Section 49-3-160 Lessee's Duties as to Rightfully Rejected Goods

- (A) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 49-3-159) and subject to any security interest of a lessee (subsection (E) of Section 49-3-156):
- (1) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;
 - (2) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them for the lessor's or the supplier's account with reimbursement in the manner provided in Section 49-3-159; but
 - (3) the lessee has no further obligations with regard to goods rightfully rejected.
- (B) Action by the lessee pursuant to subsection (A) of this section is not acceptance or conversion.

Section 49-3-161 Cure by Lessor of Improper Tender or Delivery; Replacement

- (A) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's inten-

tion to cure and may then make a conforming delivery within the time provided in the lease contract.

- (B) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if he seasonably notifies the lessee.

Section 49-3-162 Waiver of Lessee's Objections

- (A) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:
- (1) if, stated seasonably, the lessor or the supplier could have cured it (Section 49-3-161); or
 - (2) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.
- (B) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent on the face of the documents.

Section 49-3-163 Acceptance of Goods

- (A) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:
- (1) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or
 - (2) the lessee fails to make an effective rejection of the goods (subsection (B) of Section 49-3-157).
- (B) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Section 49-3-164 Effect of Acceptance of Goods; notice of Default; Burden of Establishing Default After Acceptance; notice of Claim or Litigation to Person Answerable Over

- (A) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.
- (B) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this article or the lease agreement for nonconformity.
- (C) If a tender has been accepted:
- (1) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and the supplier, if any, or be barred from any remedy against the party not notified;
 - (2) except in the case of a consumer lease, within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 49-3-120 of this title) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and
 - (3) the burden is on the lessee to establish any default.
- (D) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over the following apply:
- (1) the lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to the two litigations, then unless the person notified after seasonable receipt

of the notice does come in and defend that person is so bound.

- (2) the lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 49-3-120 of this title) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after reasonable receipt of the demand does turn over control the lessee is so barred.

- (E) Subsections (C) and (D) of this section apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 49-3-120 of this title).

Section 49-3-165 Revocation of Acceptance of Goods

- (A) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:
 - (1) except in the case of a finance lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or
 - (2) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease, by the difficulty of discovery before acceptance.
- (B) Except in the case of a finance lease that is not a consumer lease, a lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.
- (C) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.
- (D) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

- (E) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Section 49-3-166 Cover; Substitute Goods

- (A) After a default by a lessor under the lease contract of the type described in subsection (A) of Section 49-3-156 of this title, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.
- (B) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 49-3-152 of this title) or otherwise determined pursuant to agreement of the parties (Section 49-3-151 of this title), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages:
 - (1) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and
 - (2) any incidental or consequential damages less expenses saved in consequence of the lessor's default.
- (C) If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection (B) of this section, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 49-3-167 of this title governs.

Section 49-3-167 Lessee's Damages for Nondelivery, Repudiation, Default and Breach of Warranty in Regard to Accepted Goods

- (D) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 49-3-152 of this title) or otherwise determined pursuant to agreement of the parties

(Section 49-3-151 of this title), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under subsection (B) of Section 49-3-166 of this title, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

- (E) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.
- (F) Except as otherwise agreed, if the lessee has accepted goods and given notification (subsection (C) of Section 49-3-164 of this title), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.
- (G) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Section 49-3-168 Lessee's incidental and Consequential Damages

- (A) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting

cover, and any other reasonable expense incident to the default.

- (B) Consequential damages resulting from a lessor's default include:
 - (1) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and
 - (2) injury to person or property proximately resulting from any breach of warranty.

Section 49-3-169 Lessee's Right to Specific Performance or Replevin

- (A) Specific performance may be decreed if the goods are unique or in other proper circumstances.
- (B) A decree for specific performance may include any terms and conditions as to payment of the rent, damages, or other relief that the court deems just.
- (C) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Section 49-3-170 Lessee's Right to Goods on Lessor's insolvency

- (A) Subject to subsection (B) of this section and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 49-3-126) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within ten (10) days after receipt of the first installment of rent and security.
- (B) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

Section 49-3-171 Lessor's Remedies

- (A) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved,

and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 49-3-158 of this title), the lessee is in default under the lease contract and the lessor may:

- (1) cancel the lease contract (subsection (A) of Section 49-3-153 of this title);
- (2) proceed respecting goods not identified to the lease contract (Section 49-3-172 of this title);
- (3) withhold delivery of the goods and take possession of goods previously delivered (Section 49-3-173 of this title);
- (4) stop delivery of the goods by any bailee (Section 49-3-174 of this title);
- (5) dispose of the goods and recover damages (Section 49-3-175 of this title), or retain the goods and recover damages (Section 49-3-176 of this title), or in a proper case recover rent (Section 49-3-177 of this title); or
- (6) exercise any other rights or pursue any other remedies provided in the lease contract.

(B) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under subsection (A) of this section, the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(C) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

- (1) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided in subsection (A) or (B) of this section; or
- (2) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided in subsection (B) of this section.

Section 49-3-172 Lessor's Right to Identify Goods to Lease Contract

(A) After default by the lessee under the lease contract of the type described in either subsection (A) of Section 49-3-171 of this title or paragraph (1) of subsection (C) of Section 49-3-171 of this title, or, if agreed, after other default by the lessee, the lessor may:

- (1) identify to the lease contract conforming goods not already identified if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and
- (2) dispose of goods (subsection (A) of Section 49-3-175 of this title) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(B) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose of the goods for scrap or salvage value or proceed in any other reasonable manner.

Section 49-3-173 Lessor's Right to Possession of Goods

(A) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(B) After a default by the lessee under the lease contract of the type described in subsection (A) of Section 49-3-171 or paragraph (1) of subsection (C) of Section 49-3-171 of this title or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 49-3-175 of this title).

(C) The lessor may proceed under subsection (B) of

this section without judicial process if it can be done without breach of the peace or the lessor may proceed by action.

Section 49-3-174 Lessor's Stoppage of Delivery in Transit or Otherwise

- (A) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.
- (B) In pursuing its remedies under subsection (A) of this section, the lessor may stop delivery until:
 - (1) receipt of the goods by the lessee;
 - (2) acknowledgement to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
 - (3) such an acknowledgment to the lessee by a carrier via reshipment or as warehouseman.
- (C) (1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.
- (2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.
- (3) A carrier who has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

Section 49-3-175 Lessor's Rights to Dispose of Goods

- (A) After a default by a lessee under the lease contract of the type described in subsection (A) of Section 49-3-171 of this title or paragraph (1) of subsection (C) of Section 49-3-171 of this title or after the lessor refuses to deliver or takes possession of goods (Section 49-3-173 or 49-3-174 of this title), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

(B) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 49-3-152 of this title) or otherwise determined pursuant to agreement of the parties (Section 49-3-151 of this title), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages:

- (1) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement,
- (2) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and
- (3) any incidental damages allowed under Section 49-3-178 of this title, less expenses saved in consequence of the lessee's default.

(C) If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection (B) of this section, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 49-3-176 of this title governs.

(D) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(E) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (subsection (E) of Section 49-3-156 of this title).

Section 49-3-176 Lessor's Damages for Nonacceptance, Failure to Pay, Repudiation, or other Default

(A) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 49-3-152 of this title) or otherwise determined pursuant to agreement of the parties (Section 49-3-151 of this title), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under subsection (B) of Section 49-3-175 of this title, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in subsection (A) of Section 49-3-171 or paragraph (1) of subsection (C) of Section 49-3-171, or, if agreed, for other default of the lessee:

- (1) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor,
- (2) the present value as of the date determined under clause (1) of this subsection of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and
- (3) any incidental damages allowed under Section 49-3-178 of this title, less expenses saved in consequence of the lessee's default.

(B) If the measure of damages provided in subsection (A) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 49-3-178 of this title, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Section 49-3-177 Lessor's Action for the Rent

(A) After default by the lessee under the lease contract of the type described in subsection (A) of

Section 49-3-171 or paragraph (1) of subsection (C) of Section 49-3-171 of this title, or, if agreed, after other default by the lessee, if the lessor complies with subsection (B) of this section, the lessor may recover from the lessee as damages:

(1) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 49-3-128 of this title):

- (a) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,
- (b) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and
- (c) any incidental damages allowed under Section 49-3-178 of this title, less expenses saved in consequence of the lessee's default; and

(2) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing:

- (a) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor,
- (b) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and
- (c) any incidental damages allowed under Section 49-3-178 of this title, less expenses saved in consequence of the lessee's default.

(B) Except as provided in subsection (C) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(C) The lessor may dispose of the goods at any time before collection of the judgment for damages obtained pursuant to subsection (A) of this section. If the disposition is before the end of the remaining lease term of the lease agreement, the

lessor's recovery against the lessee for damages is governed by Section 49-3-175 or 49-3-176 of this title, and the lessor will cause an appropriate credit to be provided against a judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 49-3-175 or 49-3-176 of this title.

(D) Payment of the judgment for damages obtained pursuant to subsection (A) of this section entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(E) After default by the lessee under the lease contract of the type described in either subsection (A) of Section 49-3-171 of this title or paragraph (1) of subsection (C) of Section 49-3-171 of this title or, if agreed, after other default by the lessee, a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Section 49-3-175 or 49-3-176 of this title.

Section 49-3-178 Lessor's incidental Damages

Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

Section 49-3-179 Standing to Sue Third Parties for injury to Goods

(A) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

- (1) the lessor has a right of action against the third party, and
- (2) the lessee also has a right of action against the third party if the lessee:
 - (a) has a security interest in the goods;
 - (b) has an insurable interest in the goods; or
 - (c) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(B) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, his suit or settlement, subject to his own interest, is as a fiduciary for the other party to the lease contract.

(C) Either party with the consent of the other may sue for the benefit of whom it may concern.

Section 49-3-180 Lessor's Right to Residual interest

In addition to any other recovery permitted by this article or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

CHAPTER FOUR NEGOTIABLE INSTRUMENTS SECTION ONE

SHORT TITLE, FORM AND INTERPRETATION

Section 49-4-101 Short Title

This chapter may be cited as Uniform Commercial Code -- Negotiable Instruments.

Section 49-4-102 Subject Matter

(A) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by Article 4A of the Federal Code, or to securities governed by Article 8 of the Federal Code.

(B) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supercede any inconsistent provision of this article to the extent of the inconsistency.

Section 49-4-103 Definitions

(A) In this article:

- (1) "Acceptor" means a drawee who has accepted a draft;
- (2) "Drawee" means a person ordered in a draft to make payment;
- (3) "Drawer" means a person who signs or is identified in a draft as a person ordering payment;
- (4) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing;

- (5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay;
 - (6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;
 - (7) “Ordinary care” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this chapter of this title;
 - (8) “Party” means a party to an instrument;
 - (9) “Promise” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;
 - (10) “Prove” with respect to a fact means to meet the burden of establishing the fact; and
 - (11) “Remitter” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.
- (B) Other definitions applying to this article and the sections in which they appear in this title are:
- (1) “Acceptance” Section 49-4-409
 - (2) “Accommodated party” Section 49-4-419
 - (3) “Accommodation party” Section 49-4-419
 - (4) “Alteration” Section 49-4-407
 - (5) “Anomalous endorsement” Section 49-4-205
 - (6) “Blank endorsement” Section 49-4-205
 - (7) “Cashier’s check” Section 49-4-104
 - (8) “Certificate of deposit” Section 49-4-104
 - (9) “Certified check”mSection 49-4-409
 - (10) “Check” Section 49-4-104
 - (11) “Consideration” Section 49-4-303
 - (12) “Draft” Section 49-4-104
 - (13) “Holder in due course” Section 49-4-302
 - (14) “Incomplete instrument” Section 49-4-115
 - (15) “Endorsement” Section 49-4-204
 - (16) “Endorser” Section 49-4-204
 - (17) “Instrument” Section 49-4-104
 - (18) “Issue” Section 49-4-105
 - (19) “Issuer” Section 49-4-105
 - (20) “Negotiable instrument” Section 49-4-104
 - (21) “Negotiation” Section 49-4-201
 - (22) “Note” Section 49-4-104
 - (23) “Payable at a definite time” Section 49-4-108
 - (24) “Payable on demand” Section 49-4-108
 - (25) “Payable to bearer” Section 49-4-109
 - (26) “Payable to order” Section 49-4-109
 - (27) “Payment” Section 49-4-602
 - (28) “Person entitled to enforce” Section 49-4-301
 - (29) “Presentment” Section 49-4-501
 - (30) “Reacquisition” Section 49-4-207
 - (31) “Special endorsement” Section 49-4-205
 - (32) “Teller’s check” Section 49-4-104
 - (33) “Transfer of instrument” Section 49-4-203
 - (34) “Traveler’s check” Section 49-4-104
 - (35) “Value” Section 49-4-303
- (C) The following definitions in other chapters of this title apply to this chapter:
- (1) “Bank” Section 49-5-105
 - (2) “Banking day” Section 49-5-104
 - (3) “Clearing house” Section 49-5-104

- (4) “Collecting bank” Section 49-5-105
- (5) “Depository bank” Section 49-5-105
- (6) “Documentary draft” Section 49-5-104
- (7) “Intermediary bank” Section 49-5-105
- (8) “Item” Section 49-5-104
- (9) “Payor bank” Section 49-5-105
- (10) “Suspends payments” Section 49-5-104

(D) In addition, Chapter 1 of the Uniform Commercial Code, this title, contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 49-4-104 Negotiable instrument

(A) Except as provided in subsections (C) and (D) of this section, “negotiable instrument” means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (a) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (b) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(B) “Instrument” means a negotiable instrument.

(C) An order that meets all of the requirements of subsection (A) of this section, except paragraph (1), and otherwise falls within the definition of “check” in subsection (F) of this section is a negotiable instrument and a check.

(D) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not nego-

tiabile or is not an instrument governed by this article.

(E) An instrument is a “note” if it is a promise and is a “draft” if it is an order. If an instrument falls within the definition of both “note” and “draft”, a person entitled to enforce the instrument may treat it as either.

(F) “Check” means (a) a draft, other than a documentary draft, payable on demand and drawn on a bank or (b) a cashier’s check or teller’s check. An instrument may be a check even though it is described on its face by another term, such as “money order”.

(G) “Cashier’s check” means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(H) “Teller’s check” means a draft drawn by a bank (a) on another bank, or (b) payable at or through a bank.

(I) “Traveler’s check” means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term “traveler’s check” or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(J) “Certificate of deposit” means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

Section 49-4-105 Issue of instrument

(A) “Issue” means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(B) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(C) “Issuer” applies to issued and unissued instruments and means a maker or drawer of an instrument.

Section 49-4-106 Unconditional Promise or order

- (A) Except as provided in this section, for the purposes of subsection (A) of Section 49-4-104 of this title, a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or obligations with respect to the promise or order are stated in another writing. A reference to another writing does not of itself make the promise or order conditional.
- (B) A promise or order is not made conditional (i) by a reference to another writing for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.
- (C) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of subsection (A) of Section 49-4-104 of this title. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.
- (D) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of subsection (A) of Section 49-4-104 of this title; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Section 49-4-107 instrument Payable in foreign Money

Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

Section 49-4-108 Payable on Demand or at Definite Time

- (A) A promise or order is “payable on demand” if it (i) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment.
- (B) A promise or order is “payable at a definite time” if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of (i) prepayment, (ii) acceleration, (iii) extension at the option of the holder, or (iv) extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.
- (C) If an instrument, payable at a fixed date, is also payable upon demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

Section 49-4-109 Payable to Bearer or to order

- (A) A promise or order is payable to bearer if it:
 - (1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;
 - (2) does not state a payee; or
 - (3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.
- (B) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.
- (C) An instrument payable to bearer may become payable to an identified person if it is specially endorsed pursuant to subsection (A) of Section 49-4-205 of this title. An instrument payable to an identified person may become payable to bearer if it is endorsed in blank pursuant to subsection (B) of Section 49-4-205 of this title.

Section 49-4-110 Identification of Person to Whom instrument is Payable

- (A) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.
- (B) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.
- (C) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:
- (1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not that person is the owner of the account identified by number.
 - (2) If an instrument is payable to:
 - (a) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;
 - (b) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

- (c) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or
- (d) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

- (D) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Section 49-4-111 Place of Payment

Except as otherwise provided for items in Chapter 5 of this title, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Section 49-4-112 interest

- (A) Unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument.
- (B) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in

effect at the place of payment of the instrument and at the time interest first accrues.

Section 49-4-113 Date of instrument

- (A) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. An instrument payable on demand is not payable before the date of the instrument.
- (B) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

Section 49-4-114 Contradictory Terms of instruments

If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Section 49-4-115 incomplete instrument

- (A) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.
- (B) Subject to subsection (C) of this section, if an incomplete instrument is an instrument under Section 49-4-104 of this title, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 49-4-104 of this title, but, after completion, the requirements of Section 49-4-104 of this title, are met, the instrument may be enforced according to its terms as augmented by completion.
- (C) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 49-4-407 of this title.
- (D) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Section 49-4-116 Joint and Several Liability; Contribution

- (A) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, endorsers who endorse as joint payees, or anomalous endorsers are jointly and severally liable in the capacity in which they sign.
- (B) Except as provided in subsection (E) of Section 49-4-419 of this title or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.
- (C) Discharge of one party having joint and several liability by a person entitled to enforce the instrument does not affect the right under subsection (B) of this section of a party having the same joint and several liability to receive contribution from the party discharged.

Section 49-4-117 Other Agreements Affecting instrument

Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Section 49-4-118 Statute of Limitations

- (A) Except as provided in subsection (E) of this section, an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.
- (B) Except as provided in subsection (D) or (E) of this section, if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay

the note must be commenced within six (6) years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten (10) years.

- (C) Except as provided in subsection (D) of this section, an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three (3) years after dishonor of the draft or ten (10) years after the date of the draft, whichever period expires first.
- (D) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three (3) years after demand for payment is made to the acceptor or issuer, as the case may be.
- (E) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six (6) years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.
- (F) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced (i) within six (6) years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time, or (ii) within six (6) years after the date of the acceptance if the obligation of the acceptor is payable on demand.
- (G) Unless governed by other law regarding claims for indemnity or contribution, an action (i) for conversion of an instrument, for money had and received, or like action based on conversion, (ii) for breach of warranty, or (iii) to enforce an obligation, duty, or right arising under this article and not governed by this section must be commenced within three (3) years after the claim for relief accrues.

Section 49-4-119 notice of Right to Defend Action

In an action for breach of an obligation for which a third person is answerable over pursuant to this article of this title, the defendant may give the third person

written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend.

SECTION TWO TRANSFER AND NEGOTIATION

Section 49-4-201 Negotiation

- (A) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.
- (B) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its endorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Section 49-4-202 Negotiation Subject to Rescission

- (A) Negotiation is effective even if obtained (i) from an infant, a corporation exceeding its powers, or a person without capacity, (ii) by fraud, duress, or mistake, or (iii) in breach of duty or as part of an illegal transaction.
- (B) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Section 49-4-203 Transfer of instrument; Rights Acquired by Transfer

- (A) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.
- (B) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due

course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

- (C) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of endorsement by the transferor, the transferee has a specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of the instrument does not occur until the endorsement is made.
- (D) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this article and has only the rights of a partial assignee.

Section 49-4-204 Endorsement

- (A) “Endorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring endorser’s liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.
- (B) “Endorser” means a person who makes an endorsement.
- (C) For the purpose of determining whether the transferee of an instrument is a holder, an endorsement that transfers a security interest in the instrument is effective as an unqualified endorsement of the instrument.
- (D) If an instrument is payable to a holder under a name that is not the name of the holder, endorsement may be made by the holder in the name stated in the instrument or in the holder’s name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Section 49-4-205 Special Endorsement; Blank Endorsement; Anomalous Endorsement

- (A) If an endorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the endorsement identifies a person to whom it makes the instrument payable, it is a “special endorsement”. When specially endorsed, an instrument becomes payable to the identified person and may be negotiated only by the endorsement of that person. The principles stated in Section 49-4-110 of this title apply to special endorsements.
- (B) If an endorsement is made by the holder of an instrument and it is not a special endorsement, it is a “blank endorsement”. When endorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially endorsed.
- (C) The holder may convert a blank endorsement that consists only of a signature into a special endorsement by writing, above the signature of the endorser, words identifying the person to whom the instrument is made payable.
- (D) “Anomalous endorsement” means an endorsement made by a person who is not the holder of the instrument. An anomalous endorsement does not affect the manner in which the instrument may be negotiated.

Section 49-4-206 Restrictive Endorsement

- (A) An endorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.
- (B) An endorsement stating a condition to the right of the endorsee to receive payment does not affect the right of the endorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the rights and liabilities of that person are not affected by whether the condition has been fulfilled.
- (C) If an instrument bears an endorsement (1) described in subsection (B) of Section 49-5-201 of this title, or (2) in blank or to a particular bank using the words “for deposit”, “for collection”, or other words indicating a purpose of having

the instrument collected by a bank for the endorser or for a particular account, the following rules apply:

- (1) A person, other than a bank, who purchases the instrument when so endorsed converts the instrument unless the amount paid for the instrument is received by the endorser or applied consistently with the endorsement;
- (2) A depository bank that purchases the instrument or takes it for collection when so endorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the endorser or applied consistently with the endorsement;
- (3) A payor bank that is also the depository bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the endorser or applied consistently with the endorsement; and
- (4) Except as otherwise provided in paragraph (3) of this subsection, a payor bank or intermediary bank may disregard the endorsement and is not liable if the proceeds of the instrument are not received by the endorser or applied consistently with the endorsement.

(D) Except for an endorsement covered by subsection (C) of this section, if an instrument bears an endorsement using words to the effect that payment is to be made to the endorsee as agent, trustee, or other fiduciary for the benefit of the endorser or another person, the following rules apply:

- (1) Unless there is notice of breach of fiduciary duty as provided in Section 49-4-307 of this title, a person who purchases the instrument from the endorsee or takes the instrument from the endorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the endorsee without regard to whether the endorsee violates a fiduciary duty to the endorser; and
- (2) A subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by

the restriction in the endorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach of fiduciary duty.

(E) The presence on an instrument of an endorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under subsection (C) of this section or has notice or knowledge of breach of fiduciary duty as stated in subsection (D) of this section.

(F) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an endorsement to which this section applies and the payment is not permitted by this section.

Section 49-4-207 Reacquisition

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel endorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An endorser whose endorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

SECTION THREE ENFORCEMENT OF INSTRUMENTS

Section 49-4-301 Person Entitled to Enforce instrument

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 49-4-309 or subsection (D) of Section 49-4-418 of this title. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Section 49-4-302 Holder in Due Course

(A) Subject to subsection (C) of this section and subsection (D) of Section 49-4-106 of this title, “holder in due course” means the holder of an instrument if:

- (1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and
 - (2) the holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306 of this title, and (vi) without notice that any party has a defense or claim in recoupment described in subsection (A) of Section 49-4-305 of this title.
- (B) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (A) of this section, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.
- (C) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.
- (D) If, under paragraph (1) of subsection (A) of Section 49-4-303 of this title, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.
- (E) If (i) the person entitled to enforce an instrument

has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

- (F) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.
- (G) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

Section 49-4-303 Value and Consideration

- (A) An instrument is issued or transferred for value if:
- (1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;
 - (2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;
 - (3) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;
 - (4) the instrument is issued or transferred in exchange for a negotiable instrument; or
 - (5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.
- (B) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in subsection (A) of this section, the instrument is also issued for consideration.

Section 49-4-304 Overdue instrument

(A) An instrument payable on demand becomes overdue at the earliest of the following times:

- (1) on the day after the day demand for payment is duly made;
- (2) if the instrument is a check, ninety (90) days after its date; or
- (3) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date which is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(B) With respect to an instrument payable at a definite time the following rules apply:

- (1) If the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue upon default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured;
- (2) If the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date; and
- (3) If a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(C) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Section 49-4-305 Defenses and Claims in RECOUPMENT

(A) Except as stated in subsection (B) of this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

- (1) a defense of the obligor based on (i) infancy of the obligor to the extent it is a defense to a simple contract, (ii) duress, lack of legal capacity, or illegality of the transaction which, under other law, nullifies the obligation of the obligor, (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity

to learn of its character or its essential terms, or (iv) discharge of the obligor in insolvency proceedings;

- (2) a defense of the obligor stated in another section of this article or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

- (3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(B) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in paragraph (1) of subsection (A) of this section, but is not subject to defenses of the obligor stated in paragraph (2) of subsection (A) of this section or claims in recoupment stated in paragraph (3) of subsection (A) of this section against a person other than the holder.

(C) Except as stated in subsection (D) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 49-4-306 of this title) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(D) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under subsection (A) of this section that the accommodated

party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

Section 49-4-306 Claims to An instrument

A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

Section 49-4-307 notice of Breach of Fiduciary Duty

(A) In this section:

- (1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument; and
- (2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in paragraph (1) of this subsection is owed.

(B) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

- (1) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;
- (2) In the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person;
- (3) If an instrument is issued by the represented

person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty; and

- (4) If an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is (i) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary, (ii) taken in a transaction known by the taker to be for the personal benefit of the fiduciary, or (iii) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Section 49-4-308 Proof of Signatures and Status as Holder in Due Course

(A) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under section 49-4-402.

(B) If the validity of signatures is admitted or proved and there is compliance with subsection (A) of this section, a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under section 49-4-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

Section 49-4-309 Enforcement of Lost, Destroyed, or Stolen instrument

- (A) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
- (B) A person seeking enforcement of an instrument under subsection (A) of this section must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, section 49-4-308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Section 49-4-310 Effect of instrument on Obligation for Which Taken

- (A) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an endorser of the instrument.
- (B) Unless otherwise agreed and except as provided in subsection (A) of this section, if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:
- (1) In the case of an uncertified check, suspen-

sion of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check;

- (2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment;
- (3) Except as provided in paragraph (4) of this subsection, if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation; and
- (4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

- (C) If an instrument other than one described in subsection (A) or (B) of this section is taken for an obligation, the effect is (i) that stated in subsection (A) of this section if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (B) of this section in any other case.

Section 49-4-311 Accord and Satisfaction by Use of instrument

- (A) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.

(B) Unless subsection (C) of this section applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(C) Subject to subsection (D) of this section, a claim is not discharged under subsection (B) of this section if either of the following applies:

- (1) The claimant, if an organization, proves that
 - (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and
 - (ii) the instrument or accompanying communication was not received by that designated person, office or place; or
- (2) The claimant, whether or not an organization, proves that within ninety (90) days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This paragraph does not apply if the claimant is an organization that sent a statement complying with subparagraph (i) of paragraph (1) of this subsection.

(D) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

**Section 49-4-312 Lost, Destroyed, or Stolen
Cashier's Check, Teller's Check, or Certified
Check**

(A) In this section:

- (1) "Check" means a cashier's check, teller's check, or certified check;
- (2) Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen;

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process; and

(4) "Obligated bank" means the issuer of a cashier's check or a teller's check or the acceptor of a certified check.

(B) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

- (1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the ninetieth (90th) day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth (90th) day following the date of the acceptance, in the case of a certified check;
- (2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to en-

force the check discharges all liability of the obligated bank with respect to the check;

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to paragraph (1) of subsection (A) of section 49-5-302, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(C) If the obligated bank pays the amount of a check to a claimant under paragraph (4) of subsection (B) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(D) If a claimant has the right to assert a claim under subsection (B) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or section 49-4-309.

SECTION FOUR LIABILITY OF PARTIES

Section 49-4-401 Signature

(A) A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 49-4-402 of this title.

(B) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Section 49-4-402 Signature by Representative

(A) If a person acting, or purporting to act, as a rep-

resentative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(B) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument; and

(2) Subject to subsection (C) of this section, if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity or (ii) the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(C) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Section 49-4-403 Unauthorized Signature

(A) Unless otherwise provided in this chapter or Chapter 5 of this title, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be rati-

fied for all purposes of this article.

- (B) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.
- (C) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this article which makes the unauthorized signature effective for the purposes of this article.

Section 49-4-404 Impostors; Fictitious Payees

- (A) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an endorsement of the instrument by any person in the name of the payee is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (B) If (i) a person whose intent determines to whom an instrument is payable (subsection (A) or (B) of Section 49-4-110 of this title) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special endorsement:
 - (1) Any person in possession of the instrument is its holder; and
 - (2) An endorsement by any person in the name of the payee stated in the instrument is effective as the endorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.
- (C) Under subsection (A) or (B) of this section, an endorsement is made in the name of a payee if (i) it is made in a name substantially similar to that of the payee or (ii) the instrument, whether or not endorsed, is deposited in a depository bank to an account in a name substantially similar to that of the payee.
- (D) With respect to an instrument to which subsec-

tion (A) or (B) of this section applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Section 49-4-405 Employer's Responsibility for Fraudulent Endorsement by Employee

(A) In this section:

- (1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer;
 - (2) "Fraudulent endorsement" means (i) in the case of an instrument payable to the employer, a forged endorsement purporting to be that of the employer, or (ii) in the case of an instrument with respect to which the employer is the issuer, a forged endorsement purporting to be that of the person identified as payee; and
 - (3) "Responsibility" with respect to instruments means authority (i) to sign or endorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.
- (B) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with

responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent endorsement of the instrument, the endorsement is effective as the endorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

- (C) Under subsection (B) of this section, an endorsement is made in the name of the person to whom an instrument is payable if (i) it is made in a name substantially similar to the name of that person or (ii) the instrument, whether or not endorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.

Section 49-4-406 Negligence Contributing to forged Signature or Alteration of instrument

- (A) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.
- (B) Under subsection (A) of this section, if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure substantially contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.
- (C) Under subsection (A) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (B) of this section, the burden of proving failure to exercise ordinary care is on the person precluded.

Section 49-4-407 Alteration

- (A) “Alteration” means (i) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or (ii) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.
- (B) Except as provided in subsection (C) of this section, an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.
- (C) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument (i) according to its original terms, or (ii) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Section 49-4-408 Drawee not Liable on Unaccepted Draft

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Section 49-4-409 Acceptance of Draft; Certified Check

- (A) “Acceptance” means the drawee’s signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee’s signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.
- (B) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.
- (C) If a draft is payable at a fixed period after sight and the acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.
- (D) “Certified check” means a check accepted by the bank on which it is drawn. Acceptance may

be made as stated in subsection (A) of this section or by a writing on the check which indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Section 49-4-410 Acceptance Varying Draft

- (A) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.
- (B) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.
- (C) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and endorser that does not expressly assent to the acceptance is discharged.

Section 49-4-411 Refusal to Pay Cashier's Checks, Teller's Checks, and Certified Checks

- (A) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.
- (B) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.
- (C) Expenses or consequential damages under subsection (B) of this section are not recoverable if the refusal of the obligated bank to pay occurs because (i) the bank suspends payments, (ii) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument, (iii) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument, or (iv) payment is prohibited by law.

Section 49-4-412 Obligation of Issuer of note or Cashier's Check

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Section 49-4-115 and 49-4-407 of this title. The obligation is owed to a person entitled to enforce the instrument or to an endorser who paid the instrument under Section 49-4-415 of this title.

Section 49-4-413 Obligation of Acceptor

- (A) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Section 49-4-115 and 49-4-407 of this title. The obligation is owed to a person entitled to enforce the draft or to the drawer or an endorser who paid the draft under Section 49-4-414 or 49-4-415 of this title.
- (B) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If (i) the certification or acceptance does not state an amount, (ii) the amount of the instrument is subsequently raised, and (iii) the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.

Section 49-4-414 Obligation of Drawer

- (A) This section does not apply to cashier's checks or other drafts drawn on the drawer.
- (B) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Section 49-4-115 and 49-4-407 of this title. The obligation is

owed to a person entitled to enforce the draft or to an endorser who paid the draft under Section 49-4-415 of this title.

- (C) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.
- (D) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an endorser under subsections (A) and (C) of Section 49-4-415 of this title.
- (E) If a draft states that it is drawn “without recourse” or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under subsection (B) of this section to pay the draft if the draft is not a check. A disclaimer of the liability stated in subsection (B) of this section is not effective if the draft is a check.
- (F) If (i) a check is not presented for payment or given to a depository bank for collection within thirty (30) days after its date, (ii) the drawee suspends payments after expiration of the thirty-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Section 49-4-415 Obligation of Endorser

- (A) Subject to subsections (B), (C), (D), and (E) of this section and to subsection (D) of Section 49-4-419 of this title, if an instrument is dishonored, an endorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was endorsed, or (ii) if the endorser endorsed an incomplete instrument, according to its terms when completed, to the extent stated in Section 49-4-115 and 49-4-407 of this title. The obligation of the endorser is owed to a person entitled to enforce the instrument or to a subsequent endorser who paid the instrument under this section.
- (B) If an endorsement states that it is made “without recourse” or otherwise disclaims liability of the

endorser, the endorser is not liable under subsection (A) of this section to pay the instrument.

- (C) If notice of dishonor of an instrument is required by Section 49-4-503 of this title and notice of dishonor complying with that section is not given to an endorser, the liability of the endorser under subsection (A) of this section is discharged.
- (D) If a draft is accepted by a bank after an endorsement is made, the liability of the endorser under subsection (A) of this section is discharged.
- (E) If an endorser of a check is liable under subsection (A) of this section and the check is not presented for payment, or given to a depository bank for collection, within thirty (30) days after the day the endorsement was made, the liability of the endorser under subsection (A) of this section is discharged.

Section 49-4-416 Transfer Warranties

- (A) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by endorsement, to any subsequent transferee that:
 - (1) The warrantor is a person entitled to enforce the instrument;
 - (2) All signatures on the instrument are authentic and authorized;
 - (3) The instrument has not been altered;
 - (4) The instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor; and
 - (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
- (B) A person to whom the warranties under subsection (A) of this section are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.
- (C) The warranties stated in subsection (A) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of

warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (B) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

- (D) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 49-4-417 Presentment Warranties

(A) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) The draft has not been altered; and
- (3) The warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.

(B) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(C) If a drawee asserts a claim for breach of warranty under subsection (A) of this section based on

an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 49-4-404 or 49-4-405 of this title or the drawer is precluded under Section 49-4-406 or 49-5-406 of this title from asserting against the drawee the unauthorized endorsement or alteration.

(D) If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

- (1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument; and
- (2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(E) The warranties stated in subsections (A) and (D) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under subsection (B) or (D) of this section is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(F) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 49-4-418 Payment or Acceptance by Mistake

(A) Except as provided in subsection (C) of this section, if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 49-5-403 of this title or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the

amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

- (B) Except as provided in subsection (C) of this section, if an instrument has been paid or accepted by mistake and the case is not covered by subsection (A) of this section, the person paying or accepting may, to the extent permitted by the law governing mistake and restitution, (i) recover the payment from the person to whom or for whose benefit payment was made or (ii) in the case of acceptance, may revoke the acceptance.
- (C) The remedies provided by subsection (A) or (B) of this section may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 49-4-417 or 49-5-407 of this title.
- (D) Notwithstanding Section 49-5-215 of this title, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under subsection (A) or (B) of this section, the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Section 49-4-419 instruments Signed for Accommodation

- (A) If an instrument is issued for value given for the benefit of a party to the instrument (“accommodated party”) and another party to the instrument (“accommodation party”) signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party “for accommodation”.
- (B) An accommodation party may sign the instrument as maker, drawer, acceptor, or endorser and, subject to subsection (D) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be

enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

- (C) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous endorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 49-4-605 of this title, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.
- (D) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if (i) execution of judgment against the other party has been returned unsatisfied, (ii) the other party is insolvent or in an insolvency proceeding, (iii) the other party cannot be served with process, or (iv) it is otherwise apparent that payment cannot be obtained from the other party.
- (E) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party who pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Section 49-4-420 Conversion of instrument

- (A) The law applicable to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by (i) the

issuer or acceptor of the instrument or (ii) a payee or endorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

- (B) In an action under subsection (A) of this section, the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.
- (C) A representative, other than a depository bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

SECTION FIVE DISHONOR

Section 49-4-501 Presentment

- (A) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument (i) to pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank, or (ii) to accept a draft made to the drawee.
- (B) The following rules are subject to Chapter 5 of this title, agreement of the parties, and clearing-house rules and the like:
 - (1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States; may be made by any commercially reasonable means, including an oral, written, or electronic communication; is effective when the demand for payment or acceptance is received by the person to whom presentment is made; and is effective if made to any one of two or more makers, acceptors, drawees, or other payors;
 - (2) Upon demand of the person to whom presentment is made, the person making presentment must (i) exhibit the instrument, (ii) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so, and (iii) sign a receipt on the instru-

ment for any payment made or surrender the instrument if full payment is made;

- (3) Without dishonoring the instrument, the party to whom presentment is made may (i) return the instrument for lack of a necessary endorsement, or (ii) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule; and
- (4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 o'clock p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

Section 49-4-502 Dishonor

- (A) Dishonor of a note is governed by the following rules:
 - (1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment;
 - (2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later; and
 - (3) If the note is not payable on demand and paragraph (2) of this subsection does not apply, the note is dishonored if it is not paid on the day it becomes payable.
- (B) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:
 - (1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 49-5-301 or 49-5-302 of this title, or becomes

accountable for the amount of the check under Section 49-5-302 of this title;

- (2) If a draft is payable on demand and paragraph (1) of this subsection does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment;
 - (3) If a draft is payable on a date stated in the draft, the draft is dishonored if (i) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later, or (ii) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment; and
 - (4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.
- (C) Dishonor of an unaccepted documentary draft occurs according to the rules stated in paragraphs (2), (3) and (4) of subsection (B) of this section, except that payment or acceptance may be delayed without dishonor until no later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those paragraphs.
- (D) Dishonor of an accepted draft is governed by the following rules:
- (1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment; and
 - (2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.
- (E) In any case in which presentment is otherwise required for dishonor under this section and presentment is excused under Section 49-4-504 of this title, dishonor occurs without presentment if the instrument is not duly accepted or paid.
- (F) If a draft is dishonored because timely accep-

tance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Section 49-4-503 notice of Dishonor

- (A) The obligation of an endorser stated in subsection (A) of Section 49-4-415 of this title and the obligation of a drawer stated in subsection (D) of Section 49-4-414 of this title may not be enforced unless (i) the endorsers or drawer is given notice of dishonor of the instrument complying with this section or (ii) notice of dishonor is excused under subsection (B) of Section 49-4-504 of this title.
- (B) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.
- (C) Subject to subsection (C) of Section 49-4-504 of this title, with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within thirty (30) days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within thirty (30) days following the day on which dishonor occurs.

Section 49-4-504 Excused Presentment and notice of Dishonor

- (A) Presentment for payment or acceptance of an instrument is excused if (i) the person entitled to present the instrument cannot with reasonable diligence make presentment, (ii) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings, (iii) by the terms of the instrument presentment is not necessary to enforce the obligation of endorsers or the drawer, (iv) the drawer or endorser whose obligation is being enforced has

waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted, or (v) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(B) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(C) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Section 49-4-505 Evidence of Dishonor

(A) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

- (1) A document regular in form as provided in subsection (B) of this section which purports to be a protest;
- (2) A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; and
- (3) A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

(B) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that

notice of dishonor has been given to some or all parties.

SECTION SIX DISCHARGE AND PAYMENT

Section 49-4-601 Discharge and Effect of Discharge

(A) The obligation of a party to pay the instrument is discharged as stated in this article or by an act or agreement with the party which would discharge an obligation to pay money under a simple contract.

(B) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

Section 49-4-602 Payment

(A) Subject to subsection (B) of this section, an instrument is paid to the extent payment is made (i) by or on behalf of a party obliged to pay the instrument, and (ii) to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 49-4-306 of this title by another person.

(B) The obligation of a party to pay the instrument is not discharged under subsection (A) of this section if:

- (1) A claim to the instrument under Section 49-4-306 of this title is enforceable against the party receiving payment and (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction, or (ii) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or
- (2) The person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

Section 49-4-603 Tender of Payment

- (A) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.
- (B) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an endorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.
- (C) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Section 49-4-604 Discharge by Cancellation or Renunciation

- (A) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed writing.
- (B) Cancellation or striking out of an endorsement pursuant to subsection (A) of this section does not affect the status and rights of a party derived from the endorsement.

Section 49-4-605 Discharge of Endorsers, Accommodation, and Other Parties

- (A) In this section, the term "endorser" includes a drawer having the obligation described in subsection (D) of Section 49-4-414 of this title.

- (B) Discharge, under Section 49-4-604 of this title, of the obligation of a party to pay an instrument does not discharge the obligation of an endorser or accommodation party having a right of recourse against the discharged party.
- (C) If a person entitled to enforce an instrument agrees, with or without consideration, to an extension of the due date of the obligation of a party to pay the instrument, the extension discharges an endorser or accommodation party having a right of recourse against the party whose obligation is extended to the extent the endorser or accommodation party proves that the extension caused loss to the endorser or accommodation party with respect to the right of recourse.
- (D) If a person entitled to enforce an instrument agrees, with or without consideration, to a material modification of the obligation of a party other than an extension of the due date, the modification discharges the obligation of an endorser or accommodation party having a right of recourse against the person whose obligation is modified to the extent the modification causes loss to the endorser or accommodation party with respect to the right of recourse. The loss suffered by the endorser or accommodation party as a result of the modification is equal to the amount of the right of recourse unless the person enforcing the instrument proves that no loss was caused by the modification or that the loss caused by the modification was an amount less than the amount of the right of recourse.
- (E) If the obligation of a party to pay an instrument is secured by an interest in collateral and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of an endorser or accommodation party having a right of recourse against the obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent (i) the value of the interest is reduced to an amount less than the amount of the right of recourse of the party asserting discharge, or (ii) the reduction in value of the interest causes an increase in the amount by which the amount of the right of recourse exceeds the value of the interest. The burden of proving impairment is on the party asserting discharge.
- (F) If the obligation of a party is secured by an interest in collateral not provided by an accom-

modation party and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of any party who is jointly and severally liable with respect to the secured obligation is discharged to the extent the impairment causes the party asserting discharge to pay more than that party would have been obliged to pay, taking into account rights of contribution, if impairment had not occurred. If the party asserting discharge is an accommodation party not entitled to discharge under subsection (E) of this section, the party is deemed to have a right to contribution based on joint and several liability rather than a right to reimbursement. The burden of proving impairment is on the party asserting discharge.

- (G) Under subsection (E) or (F) of this section, impairing value of an interest in collateral includes (i) failure to obtain or maintain perfection or recordation of the interest in collateral, (ii) release of collateral without substitution of collateral of equal value, (iii) failure to perform a duty to preserve the value of collateral owed, under Chapter 7 of this title or other law, to a debtor or surety or other person secondarily liable, or (iv) failure to comply with applicable law in disposing of collateral.
- (H) An accommodation party is not discharged under subsection (C), (D), or (E) of this section unless the person entitled to enforce the instrument knows of the accommodation or has notice under subsection (C) of Section 49-4-419 of this title that the instrument was signed for accommodation.
- (I) A party is not discharged under this section if (i) the party asserting discharge consents to the event or conduct that is the basis of the discharge, or (ii) the instrument or a separate agreement of the party provides for waiver of discharge under this section either specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral.

CHAPTER FIVE

BANK DEPOSITS AND COLLECTIONS

SECTION ONE

GENERAL PROVISIONS AND DEFINITIONS

Section 49-5-101 Short Title

This chapter may be cited as Uniform Commercial Code - Bank Deposits and Collections.

Section 49-5-102 Applicability

- (A) To the extent that items within this chapter are also within Chapter 4 of this title, they are subject to those chapters. If there is conflict, this article governs Chapter 4.
- (B) The liability of a bank for action or nonaction with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located.

Section 49-5-103 Variation by Agreement; Measure of Damages; Certain Action Constituting ordinary Care

- (A) The effect of the provisions of this article may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure of damages for the lack or failure; however, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.
- (B) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under subsection (A) of this section, whether or not specifically assented to by all parties interested in items handled.
- (C) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this article, is prima facie the exercise of ordinary care.
- (D) The specification or approval of certain procedures by this article is not disapproval of other procedures that may be reasonable under the circumstances.

- (E) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith it includes any other damages the party suffered as a proximate consequence.

Section 49-5-104 Definitions and index of Definitions

(A) In this article unless the context otherwise requires:

- (1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;
- (2) "Afternoon" means the period of a day between noon and midnight;
- (3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;
- (4) "Clearing house" means an association of banks or other payors regularly clearing items;
- (5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;
- (6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certified securities or instructions for uncertificated or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;
- (7) "Draft" means a draft as defined in Section 49-4-104 of this title or an item, other than an instrument, that is an order;
- (8) "Drawee" means a person ordered in a draft to make payment;
- (9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter Five of this title or a credit or debit card slip;

- (10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

- (11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

- (12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(B) Other definitions applying to this article and the sections of this title in which they appear are:

- (1) "Agreement for electronic presentment" Section 49-5-110
- (2) "Bank" Section 49-5-105
- (3) "Collecting bank" Section 49-5-105
- (4) "Depository bank" Section 49-5-105
- (5) "Intermediary bank" Section 49-5-105
- (6) "Payor bank" Section 49-5-105
- (7) "Presenting bank" Section 49-5-105
- (8) "Presentment Notice" Section 49-5-110

(C) The following definitions in other articles of this title apply to this article:

- (1) "Acceptance" Section 49-4-409
- (2) "Alteration" Section 49-4-407
- (3) "Cashier's check" Section 49-4-104
- (4) "Certificate of deposit" Section 49-4-104
- (5) "Certified check" Section 49-4-409
- (6) "Check" Section 49-4-104
- (7) "Draft" Section 49-4-104
- (8) "Good faith" Section 49-4-103
- (9) "Holder in due course" Section 49-4-302
- (10) "Instrument" Section 49-4-104
- (11) "Notice of dishonor" Section 49-4-503
- (12) "Order" Section 49-4-103

- (13) “Ordinary care” Section 49-4-103
- (14) “Person entitled to enforce” Section 49-4-301
- (15) “Presentment” Section 49-4-501
- (16) “Promise” Section 49-4-103
- (17) “Prove” Section 49-4-103
- (18) “Teller’s check” Section 49-4-104
- (19) “Unauthorized signature” Section 49-4-403

(D) In addition, Chapter 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 49-5-105 “Bank”; “Depository Bank”; “Payor Bank”; “intermediary Bank”; “Collecting Bank”; “Presenting Bank”

In this article:

- (A) “Bank” means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company;
- (B) “Depository bank” means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;
- (C) “Payor bank” means a bank that is the drawee of a draft;
- (D) “Intermediary bank” means a bank to which an item is transferred in course of collection except the depository or payor bank;
- (E) “Collecting bank” means a bank handling an item for collection except the payor bank; and
- (F) “Presenting bank” means a bank presenting an item except a payor bank.

Section 49-5-106 Payable Through or Payable At Bank; Collecting Bank

- (A) If an item states that it is “payable through” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the item may be presented for payment only by or through the bank.
- (B) If an item states that it is “payable at” a bank identified in the item, (i) the item designates the bank as a collecting bank and does not by itself authorize the bank to pay the item, and (ii) the

item may be presented for payment only by or through the bank.

- (C) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

Section 49-5-107 Separate office of Bank

A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notice or orders must be given under this article and under Chapter 4 of this title.

Section 49-5-108 Time of Receipt of Items

- (A) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2:00 p.m. or later as a cut-off hour for the handling of money and items and the making of entries on its books.
- (B) An item or deposit of money received on any day after a cut-off so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Section 49-5-109 Delays

- (A) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this article for a period not exceeding two (2) additional banking days without discharge of drawers or endorsers or liability to its transferor or a prior party.
- (B) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this article or by instructions is excused if (i) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank, and (ii) the bank exercises such diligence as the circumstances require.

Section 49-5-110 Electronic Presentment

- (A) “Agreement for electronic presentment” means an agreement, clearing-house rule, or Federal

Reserve regulation or operating circular, providing that presentment of an item may be made by transmission of an image of an item or information describing the item (“presentment notice”) rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(B) Presentment of an item pursuant to an agreement for presentment is made when the presentment notice is received.

(C) If presentment is made by presentment notice, a reference to “item” or “check” in this article means the presentment notice unless the context otherwise indicates.

Section 49-5-111 Statute of Limitations

An action to enforce an obligation, duty, or right arising under this article must be commenced within three (3) years after the claim for relief accrues.

SECTION TWO COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

Section 49-5-201 Status of Collecting Bank as Agent and Provisional Status of Credits; Applicability of Article; Item Endorsed “Pay Any Bank”

(A) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or subagent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of endorsement or lack of endorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(B) After an item has been endorsed with the words “pay any bank” or the like, only a bank may acquire the rights of a holder until the item has been:

- (1) returned to the customer initiating collection; or
- (2) specially endorsed by bank to a person who is not a bank.

Section 49-5-202 Responsibility for Collection or Return; When Action Timely

(A) A collecting bank must exercise ordinary care in:

- (1) Presenting an item or sending it for presentment;
- (2) Sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank’s transferor after learning that the item has not been paid or accepted, as the case may be;
- (3) Settling for an item when the bank receives final settlement; and
- (4) Notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(B) A collecting bank exercises ordinary care under subsection (A) of this section by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(C) Subject to paragraph (1) of subsection (A) of this section, a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

Section 49-5-203 Effect of instructions

Subject to Chapter 4 of this title concerning conversion of instruments (Section 49-4-420 of this title) and restrictive endorsements (Section 49-4-206 of this title), only a collecting bank’s transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

Section 49-5-204 Methods of Sending and Presenting; Sending Directly to Payor Bank

- (A) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.
- (B) A collecting bank may send:
 - (1) An item directly to the payor bank;
 - (2) An item to a nonbank payor if authorized by its transferor; and
 - (3) An item other than documentary drafts to a nonbank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.
- (C) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Section 49-5-205 Depository Bank Holder of Unendorsed Item

If a customer delivers an item to a depository bank for collection:

- (A) The depository bank becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer endorses the item, and, if the bank satisfies the other requirements of Section 49-4-302 of this title, it is a holder in due course; and
- (B) The depository bank warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Section 49-5-206 Transfer Between Banks

Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

Section 49-5-207 Transfer Warranties

- (A) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:
 - (1) The warrantor is a person entitled to enforce the item;

- (2) All signatures on the item are authentic and authorized;
 - (3) The item has not been altered;
 - (4) The item is not subject to a defense or claim in recoupment (subsection (A) of Section 49-4-305 of this title) of any party that can be asserted against the warrantor; and
 - (5) The warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.
- (B) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 49-4-115 and 49-4-407 of this title. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an endorsement stating that it is made "without recourse" or otherwise disclaiming liability.
 - (C) A person to whom the warranties under subsection (A) of this section are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.
 - (D) The warranties stated in subsection (A) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.
 - (E) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 49-5-208 Presentment Warranties

(A) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

- (1) The warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;
- (2) The draft has not been altered; and
- (3) The warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized.

(B) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft (i) breach of warranty is a defense to the obligation of the acceptor, and (ii) if the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(C) If a drawee asserts a claim for breach of warranty under subsection (A) of this section based on an unauthorized endorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the endorsement is effective under Section 49-4-404 or 49-4-405 of this title or the drawer is precluded under Section 49-4-406 or 49-5-406 of this title from asserting against the drawee the unauthorized endorsement or alteration.

(D) If (i) a dishonored draft is presented for payment to the drawer or an endorser or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the

person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(E) The warranties stated in subsections (A) and (D) of this section cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within thirty (30) days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(F) A claim for relief for breach of warranty under this section accrues when the claimant has reason to know of the breach.

Section 49-5-209 Encoding and Retention Warranties

(A) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depository bank encodes, that bank also makes the warranty.

(B) A person who undertakes to retain an item pursuant to an agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depository bank undertakes to retain an item, that bank also makes this warranty.

(C) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Section 49-5-210 Security interest of Collecting Bank in Items, Accompanying documents and Proceeds

(A) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

- (1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
- (2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
- (3) If it makes an advance on or against the item.

(B) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(C) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 7 of this title, but:

- (1) No security agreement is necessary to make the security interest enforceable (paragraph (A) of subsection (1) of Section 49-7-203 of this title);
- (2) No filing is required to perfect the security interest; and
- (3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Section 49-5-211 When Bank Gives Value for Purposes of Holder in Due Course

For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise

complies with the requirements of Section 49-4-302 of this title on what constitutes a holder in due course.

Section 49-5-212 Presentment by notice of Item not Payable by, Through, or At Bank; Liability of Drawer or Endorser

(A) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under Section 49-4-501 by the close of the bank's next banking day after it knows of the requirement.

(B) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 49-4-501 of this title is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or endorser by sending it notice of the facts.

Section 49-5-213 Medium and Time of Settlement by Bank

(A) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like, or agreement. In the absence of such prescription:

- (1) The medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and
- (2) The time of settlement, is:
 - (a) with respect to tender of settlement by cash, a cashier's check, or teller's check, when the cash or check is sent or delivered;
 - (b) with respect to tender of settlement by credit in an account in a Federal Reserve bank, when the credit is made;
 - (c) with respect to tender of settlement by a credit or debit to an account in a

bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

- (d) with respect to tender of settlement by a funds transfer, when payment is made pursuant to subsection (A) of Section 49-5-406 of this title to the person receiving settlement.

(B) If the tender of settlement is not by a medium authorized by subsection (A) of this section or the time of settlement is not fixed by subsection (A) of this section, no settlement occurs until the tender or settlement is accepted by the person receiving settlement.

(C) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

- (1) Presents or forwards the check for collection, settlement is final when the check is finally paid; or
- (2) Fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(D) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

Section 49-5-214 Right of Charge-Back or Refund; Liability of Collecting Bank; Return of Item

(A) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reason-

able time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customer, but it is liable for any loss resulting from the delay. These rights to revoke, charge back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(B) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(C) A depository bank that is also the payor may charge back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (Section 49-5-301 of this title).

(D) The right to charge back is not affected by:

- (1) Previous use of a credit given for the item; or
- (2) Failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(E) A failure to charge back or claim refund does not affect other rights of the bank against the customer or any other party.

(F) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Section 49-5-215 Final Payment of Item by Payor Bank; When Provisional Debits and Credits Become Final; When Certain Credits Become Available for withdrawal

(A) An item is finally paid by a payor bank when the bank has first done any of the following:

- (1) Paid the item in cash;
- (2) Settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or
- (3) Made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clear-

ing-house rule, or agreement.

- (B) If provisional settlement for an item does not become final, the item is not finally paid.
- (C) If provisional settlement for an item between the presenting and payor banks is made through a clearinghouse or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the items by the payor bank.
- (D) If a collecting bank receives a settlement for an item which is or becomes final, the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.
- (E) Subject to (i) applicable law stating a time for availability of funds and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right:
 - (1) If the bank has received a provisional settlement for the item, when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or
 - (2) If the bank is both the depository bank and the payor bank, and the item is finally paid, at the opening of the bank's second banking day following receipt of the item.
- (F) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

Section 49-5-216 insolvency and Preference

- (A) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the pre-

senting bank or the closed bank's customer.

- (B) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.
- (C) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.
- (D) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final and the bank suspends payments without making a settlement for the item with its customer which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

SECTION THREE

COLLECTION OF ITEMS: PAYOR BANKS

Section 49-5-301 Deferred Posting; Recovery of Payment by Return of Items; Time of Dishonor; Return of Items by Payor Bank

- (A) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:
 - (1) Returns the item; or
 - (2) Sends written notice of dishonor or nonpayment if the item is unavailable for return.
- (B) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in subsection (A) of this section.
- (C) Unless previous notice of dishonor has been sent an item is dishonored at the time when for

purposes of dishonor it is returned or notice sent in accordance with this section.

(D) An item is returned:

- (1) As to an item presented through a clearing-house, when it is delivered to the presenting or last collecting bank or to the clearinghouse or is sent or delivered in accordance with clearinghouse rules; or
- (2) In all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to instructions.

Section 49-5-302 Payor Bank's Responsibility for Late Return of Item

(A) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

- (1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or
- (2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(B) The liability of a payor bank to pay an item pursuant to subsection (A) of this section is subject to defenses based on breach of presentment warranty (Section 49-5-208 of this title) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

Section 49-5-303 When Items Subject to notice, Stop-Payment order, Legal Process, or Setoff; order in Which Items May Be Charged or Certified

(A) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received

or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

- (1) The bank accepts or certifies the item;
- (2) The bank pays the item in cash;
- (3) The bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;
- (4) The bank becomes accountable for the amount of the item under Section 49-5-302 of this title dealing with the payor bank's responsibility for late return of items; or
- (5) With respect to checks, a cutoff hour no earlier than one (1) hour after the opening of the next banking day after the banking day on which the bank received the check and no later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(B) Subject to subsection (A) of this section, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order.

**SECTION FOUR
RELATIONSHIP BETWEEN PAYOR BANK
AND ITS CUSTOMER**

Section 49-5-401 When Bank May Charge Customer's Account

- (A) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and bank.
- (B) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.
- (C) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in subsection (B) of Section 49-5-403

of this title for stop-payment orders, and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 49-5-303 of this title. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor or subsequent items under Section 49-5-402 of this title.

(D) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

- (1) The original terms of the altered item; or
- (2) The terms of the completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

Section 49-5-402 Bank's Liability to Customer for Wrongful Dishonor; Time for Determining insufficiency of Account

- (A) Except as otherwise provided in this article, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.
- (B) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.
- (C) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based and may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one (1) determination need be made. If, at the election of the payor bank, a subsequent balance determination is made for the purpose of reevaluat-

ing the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Section 49-5-403 Customer's Right to Stop Payment; Burden of Proof of Loss

- (A) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 49-5-303 of this title. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.
- (B) A stop-payment order is effective for six (6) months, but it lapses after fourteen (14) calendar days if the original order was oral and was not confirmed in writing within that period. A stop-payment order may be renewed for additional six-month periods by a writing given to the bank within a period during which the stop-payment order is effective.
- (C) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 49-5-402 of this title.

Section 49-5-404 Bank not Obligated to Pay Check More Than Six Months Old

A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six (6) months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Section 49-5-405 Death or incompetence of Customer

- (A) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is

not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

- (B) Even with knowledge, a bank may for ten (10) days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

Section 49-5-406 Customer's Duty to Discover and Report Unauthorized Signature or Alteration

- (A) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment.
- (B) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven (7) years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item.
- (C) If a bank sends or makes available a statement of account or items pursuant to subsection (A) of this section, the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must

promptly notify the bank of the relevant facts.

- (D) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subsection (C) of this section, the customer is precluded from asserting against the bank:
- (1) The customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and
 - (2) The customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding thirty (30) days, in which to examine the item or statement of account and notify the bank.
- (E) If subsection (D) of this section applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure substantially contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with subsection (C) of this section and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under subsection (D) of this section does not apply.
- (F) Without regard to care or lack of care of either the customer or the bank, a customer who does not within one (1) year after the statement or items are made available to the customer (subsection (A) of this section) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 49-5-208 of this title with respect to the unauthorized signature or alteration to which the preclusion applies.

Section 49-5-407 Payor Bank's Right to Subrogation on Improper Payment

If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

- (A) Of any holder in due course on the item against the drawer or maker;
- (B) Of the payee or any other holder of the item against the drawer or maker either on the item or under transaction out of which the item arose; and
- (C) Of the drawer or maker against the payee or any other holder of the item with respect to the transaction of which the item arose.

SECTION FIVE

COLLECTION OF DOCUMENTARY DRAFTS

Section 49-5-501 Handling of documentary Drafts; Duty to Send for Presentment and to notify Customer of Dishonor

A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

Section 49-5-502 Presentment of "on Arrival" Drafts

If a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Section 49-5-503 Responsibility of Presenting Bank for documents and Goods; Report of Reasons for Dishonor; Referee in Case of Need

Unless otherwise instructed, a bank presenting a documentary draft:

- (A) Must deliver the documents to the drawee on acceptance of the draft if it is payable more than three (3) days after presentment; otherwise, only on payment; and
- (B) Upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefore, and must request instructions.

However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

Section 49-5-504 Privilege of Presenting Bank to Deal with Goods; Security interest for Expenses

- (A) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.
- (B) For its reasonable expenses incurred by action under subsection (A) of this section, the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

CHAPTER SIX

**TRANSITION TO THIS ACT;
TRANSITION TO PROVISIONS**

Section 49-6-101 Transition to this Act; General Rule

Transactions validly entered into and which were subject to the provisions of the U.C.C. prior to this act, and which would be subject to this act, if they had been entered into after the effective date of this act and the rights, duties and interests flowing from such transactions remain valid and may be terminated, completed, consummated or enforced as required or permitted by this act. Security interests arising out of such transactions which are perfected when this act becomes effective shall remain perfected until they lapse as provided herein, and may be continued as

permitted by this act, except as stated in Section 49-6-103.

Section 49-6-102 Transition Provision on Change of Requirement of Filing

A security interest for the perfection of which filing or the taking of possession was required under the U.C.C. prior to this act and which attached prior to the effective date of this act but was not perfected shall be deemed perfected on the effective date of this act if this act permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made.

Section 49-6-103 Transition Provision on Change of Place of Filing

- (A) A financing statement or continuation statement which has not lapsed shall remain effective for the period provided in the U.C.C. under which it is filed, but for not less than five (5) years after the filing.
- (B) With respect to any collateral acquired by the debtor subsequent to the effective date of this act, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under the provisions of this act.
- (C) The effectiveness of any financing statement or continuation statement filed prior to the effective date of this act may be continued by a continuation statement as permitted by this act, except that if this act requires a filing in an office where there was no previous financing statement, a new financing statement conforming to Section 49-6-104 shall be filed in that office.
- (D) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if this act had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods.

Section 49-6-104 Required Refilings

- (A) If a security interest is perfected or has priority when this act takes effect as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons

under this act, the perfection and priority rights of the security interest continue until three (3) years after the effective date of this act. The perfection will then lapse unless a financing statement is filed as provided in subsection (D) of this section or unless the security interest is perfected otherwise than by filing.

- (B) If a security interest is perfected when this act takes effect under a law other than the U.C.C. prior to this act which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three (3) years after this act takes effect, unless a financing statement is filed as provided in subsection (D) of this section or unless the security interest is perfected otherwise than by filing, the other law continues to govern filing.
- (C) If a security interest is perfected by a filing, refiling or recording under a law repealed by this act which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (D) of this section or unless the security interest is perfected otherwise than by filing.
- (D) A financing statement may be filed within six (6) months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice, however denominated in any statute or other law repealed or modified by this act, state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated in another filing office under the U.C.C. prior to this act, or under any statute or other law repealed or modified by this act is still effective.

Section 49-6-105 Presumption that Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this act shall be deemed declaratory of the meaning of the laws of the Citizen Potawatomi Nation prior to this act.

CHAPTER SEVEN
SECURED TRANSACTIONS; SALES OF
ACCOUNTS AND CHATTEL PAPER
SECTION ONE
GENERAL PROVISIONS

Section 49-7-101 Short Title

This chapter may be cited as Uniform Commercial Code-Secured Transactions.

Section 49-7-102 Definitions and index of Definitions

(A) Chapter 7 definitions. In this article:

- (1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.
- (2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.
- (3) “Account debtor” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons

obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

- (4) “Accounting”, except as used in “accounting for”, means a record:
 - (a) authenticated by a secured party;
 - (b) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five (35) days earlier or thirty-five (35) days later than the date of the record; and
 - (c) identifying the components of the obligations in reasonable detail.
- (5) “Agricultural lien” means an interest, other than a security interest, in farm products:
 - (a) which secures payment or performance of an obligation for:
 - (i) goods or services furnished in connection with a debtor’s farming operation; or
 - (ii) rent on real property leased by a debtor in connection with its farming operation;
 - (b) which is created by statute in favor of a person that:
 - (i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or
 - (ii) leased real property to a debtor in connection with the debtor’s farming operation; and
 - (c) whose effectiveness does not depend on the person’s possession of the personal property.
- (6) “As-extracted collateral” means:
 - (a) oil, gas, or other minerals that are subject to a security interest that:
 - (i) is created by a debtor having an interest in the minerals before extraction; and
 - (ii) attaches to the minerals as extracted; or
 - (b) accounts arising out of the sale at the wellhead or minehead of oil, gas,

or other minerals in which the debtor had an interest before extraction.

(7) “Authenticate” means:

- (a) to sign; or
- (b) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) “Bank” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts, or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

- (a) proceeds to which a security interest attaches;
- (b) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and
- (c) goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:

- (a) the claimant is an organization; or
- (b) the claimant is an individual and the claim:
 - (i) arose in the course of the claimant’s business or profession; and
 - (ii) does not include damages arising out of personal injury to or the death of an individual.

(14) “Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) “Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

- (a) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or
- (b) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) “Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

(17) “Commodity intermediary” means a person that:

- (a) is registered as a futures commission merchant under federal commodities law; or
 - (b) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.
- (18) “Communicate” means:
- (a) to send a written or other tangible record;
 - (b) to transmit a record by any means agreed upon by the persons sending and receiving the record; or
 - (c) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.
- (19) “Consignee” means a merchant to which goods are delivered in a consignment.
- (20) “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:
- (a) the merchant:
 - (i) deals in goods of that kind under a name other than the name of the person making delivery;
 - (ii) is not an auctioneer; and
 - (iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;
 - (b) with respect to each delivery, the aggregate value of the goods is one thousand dollars (\$1,000) or more at the time of delivery;
 - (c) the goods are not consumer goods immediately before delivery; and
 - (d) the transaction does not create a security interest that secures an obligation.
- (21) “Consignor” means a person that delivers goods to a consignee in a consignment.
- (22) “Consumer debtor” means a debtor in a consumer transaction.
- (23) “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.
- (24) “Consumer-goods transaction” means a consumer transaction in which:
- (a) an individual incurs an obligation primarily for personal, family, or household purposes; and
 - (b) a security interest in consumer goods secures the obligation.
- (25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.
- (26) “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.
- (27) “Continuation statement” means an amendment of a financing statement which:
- (a) identifies, by its file number, the initial financing statement to which it relates; and
 - (b) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.
- (28) “Debtor” means:
- (a) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;
 - (b) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or
 - (c) a consignee.
- (29) “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term

- does not include investment property or accounts evidenced by an instrument.
- (30) “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.
- (31) “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.
- (32) “Equipment” means goods other than inventory, farm products, or consumer goods.
- (33) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:
- (a) (a) crops grown, growing, or to be grown, including:
 - (i) crops produced on trees, vines, and bushes; and
 - (ii) aquatic goods produced in aquacultural operations;
 - (b) livestock, born or unborn, including aquatic goods produced in aquacultural operations;
 - (c) supplies used or produced in a farming operation; or
 - (d) products of crops or livestock in their unmanufactured states.
- (34) “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.
- (35) “File number” means the number assigned to an initial financing statement pursuant to Section 49-7-519.
- (36) “Filing office” means an office designated in Section 49-7-501 as the place to file a financing statement.
- (37) “Filing-office rule” means a rule adopted pursuant to Section 49-7-527.
- (38) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.
- (39) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Section 49-7-502(A) and (B). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.
- (40) “Fixtures” means goods that have become so related to particular real property that an interest in them arises under real property law.
- (41) “General intangible” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.
- (42) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (43) “Goods” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, mon-

ey, or oil, gas, or other minerals before extraction.

- (44) “Governmental unit” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.
- (45) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.
- (46) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.
- (47) “Inventory” means goods, other than farm products, which:
 - (a) are leased by a person as lessor;
 - (b) are held by a person for sale or lease or to be furnished under a contract of service;
 - (c) are furnished by a person under a contract of service; or
 - (d) consist of raw materials, work in process, or materials used or consumed in a business.
- (48) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.
- (49) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(50) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(51) “Lien creditor” means:

- (a) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (b) an assignee for benefit of creditors from the time of assignment;
- (c) a trustee in bankruptcy from the date of the filing of the petition; or
- (d) a receiver in equity from the time of appointment.

(52) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(53) “Manufactured-home transaction” means a secured transaction:

- (a) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or
- (b) in which a manufactured home, other

than a manufactured home held as inventory, is the primary collateral.

- (54) “Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.
- (55) “New debtor” means a person that becomes bound as debtor under Section 49-7-203(D) by a security agreement previously entered into by another person.
- (56) “New value” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.
- (57) “Noncash proceeds” means proceeds other than cash proceeds.
- (58) “Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
- (59) “Original debtor”, except as used in Section 49-7-310(C), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 49-7-203(D).
- (60) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.
- (61) “Person related to”, with respect to an individual, means:
- (a) the spouse of the individual;
 - (b) a brother, brother-in-law, sister, or sister-in-law of the individual;
 - (c) an ancestor or lineal descendant of the individual or the individual’s spouse; or

- (d) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.
- (62) “Person related to”, with respect to an organization, means:
- (a) a person directly or indirectly controlling, controlled by, or under common control with the organization;
 - (b) an officer or director of, or a person performing similar functions with respect to, the organization;
 - (c) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (a);
 - (d) the spouse of an individual described in subparagraph (a), (b), or (c); or
 - (e) an individual who is related by blood or marriage to an individual described in subparagraph (a), (b), (c), or (d) and shares the same home with the individual.
- (63) “Proceeds”, except as used in Section 49-7-609(B), means the following property:
- (a) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
 - (b) whatever is collected on, or distributed on account of, collateral;
 - (c) rights arising out of collateral;
 - (d) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
 - (e) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.
- (64) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay,

and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

- (65) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 49-7-620, 49-7-621, and 49-7-622.
- (66) “Public-finance transaction” means a secured transaction in connection with which:
 - (a) debt securities are issued;
 - (b) all or a portion of the securities issued have an initial stated maturity of at least twenty (20) years; and
 - (c) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a State or a governmental unit of a State.
- (67) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
- (68) “Record”, except as used in “for record”, “of record”, “record or legal title”, and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.
- (69) “Registered organization” means an organization organized solely under the law of a single State or the United States and as to which the State or the United States must maintain a public record showing the organization to have been organized.
- (70) “Secondary obligor” means an obligor to the extent that:
 - (a) the obligor’s obligation is secondary; or
 - (b) the obligor has a right of recourse with

respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

- (71) “Secured party” means:
 - (a) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;
 - (b) a person that holds an agricultural lien;
 - (c) a consignor;
 - (d) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;
 - (e) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or
 - (f) a person that holds a security interest arising under Section 49-2-401, 49-2-505, 49-2-711(C) or 49-5-210.
- (72) “Security agreement” means an agreement that creates or provides for a security interest.
- (73) “Send”, in connection with a record or notification, means:
 - (a) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or
 - (b) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (a).
- (74) “Software” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.
- (75) “State” means a State of the United States, the District of Columbia, Puerto Rico, the

United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

- (76) “Supporting obligation” means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.
- (77) “Tangible chattel paper” means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
- (78) “Termination statement” means an amendment of a financing statement which:
 - (a) identifies, by its file number, the initial financing statement to which it relates; and
 - (b) indicates either that it is a termination statement or that the identified financing statement is no longer effective.
- (79) “Transmitting utility” means a person primarily engaged in the business of:
 - (a) operating a railroad, subway, street railway, or trolley bus;
 - (b) transmitting communications electrically, electromagnetically, or by light;
 - (c) transmitting goods by pipeline or sewer; or
 - (d) transmitting or producing and transmitting electricity, steam, gas, or water.

(B) Definitions in other articles.

The following definitions in other chapters apply to this chapter:

- (1) “Check” Section 49-4-104.
- (2) “Contract for sale” Section 49-2-106.
- (3) “Holder in due course” Section 49-4-302.
- (4) “Issuer” (with respect to documents of title) Section 49-7-102.
- (5) “Lease” Section 49-3-103.
- (6) “Lease agreement” Section 49-3-103.
- (7) “Lease contract” Section 49-3-103.
- (8) “Leasehold interest” Section 49-3-103.

(9) “Lessee” Section 49-3-103.

(10) “Lessee in ordinary course of business” Section 49-3-103.

(11) “Lessor” Section 49-3-103.

(12) “Lessor’s residual interest” Section 49-3-103.

(13) “Merchant” Section 49-2-104.

(14) “Negotiable instrument” Section 49-4-104.

(15) “Note” Section 49-4-104.

(16) “Prove” Section 49-4-103.

(17) “Sale” Section 49-2-106.

(C) Chapter 1 definitions and principles

Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

Section 49-7-103 Purchase-Money Security interest; Application of Payments; Burden of Establishing

In this section:

- (A) “purchase-money collateral” means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and
- (B) “purchase-money obligation” means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.
- (C) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:
 - (1) to the extent that the goods are purchase-money collateral with respect to that security interest;
 - (2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and
 - (3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(D) Purchase-money security interest in software.

A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

- (1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and
- (2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(E) Consignor's inventory purchase-money security interest.

The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(F) Application of payment in non-consumer-goods transaction.

In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

- (1) in accordance with any reasonable method of application to which the parties agree;
- (2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or
- (3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:
 - (a) to obligations that are not secured; and
 - (b) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(G) No loss of status of purchase-money security interest in non-consumer-goods transaction.

In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

- (1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;
- (2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or
- (3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(H) Burden of proof in non-consumer-goods transaction.

In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(I) Non-consumer-goods transactions; no inference.

The limitation of the rules in subsections (E), (F), and (G) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Section 49-7-104 Control of Deposit Account

(A) Requirements for control.

A secured party has control of a deposit account if:

- (1) the secured party is the bank with which the deposit account is maintained;
- (2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or
- (3) the secured party becomes the bank's customer with respect to the deposit account.

(B) Debtor's right to direct disposition.

A secured party that has satisfied subsection (A) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Section 49-7-105 Control of Electronic Chattel Paper

A secured party has control of electronic chattel paper

if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

- (A) a single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (D), (E), and (F), unalterable;
- (B) the authoritative copy identifies the secured party as the assignee of the record or records;
- (C) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;
- (D) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
- (E) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
- (F) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Section 49-7-106 Control of investment Property

(A) Control of commodity contract.

A secured party has control of a commodity contract if:

- (1) the secured party is the commodity intermediary with which the commodity contract is carried; or
- (2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(B) Effect of control of securities account or commodity account.

A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Section 49-7-107 Control of Letter-of-Credit Right

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of

proceeds of the letter of credit per applicable law or practice.

Section 49-7-108 Sufficiency of Description

(A) Sufficiency of description.

Except as otherwise provided in subsections (C), (D), and (E), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(B) Examples of reasonable identification.

Except as otherwise provided in subsection (D), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

- (1) specific listing;
- (2) category;
- (3) except as otherwise provided in subsection (E), a type of collateral defined in the Uniform Commercial Code;
- (4) quantity;
- (5) computational or allocational formula or procedure; or
- (6) except as otherwise provided in subsection (C), any other method, if the identity of the collateral is objectively determinable.

(C) Supergeneric description not sufficient.

A description of collateral as “all the debtor’s assets” or “all the debtor’s personal property” or using words of similar import does not reasonably identify the collateral.

(D) Investment property.

Except as otherwise provided in subsection (E), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

- (1) the collateral by those terms or as investment property; or
- (2) the underlying financial asset or commodity contract.

(E) When description by type insufficient.

A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

- (1) a commercial tort claim; or
- (2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

Section 49-7-109 Scope

(A) General scope of article.

Except as otherwise provided in subsections (C) and (D), this article applies to:

- (1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
- (2) an agricultural lien
- (3) a sale of accounts, chattel paper, payment intangibles, or promissory notes
- (4) a consignment;
- (5) a security interest arising under Section 49-2-401, 49-2-505, or 49-2-711(C) as provided in Section 49-7-110.

(B) Security interest in secured obligation.

The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(C) Extent to which article does not apply.

This article does not apply to the extent that:

- (1) a statute, regulation, or treaty of the United States preempts this article;
- (2) (2) another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;
- (3) a statute of another State, a foreign country, or a governmental unit of another State or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the State, country, or governmental unit; or
- (4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 49-5-114 (Refer to Article 5, Section 114 of Federal Code).

(D) Inapplicability of article.

This article does not apply to:

- (1) a landlord's lien, other than an agricultural lien;

- (2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 49-7-333 applies with respect to priority of the lien;
- (3) an assignment of a claim for wages, salary, or other compensation of an employee;
- (4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;
- (5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;
- (6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;
- (7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;
- (8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 49-7-315 and 49-7-322 apply with respect to proceeds and priorities in proceeds;
- (9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;
- (10) a right of recoupment or set-off, but:
 - (a) Section 49-7-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
 - (b) Section 49-7-404 applies with respect to defenses or claims of an account debtor;
- (11) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
 - (a) liens on real property in Sections 49-7-203 and 49-7-308;
 - (b) fixtures in Section 49-7-334;
 - (c) fixture filings in Sections 49-7-501,

49-7-502, 49-7-512, 49-7-516, and 49-7-519; and

- (d) security agreements covering personal and real property in Section 49-7-604;
- (12) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 49-7-315 and 49-7-322 apply with respect to proceeds and priorities in proceeds; or
- (13) an assignment of a deposit account in a consumer transaction, but Sections 49-7-315 and 49-7-322 apply with respect to proceeds and priorities in proceeds.

Section 49-7-110 Security interests Arising Under Chapter 2 or Chapter 3

A security interest arising under Section 49-2-401, 49-2-505, or 49-2-711(C) is subject to this article. However, until the debtor obtains possession of the goods:

- (A) the security interest is enforceable, even if Section 49-7-203(B)(3) has not been satisfied;
- (B) filing is not required to perfect the security interest;
- (C) the rights of the secured party after default by the debtor are governed by Chapter 2 or Chapter 3; and
- (D) the security interest has priority over a conflicting security interest created by the debtor.

SECTION TWO EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Section 49-7-201 General Effectiveness of Security Agreement

(A) General effectiveness

Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(B) Applicable consumer laws and other law

A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers and insert reference to (i) any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit and (ii) any consumer-protection

statute or regulation.

(C) Other applicable law controls

In case of conflict between this chapter and a rule of law, statute, or regulation described in subsection (B), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (B) has only the effect the statute or regulation specifies.

(D) Further deference to other applicable law

This article does not:

- (1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (B); or
- (2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Section 49-7-202 Title to Collateral Immaterial

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

Section 49-7-203 Attachment and Enforceability of Security interest; Proceeds; Supporting Obligations; formal Requisites

(A) Attachment.

A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(B) Enforceability.

Except as otherwise provided in subsections (C) through (I), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- (1) value has been given;
- (2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- (3) one of the following conditions is met:
 - (a) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

- (b) the collateral is not a certificated security and is in the possession of the secured party under Section 49-7-313 pursuant to the debtor's security agreement;
- (c) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8-301 (Refer to Article 8, Section 301 of Federal Code) pursuant to the debtor's security agreement; or
- (d) the collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under Section 49-7-104, 49-7-105, 49-7-106, or 49-7-107 pursuant to the debtor's security agreement.

(C) Other UCC provisions.

Subsection (B) is subject to Section 49-7-110 on a security interest arising under Chapter 2 or Chapter 3, and Section 49-7-206 on security interests in investment property.

(D) When person becomes bound by another person's security agreement.

A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

- (1) the security agreement becomes effective to create a security interest in the person's property; or
- (2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(E) Effect of new debtor becoming bound.

If a new debtor becomes bound as debtor by a security agreement entered into by another person:

- (1) the agreement satisfies subsection (B)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and
- (2) another agreement is not necessary to make

a security interest in the property enforceable.

(F) Proceeds and supporting obligations.

The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 49-7-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(G) Lien securing right to payment.

The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(H) Security entitlement carried in securities account.

The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(I) Commodity contracts carried in commodity account.

The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Section 49-7-204 After-Acquired Property; Future Advances

(A) After-acquired collateral.

Except as otherwise provided in subsection (B), a security agreement may create or provide for a security interest in after-acquired collateral.

(B) When after-acquired property clause not effective.

A security interest does not attach under a term constituting an after-acquired property clause to:

- (1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or
- (2) a commercial tort claim.

(C) Future advances and other value.

A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 49-7-205 Use or Disposition of Collateral Permissible

(A) When security interest not invalid or fraudulent.

A security interest is not invalid or fraudulent against creditors solely because:

- (1) the debtor has the right or ability to:
 - (a) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;
 - (b) collect, compromise, enforce, or otherwise deal with collateral;
 - (c) accept the return of collateral or make repossessions; or
 - (d) use, commingle, or dispose of proceeds; or
- (2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(B) Requirements of possession not relaxed.

This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

Section 49-7-206 Security interest Arising in Purchase or Delivery of Financial asset

(A) Security interest when person buys through securities intermediary.

A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

- (1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and
- (2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(B) Security interest secures obligation to pay for financial asset.

The security interest described in subsection (A) secures the person's obligation to pay for the financial asset.

(C) Security interest in payment against delivery transaction.

A security interest in favor of a person that delivers a

certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

- (1) the security or other financial asset:
 - (a) in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment; and
 - (b) is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and
 - (2) the agreement calls for delivery against payment.
- (D) Security interest secures obligation to pay for delivery.

The security interest described in subsection (C) secures the obligation to make payment for the delivery.

Section 49-7-207 Rights and Duties of Secured Party Having Possession or Control of Collateral

(A) Duty of care when secured party in possession.

Except as otherwise provided in subsection (D), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(B) Expenses, risks, duties, and rights when secured party in possession.

Except as otherwise provided in subsection (D), if a secured party has possession of collateral:

- (1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;
- (2) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;
- (3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and
- (4) the secured party may use or operate the collateral:

- (a) for the purpose of preserving the collateral or its value;
- (b) as permitted by an order of a court having competent jurisdiction; or
- (c) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(C) Duties and rights when secured party in possession or control.

Except as otherwise provided in subsection (D), a secured party having possession of collateral or control of collateral under Section 49-7-104, 49-7-105, 49-7-106, or 49-7-107:

- (1) may hold as additional security any proceeds, except money or funds, received from the collateral;
- (2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and
- (3) may create a security interest in the collateral.

(D) Buyer of certain rights to payment.

If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

- (1) subsection (A) does not apply unless the secured party is entitled under an agreement:
 - (a) to charge back uncollected collateral; or
 - (b) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

- (2) subsections (B) and (C) do not apply.

Section 49-7-208 Additional Duties of Secured Party Having Control of Collateral

(A) Applicability of section.

This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(B) Duties of secured party after receiving demand from debtor.

Within 10 days after receiving an authenticated demand by the debtor:

- (1) a secured party having control of a deposit account under Section 49-7-104(A)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;
- (2) a secured party having control of a deposit account under Section 49-7-104(A)(3) shall:
 - (a) pay the debtor the balance on deposit in the deposit account; or
 - (b) transfer the balance on deposit into a deposit account in the debtor's name;
- (3) a secured party, other than a buyer, having control of electronic chattel paper under Section 49-7-105 shall:
 - (a) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
 - (b) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and
 - (c) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;
- (4) a secured party having control of investment property under 49-7-106(B) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity

intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

- (5) a secured party having control of a letter-of-credit right under Section 49-7-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

Section 49-7-209 Duties of Secured Party if Account Debtor Has Been notified of assignment

(A) Applicability of section.

Except as otherwise provided in subsection (C), this section applies if:

- (1) there is no outstanding secured obligation; and
- (2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(B) Duties of secured party after receiving demand from debtor.

Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 49-7-406(A) an authenticated record that releases the account debtor from any further obligation to the secured party.

(C) Inapplicability to sales.

This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Section 49-7-210 Request for Accounting; Request Regarding List of Collateral or Statement of Account

(A) Definitions.

In this section:

- (1) “Request” means a record of a type described in paragraph (2), (3), or (4).
- (2) “Request for an accounting” means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) “Request regarding a list of collateral” means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) “Request regarding a statement of account” means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(B) Duty to respond to requests.

Subject to subsections (C), (D), (E), and (F), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

- (1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and
- (2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(C) Request regarding list of collateral; statement concerning type of collateral.

A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(D) Request regarding list of collateral; no interest claimed.

A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen (14) days after receipt by sending to the debtor an authenticated record:

- (1) disclaiming any interest in the collateral; and
- (2) if known to the recipient, providing the

name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(E) Request for accounting or regarding statement of account; no interest in obligation claimed.

A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

- (1) disclaiming any interest in the obligations; and
- (2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(F) Charges for responses.

A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

SECTION THREE PERFECTION AND PRIORITY

Section 49-7-301 Law Governing Perfection and Priority of Security interests.

Except as otherwise provided in Sections 49-7-303 through 49-7-306, the following rules determine the law governing perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral:

- (A) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in collateral.
- (B) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a possessory security interest in that collateral.
- (C) Except as otherwise provided in paragraph 4, while negotiable documents, goods, instruments, money, or tangible chattel paper is locat-

ed in a jurisdiction, the local law of that jurisdiction governs:

- (1) perfection of a security interest in the goods by filing a fixture filing;
- (2) perfection of a security interest in timber to be cut; and
- (3) the effect of perfection or non-perfection and the priority of a non-possessory security interest in the collateral.

(D) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in as-extracted collateral.

Section 49-7-302 Law Governing Perfection and Priority of Agricultural Liens

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of an agricultural lien on the farm products.

Section 49-7-303 Law Governing Perfection and Priority of Security interests in Goods Covered by A Certificate of Title

(A) Applicability of section.

This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(B) When goods covered by certificate of title.

Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(C) Applicable law.

The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

Section 49-7-304 Law Governing Perfection and Priority of Security interests in Deposit Accounts

(A) Law of bank's jurisdiction governs.

The local law of a bank's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a deposit account maintained with that bank.

(B) Bank's jurisdiction.

The following rules determine a bank's jurisdiction for purposes of this part:

- (1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.
- (4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.
- (5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Section 49-7-305 Law Governing Perfection and Priority of Security interests in investment Property

(A) Governing law: general rules.

Except as otherwise provided in subsection (C), the following rules apply:

- (1) While a security certificate is located in a ju-

risdiction, the local law of that jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby.

- (2) The local law of the issuer's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security.
- (3) The local law of the securities intermediary's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account.
- (4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a commodity contract or commodity account.

(B) Commodity intermediary's jurisdiction.

The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

- (1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.
- (2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.
- (4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction

is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

- (5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(C) When perfection governed by law of jurisdiction where debtor located.

The local law of the jurisdiction in which the debtor is located governs:

- (1) perfection of a security interest in investment property by filing;
- (2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and
- (3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 49-7-306 Law Governing Perfection and Priority of Security interests in Letter-of-Credit Rights

(A) Governing law: issuer's or nominated person's jurisdiction.

Subject to subsection (C), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or non-perfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a State.

(B) Issuer's or nominated person's jurisdiction.

For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right.

(C) When section not applicable.

This section does not apply to a security interest that is perfected only under Section 49-7-308(D).

Section 49-7-307 Location of Debtor

(A) "Place of business."

In this section, "place of business" means a place where a debtor conducts its affairs.

(B) Debtor's location: general rules.

Except as otherwise provided in this section, the following rules determine a debtor's location:

- (1) A debtor who is an individual is located at the individual's principal residence.
- (2) A debtor that is an organization and has only one place of business is located at its place of business.
- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(C) Limitation of applicability of subsection (B).

Subsection (B) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a non-possessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (B) does not apply, the debtor is located in the District of Columbia.

(D) Continuation of location: cessation of existence, etc.

A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (B) and (C).

(E) Location of registered organization organized under State law.

A registered organization that is organized under the law of a State is located in that State.

(F) Location of registered organization organized under federal law; bank branches and agencies.

Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a State are located:

- (1) in the State that the law of the United States designates, if the law designates a State of location;
- (2) in the State that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its State of location; or

(3) in the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(G) Continuation of location: change in status of registered organization.

A registered organization continues to be located in the jurisdiction specified by subsection (E) or (F) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(H) Location of United States.

The United States is located in the District of Columbia.

(I) Location of foreign bank branch or agency if licensed in only one state.

A branch or agency of a bank that is not organized under the law of the United States or a State is located in the State in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one State.

(J) Location of foreign air carrier.

A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(K) Section applies only to this part.

This section applies only for purposes of this part.

Section 49-7-308 When Security interest or Agricultural Lien Is Perfected; Continuity of Perfection

(A) Perfection of security interest.

Except as otherwise provided in this section and Section 49-7-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 49-7-310 through 49-7-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(B) Perfection of agricultural lien.

An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 49-7-310 have been satisfied. An agricultural lien is perfected when it becomes effective

if the applicable requirements are satisfied before the agricultural lien becomes effective.

(C) Continuous perfection; perfection by different methods.

A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(D) Supporting obligation.

Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(E) Lien securing right to payment.

Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(F) Security entitlement carried in securities account.

Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(G) Commodity contract carried in commodity account.

Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Section 49-7-309 Security interest Perfected Upon Attachment

The following security interests are perfected when they attach:

(A) a purchase-money security interest in consumer goods, except as otherwise provided in Section 49-7-311(B) with respect to consumer goods that are subject to a statute or treaty described in Section 49-7-311(A);

(B) an assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(C) a sale of a payment intangible;

(D) a sale of a promissory note;

(E) a security interest created by the assignment of

a health-care-insurance receivable to the provider of the health-care goods or services;

(F) a security interest arising under Section 49-2-401, 49-2-505, 49-2-711(C), or 49-3-156(E), until the debtor obtains possession of the collateral;

(G) a security interest arising in the delivery of a financial asset under Section 49-7-206(C);

(H) a security interest in investment property created by a broker or securities intermediary;

(I) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(J) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(K) a security interest created by an assignment of a beneficial interest in a decedent's estate.

Section 49-7-310 When Filing Required to Perfect Security interest or Agricultural Lien; Security interests and Agricultural Liens to Which Filing Provisions do not Apply

(A) General rule: perfection by filing.

Except as otherwise provided in subsection (B) and Section 49-7-312(B), a financing statement must be filed to perfect all security interests and agricultural liens.

(B) Exceptions: filing not necessary.

The filing of a financing statement is not necessary to perfect a security interest:

- (1) that is perfected under Section 49-7-308(D), (E), (F), or (G);
- (2) that is perfected under Section 49-7-309 when it attaches;
- (3) in property subject to a statute, regulation, or treaty described in Section 49-7-311(a);
- (4) in goods in possession of a bailee which is perfected under Section 49-7-312(D)(1) or (2);
- (5) in certificated securities, documents, goods, or instruments which is perfected without filing or possession under Section 49-7-312(E), (F), or (G);
- (6) in collateral in the secured party's possession under Section 49-7-313;

(7) in a certificated security which is perfected by delivery of the security certificate to the secured party under Section 49-7-313;

(8) in deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights which is perfected by control under Section 49-7-314;

(9) in proceeds which is perfected under Section 49-7-315; or

(10) that is perfected under Section 49-7-316.

(C) Assignment of perfected security interest.

If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 49-7-311 Perfection of Security interests in Property Subject to Certain Statutes, Regulations, and Treaties

(A) Security interest subject to other law.

Except as otherwise provided in subsection (D), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

- (1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 49-7-310(A);
- (2) list any certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any non-Uniform Commercial Code central filing statute]; or
- (3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(B) Compliance with other law.

Compliance with the requirements of a statute, regulation, or treaty described in subsection (A) for obtaining priority over the rights of a lien creditor is

equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (D) and Sections 49-7-313 and 49-7-316(D) and (E) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (A) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(C) Duration and renewal of perfection.

Except as otherwise provided in subsection (D) and Section 49-7-316(D) and (E), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (A) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(D) Inapplicability to certain inventory.

During any period in which collateral subject to a statute specified in subsection (A)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Section 49-7-312 Perfection of Security interests in Chattel Paper, Deposit Accounts, documents, Goods Covered by documents, instruments, investment Property, Letter-of-Credit Rights, and Money; Perfection by Permissive Filing; Temporary Perfection without Filing or Transfer of Possession

(A) Perfection by filing permitted.

A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(B) Control or possession of certain collateral.

Except as otherwise provided in Section 49-7-315(C) and (D) for proceeds:

- (1) a security interest in a deposit account may be perfected only by control under Section 49-7-314;
- (2) and except as otherwise provided in Section 49-7-308(D), a security interest in a letter-of-credit right may be perfected only by control under Section 49-7-314; and

- (3) a security interest in money may be perfected only by the secured party's taking possession under Section 49-7-313.

(C) Goods covered by negotiable document.

While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

- (1) a security interest in the goods may be perfected by perfecting a security interest in the document; and
- (2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(D) Goods covered by nonnegotiable document.

While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

- (1) issuance of a document in the name of the secured party;
- (2) the bailee's receipt of notification of the secured party's interest; or
- (3) filing as to the goods.

(E) Temporary perfection: new value.

A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(F) Temporary perfection: goods or documents made available to debtor.

A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

- (1) ultimate sale or exchange; or
- (2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(G) Temporary perfection: delivery of security certificate or instrument to debtor.

A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

- (1) ultimate sale or exchange; or
- (2) presentation, collection, enforcement, renewal, or registration of transfer.

(H) Expiration of temporary perfection.

After the 20-day period specified in subsection (E), (F), or (G) expires, perfection depends upon compliance with this article.

Section 49-7-313 When Possession by or Delivery to Secured Party Perfects Security interest without Filing

(A) Perfection by possession or delivery.

Except as otherwise provided in subsection (B), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Section 8-301 (Refer to Article 8, Section 301 of Federal Code).

(B) Goods covered by certificate of title.

With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 49-7-316(D).

(C) Collateral in possession of person other than debtor.

With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

- (1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or
- (2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(D) Time of perfection by possession; continuation

of perfection.

If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(E) Time of perfection by delivery; continuation of perfection.

A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8-301 (Refer to Article 8, Section 301 of Federal Code) and remains perfected by delivery until the debtor obtains possession of the security certificate.

(F) Acknowledgment not required.

A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(G) Effectiveness of acknowledgment; no duties or confirmation.

If a person acknowledges that it holds possession for the secured party's benefit:

- (1) the acknowledgment is effective under subsection (C) even if the acknowledgment violates the rights of a debtor; and
- (2) unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(H) Secured party's delivery to person other than debtor.

A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- (1) to hold possession of the collateral for the secured party's benefit; or
- (2) to redeliver the collateral to the secured party.

(I) Effect of delivery under subsection (H); no duties or confirmation.

A secured party does not relinquish possession, even if a delivery under subsection (H) violates the rights of a

debtor. A person to which collateral is delivered under subsection (H) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Section 49-7-314 Perfection by Control

(A) Perfection by control.

A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under Section 49-7-104, 49-7-105, 49-7-106, or 49-7-107.

(B) Specified collateral: time of perfection by control; continuation of perfection.

A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under Section 49-7-104, 49-7-105, or 49-7-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(C) Investment property: time of perfection by control; continuation of perfection.

A security interest in investment property is perfected by control under Section 49-7-106 from the time the secured party obtains control and remains perfected by control until:

- (1) the secured party does not have control; and
- (2) one of the following occurs:
 - (a) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
 - (b) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
 - (c) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Section 49-7-315 Secured Party's Rights on Disposition of Collateral and in Proceeds

(A) Disposition of collateral: continuation of security interest or agricultural lien; proceeds.

Except as otherwise provided in this article and in Section 49-2-403(2):

- (1) a security interest or agricultural lien continues in collateral notwithstanding sale,

lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

- (2) a security interest attaches to any identifiable proceeds of collateral.

(B) When commingled proceeds identifiable.

Proceeds that are commingled with other property are identifiable proceeds:

- (1) if the proceeds are goods, to the extent provided by Section 49-7-336; and
- (2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(C) Perfection of security interest in proceeds.

A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(D) Continuation of perfection.

A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

- (1) the following conditions are satisfied:
 - (a) a filed financing statement covers the original collateral;
 - (b) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
 - (c) the proceeds are not acquired with cash proceeds;
- (2) the proceeds are identifiable cash proceeds; or
- (3) the security interest in the proceeds is perfected other than under subsection (C) when the security interest attaches to the proceeds or within 20 days thereafter.

(E) When perfected security interest in proceeds becomes unperfected.

If a filed financing statement covers the original collateral, a security interest in proceeds which remains

perfected under subsection (D)(1) becomes unperfected at the later of:

- (1) when the effectiveness of the filed financing statement lapses under Section 49-7-515 or is terminated under Section 49-7-513; or
- (2) the 21st day after the security interest attaches to the proceeds.

Section 49-7-316 Continued Perfection of Security interest Following Change in Governing Law

(A) General rule: effect on perfection of change in governing law.

A security interest perfected pursuant to the law of the jurisdiction designated in Section 49-7-301(A) or 49-7-305(C) remains perfected until the earliest of:

- (1) the time perfection would have ceased under the law of that jurisdiction;
- (2) the expiration of four months after a change of the debtor's location to another jurisdiction; or
- (3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(B) Security interest perfected or unperfected under law of new jurisdiction.

If a security interest described in subsection (A) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(C) Possessory security interest in collateral moved to new jurisdiction.

A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

- (1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;
- (2) thereafter the collateral is brought into another jurisdiction; and
- (3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(D) Goods covered by certificate of title from this state.

Except as otherwise provided in subsection (E), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(E) When subsection (D) security interest becomes unperfected against purchasers.

A security interest described in subsection (D) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 49-7-311(B) or 49-7-313 are not satisfied before the earlier of:

- (1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or
- (2) the expiration of four months after the goods had become so covered.

(F) Change in jurisdiction of bank, issuer, nominated person, securities intermediary, or commodity intermediary.

A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

- (1) the time the security interest would have become unperfected under the law of that jurisdiction; or
- (2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(G) Subsection (F) security interest perfected or unperfected under law of new jurisdiction.

If a security interest described in subsection (F) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described

in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 49-7-317 interests that Take Priority Over or Take Free of Security interest or Agricultural Lien

(A) Conflicting security interests and rights of lien creditors.

A security interest or agricultural lien is subordinate to the rights of:

- (1) a person entitled to priority under Section 49-7-322; and
- (2) except as otherwise provided in subsection (E), a person that becomes a lien creditor before the earlier of the time:
 - (a) the security interest or agricultural lien is perfected; or
 - (b) one of the conditions specified in Section 49-7-203(B)(3) is met and a financing statement covering the collateral is filed.

(B) Buyers that receive delivery.

Except as otherwise provided in subsection (E), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(C) Lessees that receive delivery.

Except as otherwise provided in subsection (E), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(D) Licensees and buyers of certain collateral.

A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(E) Purchase-money security interest.

Except as otherwise provided in Sections 49-7-320 and 49-7-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

Section 49-7-318 No interest Retained in Right to Payment that Is Sold; Rights and Title of Seller of Account or Chattel Paper with Respect to Creditors and Purchasers

(A) Seller retains no interest.

A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(B) Deemed rights of debtor if buyer's security interest unperfected.

For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Section 49-7-319 Rights and Title of Consignee with Respect to Creditors and Purchasers

(A) Consignee has consignor's rights.

Except as otherwise provided in subsection (B), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(B) Applicability of other law.

For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

Section 49-7-320 Buyer of Goods

(A) Buyer in ordinary course of business.

Except as otherwise provided in subsection (E), a buyer in ordinary course of business, other than a person

buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(B) Buyer of consumer goods.

Except as otherwise provided in subsection (E), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

- (1) without knowledge of the security interest;
- (2) for value;
- (3) primarily for the buyer's personal, family, or household purposes; and
- (4) before the filing of a financing statement covering the goods.

(C) Effectiveness of filing for subsection (B).

To the extent that it affects the priority of a security interest over a buyer of goods under subsection (B), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Section 49-7-316(A) and (B).

(D) Buyer in ordinary course of business at well-head or minehead.

A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(E) Possessory security interest not affected.

Subsections (A) and (B) do not affect a security interest in goods in the possession of the secured party under Section 49-7-313.

Section 49-7-321 Licensee of General intangible and Lessee of Goods in ordinary Course of Business

(A) "Licensee in ordinary course of business."

In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's

own usual or customary practices.

(B) Rights of licensee in ordinary course of business.

A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(C) Rights of lessee in ordinary course of business.

A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Section 49-7-322 Priorities Among Conflicting Security interests in and Agricultural Liens on Same Collateral

(A) General priority rules.

Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

- (1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.
- (2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.
- (3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(B) Time of perfection: proceeds and supporting obligations.

For the purposes of subsection (A)(1):

- (1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and
- (2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing

or perfection as to a security interest in the supporting obligation.

(C) Special priority rules: proceeds and supporting obligations.

Except as otherwise provided in subsection (F), a security interest in collateral which qualifies for priority over a conflicting security interest under Section 49-7-327, 49-7-328, 49-7-329, 49-7-330, or 49-7-331 also has priority over a conflicting security interest in:

- (1) any supporting obligation for the collateral; and
- (2) proceeds of the collateral if:
 - (a) the security interest in proceeds is perfected;
 - (b) the proceeds are cash proceeds or of the same type as the collateral; and
 - (c) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(D) First-to-file priority rule for certain collateral.

Subject to subsection (E) and except as otherwise provided in subsection (F), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(E) Applicability of subsection (D).

Subsection (D) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(F) Limitations on subsections (A) through (E).

Subsections (A) through (E) are subject to:

- (1) subsection (G) and the other provisions of this part;
- (2) Section 49-5-210 with respect to a security interest of a collecting bank;
- (3) Section 49-5-118 with respect to a security interest of an issuer or nominated person; and
- (4) Section 49-7-110 with respect to a security interest arising under Chapter 2 or 3.

(G) Priority under agricultural lien statute.

A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Section 49-7-323 Future Advances

(A) When priority based on time of advance.

Except as otherwise provided in subsection (C), for purposes of determining the priority of a perfected security interest under Section 49-7-322(A)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

- (1) is made while the security interest is perfected only:
 - (a) under Section 49-7-309 when it attaches; or
 - (b) temporarily under Section 49-7-312(E), (F), or (G); and
- (2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 49-7-309 or 49-7-312(E), (F), or (G).

(B) Lien creditor.

Except as otherwise provided in subsection (C), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

- (1) without knowledge of the lien; or
- (2) pursuant to a commitment entered into without knowledge of the lien.

(C) Buyer of receivables.

Subsections (A) and (B) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(D) Buyer of goods.

Except as otherwise provided in subsection (E), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

- (1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) forty-five (45) days after the purchase.

(E) Advances made pursuant to commitment: priority of buyer of goods.

Subsection (D) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(F) Lessee of goods.

Except as otherwise provided in subsection (G), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

- (1) the time the secured party acquires knowledge of the lease; or
- (2) forty-five (45) days after the lease contract becomes enforceable.

(G) Advances made pursuant to commitment: priority of lessee of goods.

Subsection (F) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 49-7-324 Priority of Purchase-Money Security interests

(A) General rule: purchase-money priority.

Except as otherwise provided in subsection (G), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 49-7-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty (20) days thereafter.

(B) Inventory purchase-money priority.

Subject to subsection (C) and except as otherwise provided in subsection (G), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 49-7-330, and, except as otherwise provided in Section 49-7-327, also has priority in identifiable cash proceeds of the inventory to the extent

the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(C) Holders of conflicting inventory security interests to be notified.

Subsections (B) (2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 49-7-312(F), before the beginning of the 20-day period thereunder.

(D) Livestock purchase-money priority.

Subject to subsection (E) and except as otherwise provided in subsection (G), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 49-7-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest

receives the notification within six months before the debtor receives possession of the livestock; and

- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(E) Holders of conflicting livestock security interests to be notified.

Subsections (D)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 49-7-312(F), before the beginning of the 20-day period thereunder.

(F) Software purchase-money priority.

Except as otherwise provided in subsection (G), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 49-7-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(G) Conflicting purchase-money security interests.

If more than one security interest qualifies for priority in the same collateral under subsection (A), (B), (D), or (F):

- (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (2) in all other cases, Section 49-7-322(A) applies to the qualifying security interests.

Section 49-7-325 Priority of Security interests in Transferred Collateral

(A) Subordination of security interest in transferred collateral.

Except as otherwise provided in subsection (B), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

- (1) the debtor acquired the collateral subject to the security interest created by the other person;
- (2) the security interest created by the other person was perfected when the debtor acquired the collateral; and
- (3) there is no period thereafter when the security interest is unperfected.

(B) Limitation of subsection (a) subordination.

Subsection (A) subordinates a security interest only if the security interest:

- (1) otherwise would have priority solely under Section 49-7-322(A) or 49-7-324; or
- (2) arose solely under Section 49-2-711(C) or 49-3-156(E).

Section 49-7-326 Priority of Security interests Created by New Debtor

(A) Subordination of security interest created by new debtor.

Subject to subsection (B), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under Section 49-7-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under Section 49-7-508.

(B) Priority under other provisions; multiple original debtors.

The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under Section 49-7-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Section 49-7-327 Priority of Security interests in Deposit Account

The following rules govern priority among conflicting security interests in the same deposit account:

- (A) A security interest held by a secured party having control of the deposit account under Section 49-7-104 has priority over a conflicting security interest held by a secured party that does not have control.
- (B) Except as otherwise provided in paragraphs (C) and (D), security interests perfected by control under Section 49-7-314 rank according to priority in time of obtaining control.
- (C) Except as otherwise provided in paragraph (D), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.
- (D) A security interest perfected by control under Section 49-7-104(A)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

Section 49-7-328 Priority of Security interests in investment Property

The following rules govern priority among conflicting security interests in the same investment property:

- (A) A security interest held by a secured party having control of investment property under Section 49-7-106 has priority over a security interest held by a secured party that does not have control of the investment property.
- (B) Except as otherwise provided in paragraphs (C) and (D), conflicting security interests held by secured parties each of which has control under Section 49-7-106 rank according to priority in time of:
 - (1) if the collateral is a security, obtaining control;
 - (2) if the collateral is a security entitlement carried in a securities account and:
 - (a) if the secured party obtained control under Section 8-106(d)(1), (Refer to Article 8, Section 106 of Federal Code) the secured party's becoming the person for which the securities account is maintained;
 - (b) if the secured party obtained control under Section 8-106(d)(2), (Refer to Article 8, Section 106 of Federal Code) the securities intermediary's

agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

- (c) if the secured party obtained control through another person under Section 8-106(d)(3), (Refer to Article 8, Section 106 of Federal Code) the time on which priority would be based under this paragraph if the other person were the secured party; or
- (3) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 49-7-106(B)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.
- (C) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.
- (D) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
- (E) A security interest in a certificated security in registered form which is perfected by taking delivery under Section 49-7-313(A) and not by control under Section 49-7-314 has priority over a conflicting security interest perfected by a method other than control.
- (F) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary which are perfected without control under Section 49-7-106 rank equally.
- (G) In all other cases, priority among conflicting security interests in investment property is governed by Sections 49-7-322 and 49-7-323.

Section 49-7-329 Priority of Security interests in Letter-of-Credit Right

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

- (A) A security interest held by a secured party having control of the letter-of-credit right under

Section 49-7-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

- (B) Security interests perfected by control under Section 49-7-314 rank according to priority in time of obtaining control.

Section 49-7-330 Priority of Purchaser of Chattel Paper or instrument

- (A) Purchaser's priority: security interest claimed merely as proceeds.

A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

- (1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 49-7-105; and
- (2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

- (B) Purchaser's priority: other security interests.

A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 49-7-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

- (C) Chattel paper purchaser's priority in proceeds.

Except as otherwise provided in Section 49-7-327, a purchaser having priority in chattel paper under subsection (A) or (B) also has priority in proceeds of the chattel paper to the extent that:

- (1) Section 49-7-322 provides for priority in the proceeds; or
- (2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

- (D) Instrument purchaser's priority.

Except as otherwise provided in Section 49-7-331(A), a purchaser of an instrument has priority over a security

interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

- (E) Holder of purchase-money security interest gives new value.

For purposes of subsections (A) and (B), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

- (F) Indication of assignment gives knowledge.

For purposes of subsections (B) and (D), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 49-7-331 Transfer of Money; Transfer of Funds from Deposit Account

- (A) Transferee of money.

A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

- (B) Transferee of funds from deposit account.

A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Section 49-7-332 Priority of Certain Liens Arising by Operation of Law

- (A) "Possessory lien."

In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

- (1) which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;
- (2) which is created by statute or rule of law in favor of the person; and
- (3) whose effectiveness depends on the person's possession of the goods.

- (B) Priority of possessory lien.

A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Section 49-7-333 Priority of Security interests in Fixtures and Crops

(A) Security interest in fixtures under this article.

A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(B) Security interest in fixtures under real-property law.

This article does not prevent creation of an encumbrance upon fixtures under real property law.

(C) General rule: subordination of security interest in fixtures.

In cases not governed by subsections (D) through (H), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(D) Fixtures purchase-money priority.

Except as otherwise provided in subsection (H), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

- (1) the security interest is a purchase-money security interest;
- (2) the interest of the encumbrancer or owner arises before the goods become fixtures; and
- (3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(E) Priority of security interest in fixtures over interests in real property.

A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:
 - (a) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
 - (b) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

- (a) factory or office machines;
- (b) equipment that is not primarily used or leased for use in the operation of the real property; or
- (c) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) the security interest is:

- (a) created in a manufactured home in a manufactured-home transaction; and
- (b) perfected pursuant to a statute described in Section 49-7-311(A)(2).

(F) Priority based on consent, disclaimer, or right to remove.

A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

- (1) the encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
- (2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(G) Continuation of paragraph (F)(2) priority.

The priority of the security interest under paragraph (F)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(H) Priority of construction mortgage.

A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (E) and (F), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the

construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(I) Priority of security interest in crops.

A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(J) Subsection (I) prevails.

Subsection (I) prevails over any inconsistent provisions of the following statutes:

[List here any statutes containing provisions inconsistent with subsection (I).]

Section 49-7-334 Accessions

(A) Creation of security interest in accession.

A security interest may be created in an accession and continues in collateral that becomes an accession.

(B) Perfection of security interest.

If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(C) Priority of security interest.

Except as otherwise provided in subsection (D), the other provisions of this part determine the priority of a security interest in an accession.

(D) Compliance with certificate-of-title statute.

A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 49-7-311(B).

(E) Removal of accession after default.

After default, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(F) Reimbursement following removal.

A secured party that removes an accession from other goods under subsection (E) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution

in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 49-7-335 Commingled Goods

(A) “Commingled goods.”

In this section, “commingled goods” means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(B) No security interest in commingled goods as such.

A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(C) Attachment of security interest to product or mass.

If collateral becomes commingled goods, a security interest attaches to the product or mass.

(D) Perfection of security interest.

If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (C) is perfected.

(E) Priority of security interest.

Except as otherwise provided in subsection (F), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (C).

(F) Conflicting security interests in product or mass

If more than one security interest attaches to the product or mass under subsection (C), the following rules determine priority:

- (1) A security interest that is perfected under subsection (D) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.
- (2) If more than one security interest is perfected under subsection (D), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Section 49-7-336 Priority of Security interests in Goods Covered by Certificate of Title

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

- (1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and
- (2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 49-7-311(B), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Section 49-7-337 Priority of Security interest or Agricultural Lien Perfected by Filed Financing Statement Providing Certain incorrect Information

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 49-7-516(B)(5) which is incorrect at the time the financing statement is filed:

- (1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and
- (2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Section 49-7-338 Priority Subject to Subordination

This article does not preclude subordination by agreement by a person entitled to priority.

Section 49-7-339 Effectiveness of Right of Recoupment or Set-off Against Deposit Account

(A) Exercise of recoupment or set-off.

Except as otherwise provided in subsection (C), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(B) Recoupment or setoff not affected by security interest.

Except as otherwise provided in subsection (C), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(C) When set-off ineffective.

The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under Section 49-7-104(A)(3), if the set-off is based on a claim against the debtor.

Section 49-7-340 Bank's Rights and Duties with Respect to Deposit Account

Except as otherwise provided in Section 49-7-340(C), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

- (1) the creation, attachment, or perfection of a security interest in the deposit account;
- (2) the bank's knowledge of the security interest; or
- (3) the bank's receipt of instructions from the secured party.

SECTION FOUR RIGHTS OF THIRD PARTIES

Section 49-7-401 Bank's Right to Refuse to Enter into or Disclose Existence of Control Agreement

This article does not require a bank to enter into an agreement of the kind described in Section 49-7-104(A)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Section 49-7-402 Alienability of Debtor's Rights

(A) Other law governs alienability; exceptions.

Except as otherwise provided in subsection (B) and Sections 49-7-406, 49-7-407, 49-7-408, and 49-7-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(B) Agreement does not prevent transfer.

An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Section 49-7-403 Secured Party not Obligated on Contract of Debtor or in tort

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Section 49-7-404 Agreement not to assert Defenses Against assignee

(A) "Value."

In this section, "value" has the meaning provided in Section 49-4-303(A).

(B) Agreement not to assert claim or defense.

Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

- (1) for value;
- (2) in good faith;
- (3) without notice of a claim of a property or possessory right to the property assigned; and
- (4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 49-4-305(A).

(C) When subsection (B) not applicable.

Subsection (B) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 49-4-305(B).

(D) Omission of required statement in consumer transaction.

In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

- (1) the record has the same effect as if the record included such a statement; and
- (2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(E) Rule for individual under other law.

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(F) Other law not displaced.

Except as otherwise provided in subsection (D), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Section 49-7-405 Rights Acquired by assignee; Claims and Defenses Against assignee

(A) Assignee's rights subject to terms, claims, and defenses; exceptions.

Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (B) through (E), the rights of an assignee are subject to:

- (1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
- (2) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(B) Account debtor's claim reduces amount owed to assignee.

Subject to subsection (C) and except as otherwise provided in subsection (D), the claim of an account

debtor against an assignor may be asserted against an assignee under subsection (A) only to reduce the amount the account debtor owes.

(C) Rule for individual under other law.

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(D) Omission of required statement in consumer transaction.

In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(E) Inapplicability to health-care-insurance receivable.

This section does not apply to an assignment of a health-care-insurance receivable.

Section 49-7-406 Modification of assigned Contract

(A) Effect of modification on assignee.

A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (B) through (D).

(B) Applicability of subsection (A).

Subsection (A) applies to the extent that:

- (1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or
- (2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 49-7-406(A).

(C) Rule for individual under other law.

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(D) Inapplicability to health-care-insurance receivable.

This section does not apply to an assignment of a health-care-insurance receivable.

Section 49-7-407 Discharge of Account Debtor; Notification of assignment; Identification and Proof of assignment; Restrictions on assignment of Accounts, Chattel Paper, Payment intangibles, and Promissory notes ineffective

(A) Discharge of account debtor; effect of notification.

Subject to subsections (B) through (I), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(B) When notification ineffective.

Subject to subsection (H), notification is ineffective under subsection (A):

- (1) if it does not reasonably identify the rights assigned;
- (2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or
- (3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
 - (a) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;
 - (b) a portion has been assigned to another assignee; or

- (c) the account debtor knows that the assignment to that assignee is limited.

(C) Proof of assignment.

Subject to subsection (H), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (A).

(D) Term restricting assignment generally ineffective.

Except as otherwise provided in subsection (E) and Sections 49-3-133 and 49-7-407, and subject to subsection (H), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

- (1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or
- (2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(E) Inapplicability of subsection (D) to certain sales.

Subsection (D) does not apply to the sale of a payment intangible or promissory note.

(F) Legal restrictions on assignment generally ineffective.

Except as otherwise provided in Sections 49-3-133 and 49-7-407 and subject to subsections (H) and (I), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

- (1) prohibits, restricts, or requires the consent of the government, governmental body or

official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

- (2) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(G) Subsection (B)(3) not waivable.

Subject to subsection (H), an account debtor may not waive or vary its option under subsection (B)(3).

(H) Rule for individual under other law.

This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(I) Inapplicability to health-care-insurance receivable.

This section does not apply to an assignment of a health-care-insurance receivable.

(J) Section prevails over specified inconsistent law.

This section prevails over any inconsistent provisions of the statutes, rules, and regulations.

Section 49-7-408 Restrictions on Creation or Enforcement of Security interest in Leasehold interest or in Lessor's Residual interest

(A) Term restricting assignment generally ineffective.

Except as otherwise provided in subsection (B), a term in a lease agreement is ineffective to the extent that it:

- (1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or
- (2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(B) Effectiveness of certain terms.

Except as otherwise provided in Section 49-3-133(G), a term described in subsection (A)(2) is effective to the extent that there is:

- (1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or
- (2) a delegation of a material performance of either party to the lease contract in violation of the term.

(C) Security interest not material impairment.

The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 49-3-133(D) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Section 49-7-409 Restrictions on assignment of Promissory notes, Health-Care-insurance Receivables, and Certain General intangibles ineffective

(A) Term restricting assignment generally ineffective.

Except as otherwise provided in subsection (B), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

- (1) would impair the creation, attachment, or perfection of a security interest; or
- (2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(B) Applicability of subsection (A) to sales of certain rights to payment.

Subsection (A) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(C) Legal restrictions on assignment generally ineffective.

A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

- (1) would impair the creation, attachment, or perfection of a security interest; or
- (2) provides that the assignment or transfer or creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(D) Limitation on ineffectiveness under subsections (A) and (C).

To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (C) would be effective under law other than this article but is ineffective under subsection (A) or (C), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

- (1) is not enforceable against the person obligated on the promissory note or the account debtor;
- (2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;
- (3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render

performance to the secured party, or accept payment or performance from the secured party;

- (4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;
- (5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and
- (6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(E) Section prevails over specified inconsistent law.

This section prevails over any inconsistent provisions of the following statutes, rules, and regulations:

[List here any statutes, rules, and regulations containing provisions inconsistent with this section.]

Section 49-7-410 Restrictions on assignment of Letter-of-Credit Rights ineffective

(A) Term or law restricting assignment generally ineffective.

A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

- (1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or
- (2) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(B) Limitation on ineffectiveness under subsection (A).

To the extent that a term in a letter of credit is ineffective under subsection (A) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

- (1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;
- (2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and
- (3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

**SECTION FIVE
FILING**

Section 49-7-501 Filing office

(A) Filing offices.

Except as otherwise provided in subsection (B), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

- (1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:
 - (a) the collateral is as-extracted collateral or timber to be cut; or
 - (b) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
- (2) the office of, or any office duly authorized by [], in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(B) Filing office for transmitting utilities.

The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of []. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

Section 49-7-502 Contents of Financing Statement; Record of Mortgage as Financing Statement; Time of Filing Financing Statement

(A) Sufficiency of financing statement.

Subject to subsection (B), a financing statement is sufficient only if it:

- (1) provides the name of the debtor;
- (2) provides the name of the secured party or a representative of the secured party; and
- (3) indicates the collateral covered by the financing statement.

(B) Real-property-related financing statements.

Except as otherwise provided in Section 49-7-501(B), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (A) and also:

- (1) indicate that it covers this type of collateral;
- (2) indicate that it is to be filed [for record] in the real property records;
- (3) provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this State if the description were contained in a record of the mortgage of the real property; and
- (4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(C) Record of mortgage as financing statement.

A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

- (1) the record indicates the goods or accounts that it covers;
- (2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the

real property described in the record and is as-extracted collateral or timber to be cut;

- (3) the record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
- (4) the record is duly recorded.

(D) Filing before security agreement or attachment.

A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Section 49-7-503 Name of Debtor and Secured Party

(A) Sufficiency of debtor's name.

A financing statement sufficiently provides the name of the debtor:

- (1) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
- (2) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
- (3) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
 - (a) provides the name specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
 - (b) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and
- (4) in other cases:
 - (a) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and
 - (b) if the debtor does not have a name, only if it provides the names of the

partners, members, associates, or other persons comprising the debtor.

(B) Additional debtor-related information.

A financing statement that provides the name of the debtor in accordance with subsection (A) is not rendered ineffective by the absence of:

- (1) a trade name or other name of the debtor; or
- (2) unless required under subsection (A)(4)(b), names of partners, members, associates, or other persons comprising the debtor.

(C) Debtor's trade name insufficient.

A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(D) Representative capacity.

Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(E) Multiple debtors and secured parties.

A financing statement may provide the name of more than one debtor and the name of more than one secured party.

Section 49-7-504 indication of Collateral

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

- (1) a description of the collateral pursuant to Section 49-7-108; or
- (2) an indication that the financing statement covers all assets or all personal property.

Section 49-7-505 Filing and Compliance with Other Statutes and Treaties for Consignments, Leases, Other Bailments, and Other Transactions

(A) Use of terms other than "debtor" and "secured party."

A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 49-7-311(A), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(B) Effect of financing statement under subsection (A).

This part applies to the filing of a financing statement under subsection (A) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 49-7-311(B), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

Section 49-7-506 Effect of Errors or Omissions

(A) Minor errors and omissions.

A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(B) Financing statement seriously misleading.

Except as otherwise provided in subsection (C), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 49-7-503(A) is seriously misleading.

(C) Financing statement not seriously misleading.

If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 49-7-503(A), the name provided does not make the financing statement seriously misleading.

(D) "Debtor's correct name."

For purposes of Section 49-7-508(B), the "debtor's correct name" in subsection (C) means the correct name of the new debtor.

Section 49-7-507 Effect of Certain Events on Effectiveness of Financing Statement

(A) Disposition.

A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(B) Information becoming seriously misleading.

Except as otherwise provided in subsection (C) and Section 49-7-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 49-7-506.

(C) Change in debtor's name.

If a debtor so changes its name that a filed financing statement becomes seriously misleading under Section 49-7-506:

- (1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and
- (2) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

Section 49-7-508 Effectiveness of Financing Statement if New Debtor Becomes Bound by Security Agreement

(A) Financing statement naming original debtor.

Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(B) Financing statement becoming seriously misleading.

If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (A) to be seriously misleading under Section 49-7-506:

- (1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 49-7-203(D); and
- (2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 49-7-203(D) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(C) When section not applicable.

This section does not apply to collateral as to which a

filed financing statement remains effective against the new debtor under Section 49-7-507(A).

Section 49-7-509 Persons Entitled to File a Record

(A) Person entitled to file record.

A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

- (1) the debtor authorizes the filing in an authenticated record or pursuant to subsection (B) or (C); or
- (2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(B) Security agreement as authorization.

By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

- (1) the collateral described in the security agreement; and
- (2) property that becomes collateral under Section 49-7-315(A)(2), whether or not the security agreement expressly covers proceeds.

(C) Acquisition of collateral as authorization.

By acquiring collateral in which a security interest or agricultural lien continues under Section 49-7-315(A)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 49-7-315(A)(2).

(D) Person entitled to file certain amendments.

A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

- (1) the secured party of record authorizes the filing; or
- (2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 49-7-513(A) or (C), the debtor authorizes the filing, and the termination state-

ment indicates that the debtor authorized it to be filed.

(E) Multiple secured parties of record.

If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (E).

Section 49-7-510 Effectiveness of Filed Record

(A) Filed record effective if authorized.

A filed record is effective only to the extent that it was filed by a person that may file it under Section 49-7-509.

(B) Authorization by one secured party of record.

A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(C) Continuation statement not timely filed.

A continuation statement that is not filed within the six-month period prescribed by Section 49-7-515(D) is ineffective.

Section 49-7-511 Secured Party of Record

(A) Secured party of record.

A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 49-7-514(A), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(B) Amendment naming secured party of record.

If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 49-7-514(B), the assignee named in the amendment is a secured party of record.

(C) Amendment deleting secured party of record.

A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

Section 49-7-512 Amendment of Financing Statement

(A) Amendment of information in financing statement.

Subject to Section 49-7-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (E), otherwise amend the information provided in, a financing statement by filing an amendment that:

- (1) identifies, by its file number, the initial financing statement to which the amendment relates; and
- (2) if the amendment relates to an initial financing statement filed or recorded in a filing office described in Section 49-7-501(A)(1), provides the date and time that the initial financing statement was filed or recorded and the information specified in Section 49-7-502(B).

(B) Period of effectiveness not affected.

Except as otherwise provided in Section 49-7-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(C) Effectiveness of amendment adding collateral.

A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(D) Effectiveness of amendment adding debtor.

A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(E) Certain amendments ineffective.

An amendment is ineffective to the extent it:

- (1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or
- (2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

Section 49-7-513 Termination Statement

(A) Consumer goods.

A secured party shall cause the secured party of record for a financing statement to file a termination statement

for the financing statement if the financing statement covers consumer goods and:

- (1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) the debtor did not authorize the filing of the initial financing statement.

(B) Time for compliance with subsection (A).

To comply with subsection (A), a secured party shall cause the secured party of record to file the termination statement:

- (1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or
- (2) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(C) Other collateral.

In cases not governed by subsection (A), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

- (1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;
- (2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;
- (3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or
- (4) the debtor did not authorize the filing of the initial financing statement.

(D) Effect of filing termination statement.

Except as otherwise provided in Section 49-7-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 49-7-510, for purposes of Sections 49-7-519(G), 49-7-522(A), and 49-7-523(C), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Section 49-7-514 assignment of Powers of Secured Party of Record

(A) Assignment reflected on initial financing statement.

Except as otherwise provided in subsection (C), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(B) Assignment of filed financing statement.

Except as otherwise provided in subsection (C), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates;
- (2) provides the name of the assignor; and
- (3) provides the name and mailing address of the assignee.

(C) Assignment of record of mortgage.

An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under Section 49-7-502(C) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than the Uniform Commercial Code.

Section 49-7-515 Duration and Effectiveness of Financing Statement; Effect of Lapsed Financing Statement

(A) Five-year effectiveness.

Except as otherwise provided in subsections (B), (E), (F), and (G), a filed financing statement is effective for a period of five years after the date of filing.

(B) Public-finance or manufactured-home transaction.

Except as otherwise provided in subsections (E), (F), and (G), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(C) Lapse and continuation of financing statement.

The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (D). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(D) When continuation statement may be filed.

A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (A) or the 30-year period specified in subsection (B), whichever is applicable.

(E) Effect of filing continuation statement.

Except as otherwise provided in Section 49-7-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (C), unless, before the lapse, another continuation statement is filed pursuant to subsection (D). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(F) Transmitting utility financing statement.

If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(G) Record of mortgage as financing statement.

A record of a mortgage that is effective as a financing

statement filed as a fixture filing under Section 49-7-502(C) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 49-7-516 What Constitutes Filing; Effectiveness of Filing

(A) What constitutes filing.

Except as otherwise provided in subsection (B), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(B) Refusal to accept record; filing does not occur.

Filing does not occur with respect to a record that a filing office refuses to accept because:

- (1) the record is not communicated by a method or medium of communication authorized by the filing office;
- (2) an amount equal to or greater than the applicable filing fee is not tendered;
- (3) the filing office is unable to index the record because:
 - (a) in the case of an initial financing statement, the record does not provide a name for the debtor;
 - (b) in the case of an amendment or correction statement, the record:
 - (i) does not identify the initial financing statement as required by Section 49-7-512 or 49-7-518, as applicable; or
 - (ii) identifies an initial financing statement whose effectiveness has lapsed under Section 49-7-515;
 - (c) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or
 - (d) in the case of a record filed or record-

ed in the filing office described in Section 49-7-501(A)(1), the record does not provide a sufficient description of the real property to which it relates;

- (4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
- (5) in the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:
 - (a) provide a mailing address for the debtor;
 - (b) indicate whether the debtor is an individual or an organization; or
 - (c) if the financing statement indicates that the debtor is an organization, provide:
 - (i) a type of organization for the debtor;
 - (ii) a jurisdiction of organization for the debtor; or
 - (iii) an organizational identification number for the debtor or indicate that the debtor has none;
- (6) in the case of an assignment reflected in an initial financing statement under Section 49-7-514(A) or an amendment filed under Section 49-7-514(B), the record does not provide a name and mailing address for the assignee; or
- (7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 49-7-515(D).

(C) Rules applicable to subsection (B).

For purposes of subsection (B):

- (1) a record does not provide information if the filing office is unable to read or decipher the information; and
- (2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 49-7-512, 49-7-514, or 49-7-518, is an initial financing statement.

(D) Refusal to accept record; record effective as filed record.

A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (B), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

Section 49-7-517 Effect of Indexing Errors

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

Section 49-7-518 Claim Concerning inaccurate or Wrongfully Filed Record

(A) Correction statement.

A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(B) Sufficiency of correction statement.

A correction statement must:

- (1) identify the record to which it relates by:
 - (a) the file number assigned to the initial financing statement to which the record relates; and
 - (b) if the correction statement relates to a record filed [or recorded] in a filing office described in Section 49-7-501(A)(1), the date [and time] that the initial financing statement was filed [or recorded] and the information specified in Section 49-7-502(B);
- (2) indicate that it is a correction statement; and
- (3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(C) Record not affected by correction statement.

The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 49-7-519 Numbering, Maintaining, and Indexing Records; Communicating Information Provided in Records

(A) Filing office duties.

For each record filed in a filing office, the filing office shall:

- (1) assign a unique number to the filed record;
- (2) create a record that bears the number assigned to the filed record and the date and time of filing;
- (3) maintain the filed record for public inspection; and
- (4) index the filed record in accordance with subsections (C), (D), and (E).

(B) File number.

A file number assigned after January 1, 2002, must include a digit that:

- (1) is mathematically derived from or related to the other digits of the file number; and
- (2) aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(C) Indexing: general.

Except as otherwise provided in subsections (D) and (E), the filing office shall:

- (1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and
- (2) index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(D) Indexing: real-property-related financing statement.

If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

- (1) under the names of the debtor and of each owner of record shown on the financing

statement as if they were the mortgagors under a mortgage of the real property described; and

- (2) to the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(E) Indexing: real-property-related assignment.

If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 49-7-514(A) or an amendment filed under Section 49-7-514(B):

- (1) under the name of the assignor as grantor; and
- (2) to the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(F) Retrieval and association capability.

The filing office shall maintain a capability:

- (1) to retrieve a record by the name of the debtor and:
 - (a) if the filing office is described in Section 49-7-501(B)(1), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed [or recorded]; or
 - (b) if the filing office is described in Section 49-7-501(A)(2), by the file number assigned to the initial financing statement to which the record relates; and
- (2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(G) Removal of debtor's name.

The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under

Section 49-7-515 with respect to all secured parties of record.

(H) Timeliness of filing office performance.

The filing office shall perform the acts required by subsections (A) through (E) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(I) Inapplicability to real-property-related filing office.

Subsections (B) and (H) does not apply to a filing office described in Section 49-7-501(A)(1).

Section 49-7-520 Acceptance and Refusal to Accept Record

(A) Mandatory refusal to accept record.

A filing office shall refuse to accept a record for filing for a reason set forth in Section 49-7-516(B) and may refuse to accept a record for filing only for a reason set forth in Section 49-7-516(B).

(B) Communication concerning refusal.

If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in Section 49-7-501(A)(2), in no event more than two business days after the filing office receives the record.

(C) When filed financing statement effective.

A filed financing statement satisfying Section 49-7-502(A) and (B) is effective, even if the filing office is required to refuse to accept it for filing under subsection (A). However, Section 49-7-338 applies to a filed financing statement providing information described in Section 49-7-516(B)(5) which is incorrect at the time the financing statement is filed.

(D) Separate application to multiple debtors.

If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

Section 49-7-521 Uniform form of Written Financing Statement and Amendment

(A) Initial financing statement form.

A filing office that accepts written records may not refuse to accept a written initial financing statement in the following form and format except for a reason set forth in Section 49-7-516(B):

(B) Amendment form.

A filing office that accepts written records may not refuse to accept a written record in the following form and format except for a reason set forth in Section 49-7-516(B):

Section 49-7-522 Maintenance and Destruction of Records

(A) Post-lapse maintenance and retrieval of information.

The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 49-7-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(B) Destruction of written records.

Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (A).

Section 49-7-523 Information from Filing office; Sale or License of Records

(A) Acknowledgment of filing written record.

If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 49-7-519(A)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

- (1) note upon the copy the number assigned to the record pursuant to Section 49-7-519(A)(1) and the date and time of the filing of the record; and
- (2) send the copy to the person.

(B) Acknowledgment of filing other record.

If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

- (1) the information in the record;
- (2) the number assigned to the record pursuant to Section 49-7-519(A)(1); and
- (3) the date and time of the filing of the record.

(C) Communication of requested information.

The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

- (1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

- (a) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;
- (b) has not lapsed under Section 49-7-515 with respect to all secured parties of record; and

(D) if the request so states, has lapsed under Section 49-7-515 and a record of which is maintained by the filing office under Section 49-7-522(A);

- (1) the date and time of filing of each financing statement; and
- (2) the information provided in each financing statement.

(E) Medium for communicating information.

In complying with its duty under subsection (C), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate a record that can be admitted into evidence in the courts of this State without extrinsic evidence of its authenticity.

(F) Timeliness of filing office performance.

The filing office shall perform the acts required by subsections (A) through (D) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(G) Public availability of records.

At least weekly, the [insert appropriate official or governmental agency] [filing office] shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

Section 49-7-524 Delay by Filing office

Delay by the filing office beyond a time limit prescribed by this part is excused if:

- (1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and
- (2) the filing office exercises reasonable diligence under the circumstances.

Section 49-7-525 Fees

(A) Initial financing statement or other record: general rule.

Except as otherwise provided in subsection (E), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (B), is [the amount specified in subsection (C), if applicable, plus]:

- (1) \$ ___[X]___ if the record is communicated in writing and consists of one or two pages;
- (2) \$ ___[2X]___ if the record is communicated in writing and consists of more than two pages; and
- (3) \$ ___[1/2X]___ if the record is communicated by another medium authorized by filing-office rule.

(B) Initial financing statement: public-finance and manufactured-housing transactions.

Except as otherwise provided in subsection (D), the fee for filing and indexing an initial financing statement of the following kind is [the amount specified in subsection (C), if applicable, plus]:

- (1) \$ ___ if the financing statement indicates that it is filed in connection with a public-finance transaction;
- (2) \$ ___ if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(C) Number of names.

Except as otherwise provided in subsection (E), if a record is communicated in writing, the fee for each name more than two required to be indexed is \$ ____.

(D) Response to information request.

The fee for responding to a request for information from the filing office, including for issuing a certificate showing communicating whether there is on file any financing statement naming a particular debtor, is:

- (1) \$ ____ if the request is communicated in writing; and
- (2) \$ ____ if the request is communicated by another medium authorized by filing-office rule.

(E) Record of mortgage.

This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 49-7-502(C). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

Section 49-7-526 Filing-office Rules

(A) Adoption of filing-office rules.

The [insert appropriate governmental official or agency] shall adopt and publish rules to implement this article. The filing-office rules must be:

- (1) consistent with this article; and
- (2) adopted and published in accordance with the [insert any applicable state administrative procedure act].

(B) Harmonization of rules.

To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the [insert appropriate governmental official or agency], so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

- (1) consult with filing offices in other jurisdictions that enact substantially this part; and
- (2) consult the most recent version of the Model Rules promulgated by the International

Association of Corporate Administrators or any successor organization; and

- (3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

Section 49-7-527 Duty to Report

The [insert appropriate governmental official or agency] shall report [annually on or before ____] to the [Governor and Legislature] on the operation of the filing office. The report must contain a statement of the extent to which:

- (1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and
- (2) the filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

**SECTION SIX
DEFAULT**

Section 49-7-601 Rights After Default; Judicial Enforcement; Consignor or Buyer of Accounts, Chattel Paper, Payment intangibles, or Promissory notes

(A) Rights of secured party after default.

After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 49-7-602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
- (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(B) Rights and duties of secured party in possession or control.

A secured party in possession of collateral or control of collateral under Section 49-7-104, 49-7-105, 49-7-106, or 49-7-107 has the rights and duties provided in Section 49-7-207.

(C) Rights cumulative; simultaneous exercise.

The rights under subsections (A) and (B) are cumulative and may be exercised simultaneously.

(D) Rights of debtor and obligor.

Except as otherwise provided in subsection (G) and Section 49-7-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(E) Lien of levy after judgment.

If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

- (1) the date of perfection of the security interest or agricultural lien in the collateral;
- (2) the date of filing a financing statement covering the collateral; or
- (3) any date specified in a statute under which the agricultural lien was created.

(F) Execution sale.

A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(G) Consignor or buyer of certain rights to payment.

Except as otherwise provided in Section 49-7-607(C), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 49-7-602 Waiver and Variance of Rights and Duties

Except as otherwise provided in Section 49-7-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Section 49-7-207(B)(4)(c), which deals with use and operation of the collateral by the secured party;
- (2) Section 49-7-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Section 49-7-607(C), which deals with collection and enforcement of collateral;

(4) Sections 49-7-608(A) and 49-7-615(C) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 49-7-608(A) and 49-7-615(D) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 49-7-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 49-7-610(B), 49-7-611, 49-7-613, and 49-7-614, which deal with disposition of collateral;

(8) Section 49-7-615(F), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 49-7-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 49-7-620, 49-7-621, and 49-7-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 49-7-623, which deals with redemption of collateral;

(12) Section 49-7-624, which deals with permissible waivers; and

(13) Sections 49-7-625 and 49-7-626, which deal with the secured party's liability for failure to comply with this article.

Section 49-7-603 Agreement on Standards Concerning Rights and Duties

(A) Agreed standards.

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 49-7-602 if the standards are not manifestly unreasonable.

(B) Agreed standards inapplicable to breach of peace.

Subsection (A) does not apply to the duty under Section 49-7-609 to refrain from breaching the peace.

Section 49-7-604 Procedure if Security Agreement Covers Real Property or Fixtures

(A) Enforcement: personal and real property.

If a security agreement covers both personal and real property, a secured party may proceed:

- (1) under this part as to the personal property without prejudicing any rights with respect to the real property; or
- (2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(B) Enforcement: fixtures.

Subject to subsection (C), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

- (1) under this part; or
- (2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(C) Removal of fixtures.

Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(D) Injury caused by removal.

A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 49-7-605 Unknown Debtor or Secondary Obligor

A secured party does not owe a duty based on its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:

- (a) that the person is a debtor or obligor;
 - (b) the identity of the person; and
 - (c) how to communicate with the person;
- or

- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (a) that the person is a debtor; and
- (b) the identity of the person.

Section 49-7-606 Time of Default for Agricultural Lien

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Section 49-7-607 Collection and Enforcement by Secured Party

(A) Collection and enforcement generally.

If so agreed, and in any event after default, a secured party:

- (1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
- (2) may take any proceeds to which the secured party is entitled under Section 49-7-315;
- (3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
- (4) if it holds a security interest in a deposit account perfected by control under Section 49-7-104(A)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and
- (5) if it holds a security interest in a deposit account perfected by control under Section 49-7-104(A)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(B) Nonjudicial enforcement of mortgage.

If necessary to enable a secured party to exercise under subsection (A)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

- (1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (2) the secured party's sworn affidavit in recordable form stating that:
 - (a) a default has occurred; and
 - (b) the secured party is entitled to enforce the mortgage nonjudicially.

(C) Commercially reasonable collection and enforcement.

A secured party shall proceed in a commercially reasonable manner if the secured party:

- (1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
- (2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(D) Expenses of collection and enforcement.

A secured party may deduct from the collections made pursuant to subsection (C) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(E) Duties to secured party not affected.

This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Section 49-7-608 Application of Proceeds of Collection or Enforcement; Liability for Deficiency and Right to Surplus

(A) Application of proceeds, surplus, and deficiency if obligation secured.

If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

- (1) A secured party shall apply or pay over for application the cash proceeds of collection

or enforcement under Section 49-7-607 in the following order to:

- (a) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (b) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
 - (c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(c).
 - (3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 49-7-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
 - (4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(B) No surplus or deficiency in sales of certain rights to payment.

If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Section 49-7-609 Secured Party's Right to Take Possession After Default

- (A) Possession; rendering equipment unusable; disposition on debtor's premises.

After default, a secured party:

- (1) may take possession of the collateral; and
- (2) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 49-7-610.

- (B) Judicial and nonjudicial process.

A secured party may proceed under subsection (A):

- (1) pursuant to judicial process; or
- (2) without judicial process, if it proceeds without breach of the peace.

- (C) Assembly of collateral.

If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Section 49-7-610 Disposition of Collateral After Default

- (A) Disposition after default.

After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

- (B) Commercially reasonable disposition.

Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

- (C) Purchase by secured party.

A secured party may purchase collateral:

- (1) at a public disposition; or
- (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

- (D) Warranties on disposition.

A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law

accompany a voluntary disposition of property of the kind subject to the contract.

- (E) Disclaimer of warranties.

A secured party may disclaim or modify warranties under subsection (D):

- (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
- (2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

- (F) Record sufficient to disclaim warranties.

A record is sufficient to disclaim warranties under subsection (E) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Section 49-7-611 Notification Before Disposition of Collateral

- (A) "Notification date."

In this section, "notification date" means the earlier of the date on which:

- (1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
- (2) the debtor and any secondary obligor waive the right to notification.

- (B) Notification of disposition required.

Except as otherwise provided in subsection (D), a secured party that disposes of collateral under Section 49-7-610 shall send to the persons specified in subsection (C) a reasonable authenticated notification of disposition.

- (C) Persons to be notified.

To comply with subsection (B), the secured party shall send an authenticated notification of disposition to:

- (1) the debtor;
- (2) any secondary obligor; and
- (3) if the collateral is other than consumer goods:
 - (a) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(b) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

- (i) identified the collateral;
- (ii) was indexed under the debtor's name as of that date; and
- (iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 49-7-311(A).

(D) Subsection (B) inapplicable: perishable collateral; recognized market.

Subsection (B) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(E) Compliance with subsection (C)(3)(b).

A secured party complies with the requirement for notification prescribed by subsection (C)(3)(b) if:

- (1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (C)(3)(b); and
- (2) before the notification date, the secured party:
 - (a) did not receive a response to the request for information; or
 - (b) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Section 49-7-612 Timeliness of Notification Before Disposition of Collateral

(A) Reasonable time is question of fact.

Except as otherwise provided in subsection (B), whether a notification is sent within a reasonable time is a question of fact.

(B) 10-day period sufficient in non-consumer transaction.

In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Section 49-7-613 Contents and form of Notification Before Disposition of Collateral: General

Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (a) describes the debtor and the secured party;
 - (b) describes the collateral that is the subject of the intended disposition;
 - (c) states the method of intended disposition;
 - (d) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - (e) states the time and place of a public disposition or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes: (a) information not specified by that paragraph; or (b) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in Section 49-7-614(3), when completed, each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF
COLLATERAL**

To: [Name of debtor, obligor, or other person to which
the notification is sent]

From: [Name, address, and telephone number of
secured party]

Name of Debtor(s): [Include only if debtor(s) are not
an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the
[describe collateral] [to the highest qualified bidder] in
public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the
[describe collateral] privately sometime after [day and
date].

You are entitled to an accounting of the unpaid
indebtedness secured by the property that we intend to
sell [or lease or license, as applicable] [for a charge of
\$ _____].

You may request an accounting by calling us at
[telephone number]

[End of Form]

**Section 49-7-614 Contents and form of Notification
Before Disposition of Collateral: Consumer-Goods
Transaction**

In a consumer-goods transaction, the following rules
apply:

- (1) A notification of disposition must provide Time: _____

the following information:

- (a) the information specified in Section 49-7-613(1);
 - (b) a description of any liability for a deficiency of the person to which the notification is sent;
 - (c) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 49-7-623 is available; and
 - (d) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke
promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale
could include a lease or license. The sale will be held
as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable]] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number]].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at “ [telephone number]] [or write us at [secured party’s address]] and request a written explanation. [We will charge you \$ _____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number]] [or write us at [secured party’s address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

- (4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

Section 49-7-615 Application of Proceeds of Disposition; Liability for Deficiency and Right to Surplus

(A) Application of proceeds.

A secured party shall apply or pay over for application the cash proceeds of disposition under Section 49-7-610 in the following order to:

- (1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney’s fees and legal expenses incurred by the secured party;
- (2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
- (3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (a) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
 - (b) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
- (4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(B) Proof of subordinate interest.

If requested by a secured party, a holder of a subordinate

security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (A) (3).

(C) Application of noncash proceeds.

A secured party need not apply or pay over for application noncash proceeds of disposition under Section 49-7-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(D) Surplus or deficiency if obligation secured.

If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (A) and permitted by subsection (C):

- (1) unless subsection (A)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
- (2) the obligor is liable for any deficiency.

(E) No surplus or deficiency in sales of certain rights to payment.

If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

- (1) the debtor is not entitled to any surplus; and
- (2) the obligor is not liable for any deficiency.

(F) Calculation of surplus or deficiency in disposition to person related to secured party.

The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

- (1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and
- (2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(G) Cash proceeds received by junior secured party.

A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

- (1) takes the cash proceeds free of the security interest or other lien;
- (2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
- (3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 49-7-616 Explanation of Calculation of Surplus or Deficiency

(A) Definitions.

In this section:

- (1) "Explanation" means a writing that:
 - (a) states the amount of the surplus or deficiency;
 - (b) provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;
 - (c) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (d) provides a telephone number or mailing address from which additional information concerning the transaction is available.
- (2) "Request" means a record:
 - (a) authenticated by a debtor or consumer obligor;
 - (b) requesting that the recipient provide an explanation; and
 - (c) sent after disposition of the collateral under Section 49-7-610.

(B) Explanation of calculation.

In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 49-7-615, the secured party shall:

- (1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
 - (a) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
 - (b) within 14 days after receipt of a request; or
- (2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(C) Required information.

To comply with subsection (A)(1)(b), a writing must provide the following information in the following order:

- (1) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
 - (a) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or
 - (b) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;
- (2) the amount of proceeds of the disposition;
- (3) the aggregate amount of the obligations after deducting the amount of proceeds;
- (4) the amount, in the aggregate or by type, and types of expenses, including expenses of re-taking, holding, preparing for disposition, processing, and disposing of the collateral,

and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

- (5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and
- (6) the amount of the surplus or deficiency.

(D) Substantial compliance.

A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (A) is sufficient, even if it includes minor errors that are not seriously misleading.

(E) Charges for responses.

A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (B)(1). The secured party may require payment of a charge not exceeding twenty-five dollars (\$25) for each additional response.

Section 49-7-617 Rights of Transferee of Collateral

(A) Effects of disposition.

A secured party's disposition of collateral after default:

- (1) transfers to a transferee for value all of the debtor's rights in the collateral;
- (2) discharges the security interest under which the disposition is made; and
- (3) discharges any subordinate security interest or other subordinate lien other than liens created under [cite acts or statutes providing for liens, if any, that are not to be discharged].

(B) Rights of good-faith transferee.

A transferee that acts in good faith takes free of the rights and interests described in subsection (A), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(C) Rights of other transferee.

If a transferee does not take free of the rights and interests described in subsection (A), the transferee takes the collateral subject to:

- (1) the debtor's rights in the collateral;
- (2) the security interest or agricultural lien under which the disposition is made; and
- (3) any other security interest or other lien.

Section 49-7-618 Rights and Duties of Certain Secondary Obligors

(A) Rights and duties of secondary obligor.

A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

- (1) receives an assignment of a secured obligation from the secured party;
- (2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
- (3) is subrogated to the rights of a secured party with respect to collateral.

(B) Effect of assignment, transfer, or subrogation.

An assignment, transfer, or subrogation described in subsection (A):

- (1) is not a disposition of collateral under Section 49-7-610; and
- (2) relieves the secured party of further duties under this article.

Section 49-7-619 Transfer of Record or Legal Title

(A) "Transfer statement."

In this section, "transfer statement" means a record authenticated by a secured party stating:

- (1) that the debtor has defaulted in connection with an obligation secured by specified collateral;
- (2) that the secured party has exercised its post-default remedies with respect to the collateral;
- (3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
- (4) the name and mailing address of the secured party, debtor, and transferee.

(B) Effect of transfer statement.

A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official

filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

- (1) accept the transfer statement;
- (2) promptly amend its records to reflect the transfer; and
- (3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(C) Transfer not a disposition; no relief of secured party's duties.

A transfer of the record or legal title to collateral to a secured party under subsection (B) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

Section 49-7-620 Acceptance of Collateral in Full or Partial Satisfaction of Obligation; Compulsory Disposition of Collateral

(A) Conditions to acceptance in satisfaction.

Except as otherwise provided in subsection (G), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

- (1) the debtor consents to the acceptance under subsection (C);
- (2) the secured party does not receive, within the time set forth in subsection (D), a notification of objection to the proposal authenticated by:
 - (a) a person to which the secured party was required to send a proposal under Section 49-7-621; or
 - (b) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
- (3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
- (4) subsection (E) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 49-7-624.

(B) Purported acceptance ineffective.

A purported or apparent acceptance of collateral under this section is ineffective unless:

- (1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
- (2) the conditions of subsection (A) are met.

(C) Debtor's consent.

For purposes of this section:

- (1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
- (2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (a) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (b) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (c) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(D) Effectiveness of notification.

To be effective under subsection (A)(2), a notification of objection must be received by the secured party:

- (1) in the case of a person to which the proposal was sent pursuant to Section 49-7-621, within 20 days after notification was sent to that person; and
- (2) in other cases:
 - (a) within 20 days after the last notification was sent pursuant to Section 49-7-621; or
 - (b) if a notification was not sent, before the debtor consents to the acceptance under subsection (C).

(E) Mandatory disposition of consumer goods.

A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 49-7-610 within the time specified in subsection (F) if:

- (1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
- (2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

(F) Compliance with mandatory disposition requirement.

To comply with subsection (E), the secured party shall dispose of the collateral:

- (1) within 90 days after taking possession; or
- (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(G) No partial satisfaction in consumer transaction.

In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 49-7-621 Notification of Proposal to Accept Collateral

(A) Persons to which proposal to be sent.

A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

- (1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
- (2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (a) identified the collateral;
 - (b) was indexed under the debtor's name as of that date; and
 - (c) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

- (3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 49-7-311(A).

(B) Proposal to be sent to secondary obligor in partial satisfaction.

A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (A).

Section 49-7-622 Effect of Acceptance of Collateral

(A) Effect of acceptance.

A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (1) discharges the obligation to the extent consented to by the debtor;
- (2) transfers to the secured party all of a debtor's rights in the collateral;
- (3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) terminates any other subordinate interest.

(B) Discharge of subordinate interest notwithstanding noncompliance.

A subordinate interest is discharged or terminated under subsection (A), even if the secured party fails to comply with this article.

Section 49-7-623 Right to Redeem Collateral

(A) Persons that may redeem.

A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(B) Requirements for redemption.

To redeem collateral, a person shall tender:

- (1) fulfillment of all obligations secured by the collateral; and
- (2) the reasonable expenses and attorney's fees described in Section 49-7-615(A)(1).

(C) When redemption may occur.

A redemption may occur at any time before a secured party:

- (1) has collected collateral under Section 49-7-607;

- (2) has disposed of collateral or entered into a contract for its disposition under Section 49-7-610; or

- (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 49-7-622.

Section 49-7-624 Waiver

(A) Waiver of disposition notification.

A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 49-7-611 only by an agreement to that effect entered into and authenticated after default.

(B) Waiver of mandatory disposition.

A debtor may waive the right to require disposition of collateral under Section 49-7-620(E) only by an agreement to that effect entered into and authenticated after default.

(C) Waiver of redemption right.

Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 49-7-623 only by an agreement to that effect entered into and authenticated after default.

Section 49-7-625 Remedies for Secured Party's Failure to Comply with Article

(A) Judicial orders concerning noncompliance.

If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(B) Damages for noncompliance.

Subject to subsections (C), (D), and (F), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(C) Persons entitled to recover damages; statutory damages in consumer-goods transaction.

Except as otherwise provided in Section 49-7-628:

- (1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (B) for its loss; and
- (2) if the collateral is consumer goods, a per-

son that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(D) Recovery when deficiency eliminated or reduced.

A debtor whose deficiency is eliminated under Section 49-7-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 49-7-626 may not otherwise recover under subsection (B) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(E) Statutory damages: noncompliance with specified provisions.

In addition to any damages recoverable under subsection (B), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover five hundred dollars (\$500) in each case from a person that:

- (1) fails to comply with Section 49-7-208;
- (2) fails to comply with Section 49-7-209;
- (3) files a record that the person is not entitled to file under Section 49-7-509(A);
- (4) fails to cause the secured party of record to file or send a termination statement as required by Section 49-7-513(A) or (C);
- (5) fails to comply with Section 49-7-616(B)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
- (6) fails to comply with Section 49-7-616(B)(2).

(F) Statutory damages: noncompliance with Section 49-7-210.

A debtor or consumer obligor may recover damages under subsection (B) and, in addition, five hundred dollars (\$500) in each case from a person that, without reasonable cause, fails to comply with a request under Section 49-7-210. A recipient of a request under Section 49-7-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(G) Limitation of security interest: noncompliance with Section 49-7-210.

If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 49-7-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Section 49-7-626 Action in Which Deficiency or Surplus is in Issue

(A) Applicable rules if amount of deficiency or surplus in issue.

In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

- (1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
- (2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
- (3) Except as otherwise provided in Section 49-7-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:
 - (a) the proceeds of the collection, enforcement, disposition, or acceptance; or
 - (b) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
- (4) For purposes of paragraph (3)(b), the amount

of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

- (5) If a deficiency or surplus is calculated under Section 49-7-615(F), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(B) Non-consumer transactions; no inference.

The limitation of the rules in subsection (A) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Section 49-7-627 Determination of Whether Conduct was Commercially Reasonable

(A) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness.

The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(B) Dispositions that are commercially reasonable.

A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

- (1) in the usual manner on any recognized market;
- (2) at the price current in any recognized market at the time of the disposition; or
- (3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(C) Approval by court or on behalf of creditors.

A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

- (1) in a judicial proceeding;
- (2) by a bona fide creditors' committee;
- (3) by a representative of creditors; or
- (4) by an assignee for the benefit of creditors.

(D) Approval under subsection (C) not necessary; absence of approval has no effect.

Approval under subsection (C) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 49-7-628 Nonliability and Limitation on Liability of Secured Party; Liability of Secondary Obligor

(A) Limitation of liability of secured party for non-compliance with article.

Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

- (1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and
- (2) the secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(B) Limitation of liability based on status as secured party.

A secured party is not liable because of its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
 - (a) that the person is a debtor or obligor;
 - (b) the identity of the person; and
 - (c) how to communicate with the person; or
- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (a) that the person is a debtor; and
 - (b) the identity of the person.

(C) Limitation of liability if reasonable belief that

transaction not a consumer-goods transaction or consumer transaction.

A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

- (1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
- (2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(D) Limitation of liability for statutory damages.

A secured party is not liable to any person under Section 49-7-625(C)(2) for its failure to comply with Section 49-7-616.

(E) Limitation of multiple liability for statutory damages.

A secured party is not liable under Section 49-7-625(C)(2) more than once with respect to any one secured obligation.

SECTION SEVEN TRANSITION

Section 49-7-701 Effective Date

This Act takes effect upon adoption.

Section 49-7-702 Savings Clause

(A) Pre-effective-date transactions or liens.

Except as otherwise provided in this part, this Act applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this Act takes effect..

(B) Continuing validity.

Except as otherwise provided in subsection (C) and Sections 49-7-703 through 49-7-709:

- (1) transactions and liens that were not governed by former Article 9, were validly entered into or created before this Act takes effect, and would be subject to this Act if they had been entered into or created after this Act takes effect, and the rights, duties, and interests flowing from those transactions

and liens remain valid after this Act takes effect; and

- (2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this Act or by the law that otherwise would apply if this Act had not taken effect.

(C) Pre-effective-date proceedings.

This Act does not affect an action, case, or proceeding commenced before this Act takes effect.

Section 49-7-703 Security interest Perfected Before Effective Date

(A) Continuing priority over lien creditor: perfection requirements satisfied.

A security interest that is enforceable immediately before this Act takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this Act if, when this Act takes effect, the applicable requirements for enforceability and perfection under this Act are satisfied without further action.

(B) Continuing priority over lien creditor: perfection requirements not satisfied.

Except as otherwise provided in Section 49-7-705, if, immediately before this Act takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this Act are not satisfied when this Act takes effect, the security interest:

- (1) is a perfected security interest for one year after this Act takes effect;
- (2) remains enforceable thereafter only if the security interest becomes enforceable under Section 49-7-203 before the year expires; and
- (3) remains perfected thereafter only if the applicable requirements for perfection under this Act are satisfied before the year expires.

Section 49-7-704 Security interest Unperfected Before Effective Date

A security interest that is enforceable immediately before this Act takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

- (1) remains an enforceable security interest for one year after this Act takes effect;

- (2) remains enforceable thereafter if the security interest becomes enforceable under Section 49-7-203 when this Act takes effect or within one year thereafter; and
- (3) becomes perfected:
 - (a) without further action, when this Act takes effect if the applicable requirements for perfection under this Act are satisfied before or at that time; or
 - (b) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 49-7-705 Effectiveness of Action Taken Before Effective Date

- (A) Pre-effective-date action; one-year perfection period unless reperfected.

If action, other than the filing of a financing statement, is taken before this Act takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this Act takes effect, the action is effective to perfect a security interest that attaches under this Act within one year after this Act takes effect. An attached security interest becomes unperfected one year after this Act takes effect unless the security interest becomes a perfected security interest under this Act before the expiration of that period.

- (B) Pre-effective-date filing.

The filing of a financing statement before this Act takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this Act.

- (C) Pre-effective-date filing in jurisdiction formerly governing perfection.

This Act does not render ineffective an effective financing statement that, before this Act takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 49-7-103. However, except as otherwise provided in subsections (D) and (E) and Section 49-7-706, the financing statement ceases to be effective at the earlier of:

- (1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
- (2) June 30, 2006.

- (D) Continuation statement.

The filing of a continuation statement after this Act takes effect does not continue the effectiveness of the financing statement filed before this Act takes effect. However, upon the timely filing of a continuation statement after this Act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this Act takes effect continues for the period provided by the law of that jurisdiction.

- (E) Application of subsection (C)(2) to transmitting utility financing statement.

Subsection (C)(2) applies to a financing statement that, before this Act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former Section 49-7-103 only to the extent that Part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

- (F) Application of Part 5.

A financing statement that includes a financing statement filed before this Act takes effect and a continuation statement filed after this Act takes effect is effective only to the extent that it satisfies the requirements of Part 5 for an initial financing statement.

Section 49-7-706 When initial Financing Statement Suffices to Continue Effectiveness of Financing Statement

- (A) Initial financing statement in lieu of continuation statement.

The filing of an initial financing statement in the office specified in Section 49-7-501 continues the effectiveness of a financing statement filed before this Act takes effect if:

- (1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this Act;
- (2) the pre-effective-date financing statement was filed in an office in another State or another office in this State; and
- (3) the initial financing statement satisfies subsection (C).

(B) Period of continued effectiveness.

The filing of an initial financing statement under subsection (A) continues the effectiveness of the pre-effective-date financing statement:

- (1) if the initial financing statement is filed before this Act takes effect, for the period provided in former Section 49-7-403 with respect to a financing statement; and
- (2) if the initial financing statement is filed after this Act takes effect, for the period provided in Section 49-7-515 with respect to an initial financing statement.

(C) Requirements for initial financing statement under subsection (A).

To be effective for purposes of subsection (A), an initial financing statement must:

- (1) satisfy the requirements of Part 5 for an initial financing statement;
- (2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
- (3) indicate that the pre-effective-date financing statement remains effective.

Section 49-7-707 Amendment of Pre-Effective-Date Financing Statement

(A) “Pre-effective-date financing statement”.

In this section, “pre-effective-date financing statement” means a financing statement filed before this Act takes effect.

(B) Applicable law.

After this Act takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Part 3. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(C) Method of amending: general rule.

Except as otherwise provided in subsection (D), if the law of this State governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after this Act takes effect only if:

- (1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 49-7-501;
- (2) an amendment is filed in the office specified in Section 49-7-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 49-7-706(C); or
- (3) an initial financing statement that provides the information as amended and satisfies Section 49-7-706(C) is filed in the office specified in Section 49-7-501.

(D) Method of amending: continuation.

If the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Section 49-7-705(D) and (F) or 49-7-706.

(E) Method of amending: additional termination rule.

Whether or not the law of this State governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this State may be terminated after this Act takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 49-7-706(C) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in Part 3 as the office in which to file a financing statement.

Section 49-7-708 Persons Entitled to File Initial Financing Statement or Continuation Statement

A person may file an initial financing statement or a continuation statement under this part if:

- (1) the secured party of record authorizes the filing; and
- (2) the filing is necessary under this part:
 - (a) to continue the effectiveness of a financing statement filed before this Act takes effect; or
 - (b) to perfect or continue the perfection of a security interest.

Section 49-7-709 Priority

(A) Law governing priority.

This Act determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this Act takes effect, former Article 9 determines priority.

(A) Priority if security interest becomes enforceable under Section 49-7-203.

For purposes of Section 49-7-322(A), the priority of a security interest that becomes enforceable under Section 49-7-203 of this Act dates from the time this Act takes effect if the security interest is perfected under this Act by the filing of a financing statement before this Act takes effect which would not have been effective to perfect the security interest under former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

CITIZEN POTAWATOMI NATION
UTILITIES AND OTHER PUBLIC SERVICES
TITLE 50

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CHAPTER ONE UTILITIES AND OTHER PUBLIC SERVICES

Section 50-1-101 Plan of Operation

- (A) The name of the Authority created in this article shall be the Citizen Potawatomi Utility Authority, hereinafter referred to as the "Authority."
- (B) The principal place of business and office of the Authority shall be 1601 S. Gordon Cooper Drive, Shawnee, Oklahoma.
- (C) The Authority shall not be limited in the conduct of its business to the geographical boundaries of the Citizen Potawatomi Nation. The Authority may establish offices and operational sites within the boundaries consistent with prudent and economical management of the business.
- (D) The seal of the Authority shall be as prescribed by its board members.
- (E) The duration of the Authority is perpetual.
- (F) The purpose for which the Authority is organized is as follows:
 - (1) To govern, acquire, operate, maintain and promote utility systems, furnishing electric, gas, water, telephone, and any other form of public utility services to consumers regardless of where they may live or do business, with an emphasis to those geographical areas within the traditional territory of the Citizen Potawatomi Nation.
 - (2) To provide the essential governmental service of providing public utilities that are available to consumers in other geographical areas through governmental, quasi-governmental, and private industry entities;
 - (3) To do everything necessary, proper, advisable or convenient for accomplishment of the purposes hereinabove set forth, and to do all things incidental thereto or connected therewith, which are not forbidden by federal law, regulations of the Authority, or the Constitution and laws of the Citizen Potawatomi Nation.

Section 50-1-102 General Powers

- (A) The business and affairs of the Authority shall be managed by a Board of Directors which shall exercise all the powers of the Authority except such as are by law, or this Code conferred upon and reserved to the Citizen Potawatomi Nation.

- (B) The business and affairs of the Authority shall be managed by a board of directors comprised of no less than one or more than five members appointed by the Chairman of the Citizen Potawatomi Nation with the confirmation of the Tribal Legislature.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 50-1-103 Chairman

The Chairman of the Citizen Potawatomi Nation may attend and preside over any and/or all meetings of the Authority, appoint its executive director, oversee its budget and employees as otherwise provided by the constitution and laws of the Citizen Potawatomi Nation. The Chairman may appoint an individual or individuals to act in his place, maintain the records of the Authority, provide notices in accordance with this Ordinance or as required by law, and perform any other duties assigned to the Authority.

Section 50-1-104 Management Contracts

All Management contracts shall be approved by the Tribal Legislature or as authorized by an approved budget.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 50-1-105 Advisory Committees

The Authority may create Advisory Committees as may be necessary or advisable for the provision of the essential governmental services and lawful purposes of the Authority. If deemed appropriate, such committees may be appointed or elected from the body of consumers the Authority has been established to serve.

Section 50-1-106 Reports

The Board of Directors shall submit annually a report covering the business of the Authority for the previous fiscal year. Such reports shall set forth the condition of the Authority at the close of such fiscal year.

Section 50-1-107 Disposition of Property

The Authority may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease or other disposition or encumbrance is authorized by the Tribal Legislature. No indebtedness or liability of the Authority shall accrue to the Nation without its written consent. The Authority may not waive any legal right belonging to the Nation, including the granting of any

waiver of the Nation's sovereign immunity from suit, without the Nation's express written authorization.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

Section 50-1-108 Meetings

Meetings of the Board of Directors may be called by Board Resolution, by the Chairman, by a majority of the Board of Directors, or the Executive Director of the Authority when such power has been properly delegated. The date, time and place for the meeting within the Citizen Potawatomi Nation's traditional territory shall be fixed by the calling authority.

Section 50-1-109 Waiver of Notice

Any member of the Board of Directors may waive in writing any notice of a meeting required to be given by this Ordinance. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting by such Director except in the case a Director shall attend a meeting for the express purpose of objecting to the transaction of any business because the meeting shall not have lawfully been called or convened.

Section 50-1-110 Rules and Regulations

The Board of Directors shall have the power to make and adopt such rules and regulations not inconsistent with law, or this code, as it may deem advisable for the management and regulation of the business and affairs of the Authority by a majority vote of the Board of Directors.

Section 50-1-111 Amendments

These sections may be altered, amended or repealed by the Tribal Legislature at any regular or special meeting, provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal.

Repealed by Ordinance #17-04 by the Citizen Potawatomi Legislature on June 27, 2016.

CITIZEN POTAWATOMI NATION
PROFESSIONAL LICENSES
TITLE 51

CHAPTER

SECTION

1

Short Title

101

Board of Veterinary Licensure

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Veterinary Licensure and Fees

103

Enacted by Ordinance #17-10 by the Citizen Potawatomi Legislature on March 6, 2017.

Section 51-1-001 Short Title

This Act shall be referred to as the “Citizen Potawatomi Nation Veterinary Practice Act.”

Section 51-1-002 Board of Veterinary Licensure

(A) A Board of Veterinary Licensure is hereby created to regulate and enforce the practice of veterinary medicine within the Citizen Potawatomi Nation. The Board shall be composed of three (3) members, appointed by the Citizen Potawatomi Nation Legislature. Each member of the Board shall be appointed for a term of seven (7) years. A Board member may be appointed to an unlimited number of terms. At any time, the Legislature may remove a member from the Board for cause, including, but not limited to, a felony conviction, malfeasance in relation to Board duties, a substantive violation of this Act, or failure to regularly attend Board meetings.

(B) In accordance with this Act and other applicable law, the duty of determining a person’s initial and continuing qualification and fitness for the practice of veterinary medicine, of proceeding against the unlawful and unlicensed practice of veterinary medicine and of enforcing this Act to be conducted by the Board, with all final decisions as to licensure, revocation, or renewal to be made by the Tribal Chairman.

(C) The powers conferred on the Board by the Act are to be construed to protect the health, safety and welfare of the people of the Citizen Potawatomi Nation.

(D) No member of the Board, acting in that capacity or as a member of any Board committee, shall participate in the making of any decision or the taking of any action affecting such member’s own personal, professional or pecuniary interest.

(E) The Board shall:

- (1) Set standards for licensure, including issuing examinations if the Board deems such examinations are necessary;
- (2) Set fees for licensure;
- (3) Issue recommendations to the Tribal Chairman to either issue or deny licenses and renewals thereof;

(4) Develop and use applications and other necessary forms and related procedures for purposes of the Act;

(5) Review and investigate complaints and adverse information about licensees, and adjudicate matters that come before the Board for judgment pursuant to the Act upon clear and convincing evidence and issue recommendations to the Tribal Chairman on such matters as to licensees. Any person aggrieved by a final decision of the Tribal Chairman as to issuance or revocation or renewal of licensure may seek review in the District Court of the Citizen Potawatomi Nation;

(6) Establish minimum standards for veterinary premises; and

(7) Perform such other duties and exercise such other powers as the provisions and enforcement of the Act may require.

(F) The Board shall adopt rules and regulations to enforce the provisions of the Act.

Section 51-1-003 Veterinary Licensure and Fees

(A) It shall be unlawful to practice veterinary medicine in the Citizen Potawatomi Nation without a license issued by the Tribal Chairman, after recommendation of the Board of Veterinary Licensure.

(B) Requirements for licensure shall be set by the Board and may be changed as the education and training for the practice of veterinary medicine changes. Prior to issuance of a license to practice veterinary medicine in the Citizen Potawatomi Nation, the applicant shall have been found by the Board to be of good moral character and the Board shall consider but not be limited to the following evidence of suitability to practice:

- (1) Graduation from an approved school of veterinary medicine whose requirements at the time of graduation are acceptable to the Board. Graduates of schools of veterinary medicine located outside the United States and Canada shall be held to the same standards for evidence of suitability to practice as are graduates of schools of veterinary medicine located within the United States in that applicants shall conform in all respects

to the requirements set forth in this section. Where necessary, further examination shall be administered by the Board or its designee to determine competency to practice. In addition, applicants shall demonstrate a command of the English language satisfactory to the Board. Documents and material submitted in support of application for licensure or certification, if in a foreign language, shall be translated and certified as accurate by an organization acceptable to the Board;

- (2) Satisfactory completion of a minimum number of months of education in veterinary medicine as a requirement for graduation from a school of veterinary medicine as set by the Board;
- (3) Evidence that the applicant has passed examinations satisfactory to the Board and that the examination score is acceptable to the Board;
- (4) Active licensure for the practice of veterinary medicine issued to the applicant by any Indian Nation or State of the United States;
- (5) Evidence that the applicant for licensure or certification is of good moral character; mentally and professionally capable of practicing veterinary medicine in a competent manner as determined by the Board and willing to submit, if deemed appropriate by the Board, to an evaluation of skills and abilities;
- (6) Evidence that the applicant has demonstrated familiarity with the statutes and rules set by the Board;
- (7) Evidence that the applicant has not been found guilty by a court of law of any conduct that would constitute grounds for disciplinary action under this Act or rules of the Board, and there has been no disciplinary action taken against the applicant by any public agency concerned with the practice of veterinary medicine;
- (8) If the Board deems it necessary, a personal appearance by the applicant before the Board in support of the applicant's application for licensure or certification. If the Board is not satisfied with the credentials of the applicant, or demonstration of knowl-

edge or skills presented, the Board may require further examination or supervised practice before reconsideration of the application; and

- (9) Evidence that all required fees have been paid.
- (C) Practice without the legal possession of an active license or certificate shall be prohibited. If upon inquiry in accordance with Section 51-1-002(E) of this Act and the rules of the Board, the Board determines that an individual is practicing without legal possession of an active license or certificate, the Board may recommend that the Tribal Chairman enjoin such an individual from the practice of veterinary medicine."