

CHAPTER 8A
DOMESTIC RELATIONS

INTRODUCTORY PROVISIONS

8A-1 DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

8A-1.01 "Annulment" or "nullity" means the act of declaring a marriage void.

8A-1.02 "Business day" means a day on which Kootenai Tribal offices are open for regular business

8A-1.03 "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

8A-1.04 "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.

8A-1.05 "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

8A-1.06 "Dissolution" or "divorce" means the act of terminating a marriage not including annulment.

8A-1.07 "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

8A-1.08 "Employer" includes the Kootenai Tribe of Idaho and any person or entity that pays or owes income to the obligor.

8A-1.09 "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus,

commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(1) Unemployment compensation payments, workers compensation and similar public assistance shall be exempt from the provisions of this chapter;

(2) Worker's compensation payments made under Chapter 8, title 72, Idaho Code or under the jurisdiction of any other state, province or tribe, shall be exempt from the provisions of this chapter;

(3) Public assistance payments made under the Tribal TANF or General Assistance Program, title 56, Idaho Code, or similar payments made by another tribe, state, province or federal (U.S. or Canada) agency shall be exempt from the provisions of this chapter;

(4) Gaming Revenue Distribution Plan payments.

8A-1.10 "In-Kind Payments" as permitted by the trier of fact includes, but is not limited to, the provision of traditional foods and services.

8A-1.11 "Maintenance" means the furnishing by one person to another of support, for the means of living including food, clothing, shelter and other reasonable needs.

8A-1.12 "Marriage" means the civil status, condition or relation of a man and woman considered united in law as husband and wife.

8A-1.13 "Minor" or "Child" means any person under the age of eighteen (18) that has not been emancipated by order of a court of competent jurisdiction.

8A-1.14 "Obligee" means any person, tribal department, state, provincial or federal (U.S. or

Canada) agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

8A-1.15 "Obligor" means any person obligated by order to pay child or spousal support.

8A-1.16 "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

8A-1.17 "Support order" means a judgment, decree, or order issued by the Kootenai Tribal Court creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction of another tribe, state, province or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable by the Kootenai Tribe.

8A-2 SCOPE

8A-2.01 This chapter will apply to the creation and dissolution of a marriage of which at least one party to the marriage is an Indian living in Kootenai Indian Country for a period no less than six (6) months.

8A-2.02 Marriages performed under this chapter must be performed on Kootenai Lands or within Kootenai Indian Country.

8A-3 ENFORCEMENT

In addition to any other applicable remedy or penalty provided by the Kootenai Code, any person who violates the provisions of this chapter or misrepresents any fact required to be stated on a certificate form or marriage license may be subject to fine for a civil infraction.

8A-4 MARRIAGE LICENSE

8A-4.01 Any person over the age of eighteen (18), or over the age of sixteen (16) provided he or she has consent from his or her parents or legal guardian, shall be granted a

license for purposes of legalizing his or her marriage to a person of the opposite gender, provided he or she complies with the terms and conditions set forth in this ordinance.

8A-4.02 Application For A Marriage License.

(1) The Clerk of Court shall prepare an application for a marriage license. The application shall require such information as is deemed appropriate by the Tribal Council. Upon receipt of a completed application, a marriage license shall be issued.

(2) Both individuals who desire to be married under the civil authority of the Kootenai Tribe of Idaho shall complete an application, which shall include, but is not limited to the following information:

- (a) Name, address and telephone number;
- (b) Date of birth;
- (c) Social Security Number;
- (d) Driver's License Number;
- (e) Name, address and telephone number of next of kin that can generally be contacted with the information given; and
- (f) Address and telephone number of the marriage residence.

(3) In addition to the foregoing, the application for a marriage license shall include the following:

- (a) A place for the parent or legal guardian of any applicant under the age of eighteen (18) to acknowledge his or her consent to the marriage by signature following the words,

I hereby grant my consent to _____, my (son)(daughter)(legal ward), who is presently under the age of eighteen (18) but over the age of sixteen (16), to be married to _____

under the civil authority of the Kootenai Tribe of Idaho. I have given this consent based on my trust in them to conduct themselves in conformity with the laws and policies of the Kootenai Tribe of Idaho.

- (b) A place for each applicant to sign the application immediately following the words below:

I hereby declare under penalty of perjury that the information contained on this application is true and correct to the best of my knowledge. I further declare that I make application for a license to be married to _____, who shall be my (husband)(wife) for as long as we shall live. I hereby give my promise to provide love and support to _____ and, should any children be born of our relationship, to provide love and support for them as well. I hereby give my irrevocable consent to the jurisdiction of the Tribal Court of the Kootenai Tribe of Idaho for purposes of its right and obligation to determine my duty to pay child support for any such child. I further give my irrevocable promise to abide by any order of that Court regarding custody and child support as long as any such child remains within the Court's jurisdiction.

8A-5 MARRIAGE CEREMONY

8A-5.01 Marriages may be solemnized by the Tribal Chairperson, or any of the following who is of the age of eighteen (18) years or older. Such marriages must conform to the requirements of this chapter.

- (1) A priest, minister, rabbi, or authorized person of any religious denomination.
- (2) Any judge or retired judge of any competent jurisdiction.
- (3) Any elected official of the Tribe.

(4) A "Deputy of Civil Marriage" appointed by the Tribal Chairperson, who may solemnize marriages under his or her direction. Such Deputy may be appointed upon filing a request with the Tribal Chairperson and will be valid for the time specified.

8A-5.02 The person conducting the marriage ceremony must be reasonably assured of:

- (1) the identity of the parties and
- (2) the places of residence of the parties; and
- (3) that the parties possess a marriage license.

8A-5.03 No particular form for the ceremony of a marriage is required, but the parties must declare, in the presence of at least two (2) witnesses and the person solemnizing the marriage that they take each other as husband and wife.

ANNULMENT

8A-6 VOID AND VOIDABLE MARRIAGES

8A-6.01 A marriage is illegal and void from the beginning if:

- (1) Either party is less than eighteen (18) years old unless such party:
 - (a) Is over sixteen (16) years of age and has the written and properly notarized consent of his or her parent or guardian to marry; or
 - (b) If after obtaining the age of eighteen (18), freely cohabits with the other as husband or wife.
- (2) Either party was of unsound mind, unless after coming to reason such party freely cohabits with the other as husband or wife;
- (3) The consent of either party is obtained by fraud or duress, unless such party afterward, with full knowledge of the facts constituting the fraud or regardless of the duress used, freely cohabited with the other as husband or wife;

(4) The marriage is between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, or aunts and nephews or first cousins whether the relationship is legitimate or illegitimate;

(5) The marriage is contracted by a person during the time he is legally married to another unless the actor believes the original spouse to be dead at the time.

8A-7 ANNULMENT ACTIONS/JUDGMENT

8A-7.01 An action to obtain a decree of nullity of marriage may be commenced if:

(1) The marriage is in violation of the age requirements of this chapter and the action is brought by the under aged party to the marriage within one (1) year after arriving at the age of eighteen (18), or by a parent, guardian, or other person having charge of such party, at any time before such party reaches the age of eighteen (18);

(2) Either party is legally married to another and the action is brought by either party or by such original spouse;

(3) Either party was of unsound mind and the action is brought by such party, or a relative or guardian of such party;

(4) The marriage is between relatives and the action is brought by another relative of the parties or the Tribe;

(5) Consent of either party was obtained by fraud and the action is brought by the party injured within one (1) year after the discovery of the facts constituting the fraud; or

(6) Consent of either party was obtained by force and the action is brought by the party injured within one (1) year after the marriage.

8A-8 LEGITIMACY OF CHILDREN

It shall be a rebuttable presumption that children conceived during a marriage are legitimate and have rights to the estate of both parents. The Tribal Court may at any time issue necessary

orders for the support of children as the circumstances require.

DISSOLUTION

8A-9 DISSOLUTION OF MARRIAGE

A marriage is dissolved by:

(1) The death of one of the parties; or

(2) The judgment of the Tribal Court or any other court of competent jurisdiction decreeing a dissolution and restoring the parties to the state of unmarried persons.

8A-10 GROUND FOR DISSOLUTION

A dissolution may be granted if one or other of the parties alleges irreconcilable differences in the marriage or the marriage is irretrievably broken.

8A-11 PROCEEDINGS

8A-11.01 Dissolution proceedings shall be initiated by the filing of a petition. No decree of dissolution shall be granted except after hearing before the Court.

8A-11.02 Unless determined otherwise by the Court, or upon agreement by both parties, no hearing on the petition for dissolution shall be held until at least twenty (20) business days after the filing of the petition. At any time prior to hearing, the Court, upon application of one of the parties, may require conference of the parties in order to determine whether or not reconciliation is practicable. The Court may allow additional parties to attend the meeting as it determines appropriate. If the Court determines that as a result of the meeting, reconciliation is practicable and it is in the best interest of the parties and children, if any, it may stay the proceedings for up to ninety (90) days.

SEPARATE MAINTENANCE/CHILD SUPPORT

8A-12 TEMPORARY SPOUSAL/CHILD SUPPORT

8A-12.01 While an action for dissolution is pending and upon consideration of the financial status of the parties, the Court may order the payment by one party to the other:

(1) Of temporary maintenance or temporary support of a child in an amount and according to appropriate terms under the circumstances;

(2) Of a reasonable amount for the cost of maintaining or defending any dissolution proceedings.

8A-12.02 In those instances where the Court deems it necessary, it may appoint a guardian ad litem to represent a minor or dependent child with respect to his support, custody and visitation. Any costs or fees for such representation shall be borne by either or both of the child's parents.

PROPERTY RIGHTS

8A-13 PROPERTY SETTLEMENT AGREEMENT

This chapter shall govern the property rights of married persons, subject to a written property settlement agreement between such persons entered into prior to or during the marriage. Such an agreement must be recorded in the office of the recorder of every county and/or Bureau of Indian Affairs (BIA) for property held in trust by the BIA for the benefit of either of the parties in which any real estate affected by the agreement is located. The effect of recording or non-recording of such agreement shall be the same as if the agreement were a conveyance of real property.

8A-14 SEPARATE PROPERTY

8A-14.01 The sole and separate property of married persons shall include all property of a husband or wife:

- (1) Owned by him or her before marriage or acquired after marriage by either gift, bequest, devise or descent; or
- (2) Acquired with the proceeds of his or her separate property; or
- (3) That are considered traditional or cultural items.

8A-14.02 During the marriage, a party has the management, control and sole authority to dispose of his separate property and the separate

property of one spouse shall not be liable for debts contracted to with the separate property of the other.

8A-15 COMMUNITY PROPERTY

8A-15.01 All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

8A-15.02 Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance; provided, however, that the income from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

8A-16 MANAGEMENT OF COMMUNITY PROPERTY

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal.

8A-17 DISPOSITION OF PROPERTY

8A-17.01 Unless there are compelling reasons otherwise, in the event dissolution is granted, the Court shall dispose of the community property of the parties in substantially equal division in value or assign the property in such proportions as it deems just. In making its determination, the Court shall consider all the facts of the case and the condition of the parties.

8A-17.02 If real property is involved in the disposition of property from a decree of dissolution, its disposition shall be consistent with the just apportionment of the property and may be assigned to either party either absolutely or for a limited period. The Tribe disfavors alienation of real property within Kootenai Territory to non-Kootenais and the Court shall take such policy into consideration when disposing of property under this chapter.

CUSTODY OF CHILDREN**8A-18 CARE AND CUSTODY OF CHILDREN**

8A-18.01 Unless otherwise provided by this Code or court order, the parents of an unmarried or unemancipated child(ren) are equally entitled to his or her custody and responsible for his or her care and support. If either the father or mother is deceased, or has been determined to have abandoned the family or to be unable or to have refused to take custody of the child(ren), his or her rights and responsibilities shall transfer to the other parent or grandparent(s) if neither parent is willing and able to care for the child(ren).

8A-18.02 In cases where the parents of a child(ren) are not married to each other, either parent may petition for an order of custody and child support.

8A-19 PROCEEDINGS

8A-19.01 The Court shall provide or remand physical/legal custody, care, and education, when it is deemed in the best interest of the child(ren).

8A-19.02 In reaching a decision on custody, and placement and visitation of a child(ren) the Court shall consider all relevant factors, including:

(1) The wishes of the child(ren) as to his or her custody and the older the child(ren), the more weight shall be given by the trier of fact;

(2) The wishes of the biological/legal parent(s);

(3) The relationship between the child(ren) and his or her parent(s) and siblings;

(4) The child(ren)'s adjustment or lack of adjustment, to a new home, school, or community;

(5) The need to promote continuity and stability in the life of the child(ren).

SEPARATE MAINTENANCE/CHILD SUPPORT MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT**8A-20 MAINTENANCE/CHILD SUPPORT**

8A-20.01 Action for separate maintenance and/or child support may be maintained by one spouse who is living separate from the other.

8A-20.02 Where dissolution is granted and after considering all relevant factors, the Court may order separate maintenance for either spouse in such amounts and for such period of time the Court deems just. Separate maintenance may be awarded to a spouse only if such spouse:

(1) Lacks sufficient property to provide for his or her reasonable needs; and

(2) Is unable to support himself or herself through employment.

8A-20.03 The court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for such child's support.

(1) Factors to be considered in determining each parents' obligation to their children's support include:

(a) The age, health, station, earning capacity, amount and sources of income, estate, vocational skills, employability of each of the parents;

- (b) The age, health, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child; and
- (c) Any Tribal interests in or benefits available to either of the parents or minor child, including, but not limited to, health care and education, provided that Health, Education and Welfare GRDP Distributions shall not be factored.

(2) In the absence of Kootenai Tribal Child Support Guidelines, the Court may look to the respective State-established guidelines as a tool in determining an amount for child support. Upon adoption of Tribal guidelines, the Tribal guidelines shall be the sole tool for establishing child support, in relation to the factors set forth herein. The guidelines shall be reviewed every three (3) years. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of the child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that the circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court. When adopting guidelines, the court shall provide that in a proceeding to modify an existing award, children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered.

(3) The Court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.

8A-21 REMEDIES IN ADDITION TO OTHER REMEDIES

8A-21.01 The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

8A-21.02 The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this chapter, and regardless of the past or current marital status of the parents.

8A-22 INCOME WITHHOLDING

8A-22.01 The Tribal Prosecutor or other Tribal agency responsible for child support enforcement may enforce a support order which is or has been issued or modified against a non-custodial parent by withholding as much of his or her income as is necessary to pay the current monthly support amount and, if needed, an additional amount to be applied toward any arrearage. The total amount may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673 (b)).

8A-22.02 The Tribal Prosecutor or other Tribal agency will comply with all procedural due process requirements of the Kootenai Tribe of Idaho.

8A-22.03 Income withholding does not apply to in-kind payments.

8A-22.04 Mistake of fact is the only basis for contesting income withholding.

8A-23 NOTICE OF IMMEDIATE INCOME WITHHOLDING

8A-23.01 The Court shall order income withholding in all support orders effective the date of the order unless an exception is granted pursuant to this chapter. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

8A-23.02 Immediate income withholding shall not be ordered if:

(1) One of the parties demonstrates and the Court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the Court must be based on, at a minimum:

- (a) A written determination and explanation of why implementing

immediate withholding would not be in the best interests of the child; and

- (b) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the obligor and obligee and the Tribal Prosecutor or other Tribal agency in cases where the Tribe is providing child support services, which provides for an alternative arrangement and such agreement is determined by the Court to be in the best interests of the child.

8A-23.03 Failure to provide for income withholding does not affect the validity of the support order.

8A-24 INCOME WITHHOLDING UPON A DELINQUENCY

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

8A-25 IDENTIFYING INFORMATION -- FILING WITH TRIBUNAL AND CHILD SUPPORT SERVICES

Obligors and obligees shall file with the Court or the Tribal Prosecutor or other Tribal agency, if the Tribal Prosecutor or other Tribal agency is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of their employer. Obligors and obligees shall provide written notification of any changes within thirty (30) days after such change.

8A-26 ORDER FOR PAYMENT OF MEDICAL EXPENSES

The Court may order payment for reasonable share of medical expenses of a dependent child upon filing of a motion itemizing medical expenses, reference to insurance premiums, deductibles or

payments on submitted claims and a description of the terms of the support order requiring medical expenses claimed to be due.

8A-27 TERMINATION OF INCOME WITHHOLDING UPON OBLIGOR'S REQUEST

8A-27.01 An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding by filing a motion requesting such relief with the Court. A copy of the motion and a notice of hearing shall be served upon the obligee by personal service or certified mail, pursuant to the Kootenai Civil Code.

8A-27.02 In a hearing to quash, modify, or terminate an income withholding order issued under this chapter, the Court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

8A-27.03 Mistake of fact is the only basis for contesting income withholding.

8A-28 HEALTH INSURANCE COVERAGE -- ENFORCEMENT

Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the Tribal Prosecutor or other Tribal agency or other obligee may seek enforcement of the coverage order as provided under this section.

8A-29 TERMINATION OR MODIFICATION OF INCOME WITHHOLDING UPON OBLIGEE'S REQUEST

The Court may quash, modify or terminate an income withholding order issued under this chapter upon written request therefore by the obligee, unless the Court finds that the termination would not be in the best interests of the dependent child.

8A-30 TERMINATION OF INCOME
WITHHOLDING BY THE COURT IN A JUDICIAL
PROCEEDING

If the clerk is unable to deliver payments under an income withholding order issued under this chapter for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the Court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The Court shall return all undeliverable payments to the obligor.