

**WAGANAKISING ODAWAK STATUTE #
DISSOLUTION OF MARRIAGE**

SECTION I. PURPOSE AND TITLE

The Little Traverse Bay Bands of Odawa Indians finds that the Tribe’s interest over family relations is an integral part of tribal self-government and the Tribe’s history and culture, that it is exceedingly important to the Tribe to support the preservation of families, that families thrive when they receive appropriate emotional and financial support, and that the lives of children and families improve by strengthening parental responsibility for family and child support. The Tribe encourages the protection and preservation of the continuity of family, but recognizes that in the event of dissolution of marriage, divorce proceedings need uniform, efficient and equitable ways to provide for the dissolution of the marriage. This Statute repeals and replaces Waganakising Odawak Statutes 2008-007 Dissolution of Marriage, and 2015-01

SECTION II. DEFINITIONS

- 1. “*Court*” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.
- 2. “*Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians*” means “*areas referenced in Little Traverse Bay Bands Constitution, Article IV (A)... lands which are now and hereafter owned or acquired by the Little Traverse Bay Bands of Odawa Indians or held in trust for the Tribe by the United States.*”
- 3. “*Tribe*” means the Little Traverse Bay Bands of Odawa Indians.

SECTION III. JURISDICTION

The Court shall have jurisdiction over divorce proceedings for the dissolution of marriage, including issues of child custody, child support, division of property, or alimony where at least

1 one (1) party to the proceedings is a Tribal Citizen of the Little Traverse Bay Bands of Odawa
2 Indians and has been a bona fide resident of the Tribal Jurisdiction for a period of at least 180
3 days prior to the filing of the action.
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6 **SECTION IV. SIMPLE DISSOLUTION**
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8 **1.** An action for Simple Dissolution shall be commenced by the filing of a joint petition by
9 the parties that contains the following:

10 **a)** The full legal name, address, social security number and drivers license number of
11 each party to the marriage;

12 **b)** The Tribal Citizenship number of at least one of the parties;

13 **c)** A statement that at least one of the parties have resided within the Tribal
14 jurisdiction for six months immediately before the filing of the petition;

15 **d)** A statement that the parties have no children under the age of 18, unless
16 emancipated, or no dependent children together, and the wife is not pregnant,

17 **e)** The maiden name of the wife and/or her name prior to the marriage if different;

18 **f)** The date and location of the marriage;

19 **g)** The date and location of the separation of the parties;

20 **h)** A statement that there has been a breakdown in the marital relationship to the
21 point that the objects of matrimony have been destroyed and there remains no reasonable
22 likelihood that the marriage can be preserved, or that the parties have lived separate and
23 apart for one (1) year;

24 **i)** A proposed division of marital property and debt that contains provisions about
25 how personal belongings, assets, property, and their debts are going to be divided once
26 the parties are no longer married. Or a statement that there are no personal belongings,
27 assets, debts, or property such as homes, cars, etc;

28 **j)** A statement that neither party is requesting alimony.
29

30 **2.** A simple dissolution shall be granted by the Court without a hearing.
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33 **SECTION V. DISSOLUTION OF MARRIAGE**
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LEG-317

- 1 A. A decree of dissolution of marriage shall be granted without regard to the fault of the
2 parties and upon a finding that the marriage has broken down irretrievably, and that there
3 remains no reasonable likelihood that the marriage can be preserved; or the parties have
4 mutually and voluntarily lived separate and apart without cohabitation for a period of at
5 least one (1) year immediately prior to the filing of the petition for divorce.
6
7 1. Fault of a party or basis for the breakdown of the marriage, is a relevant factor in
8 awarding alimony or spousal support notwithstanding the decree of dissolution of
9 marriage granted without regard to the fault of the parties.
10
11 B. An action for divorce shall be commenced by the filing of a petition by one of the parties
12 and shall contain the following:
13
14 1. The full legal name, address, social security number and driver's license number
15 of each party to the marriage;
16 2. The Tribal Citizenship number of at least one of the parties;
17 3. The names and birth dates of any children born of the marriage or of any children
18 born prior to the marriage where the husband is asserted to be the father;
19 4. A statement as to whether or not the wife is pregnant at the time the petition is
20 filed;
21 5. The maiden name of the wife and/or her name prior to the marriage if different;
22 6. The date and location of the marriage;
23 7. The date and location of the separation of the parties;
24 8. A proposed division of marital property and debt, and custody of children, if any.
25 9. A statement that there has been a breakdown in the marital relationship to the
26 point that the objects of matrimony have been destroyed and there remains no
27 reasonable likelihood that the marriage can be preserved, or that the parties have
28 lived separate and apart for one (1) year.
29
30 C. The non-petitioning party may file a response to the petition within thirty (30) days of
31 receipt of the petition.
32
33 D. The response may state the facts and circumstances which show that there are no valid
34 grounds for divorce, or may seek a division of property, child custody arrangement, or
35 other relief different than that proposed by the petitioner.
36
37 E. A copy of the response must be served on the petitioning spouse.
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- 1 F. Following a petition for divorce, and after the opportunity for the non-petitioning party to
2 respond, the Tribal Court shall hold a hearing unless the parties have stipulated to all
3 matters and issues pending.
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- 5 G. If the parties stipulate, and the Tribal Court is convinced that the stipulation is fair and
6 equitable, the court may enter a decree without a hearing.
7
- 8 H. If minor children are involved, the Court may order the parties to counseling, continue
9 the action for a maximum of three months to enable the parties to reconcile, or take such
10 other actions as may be in the best interests of the parties or the minor children of the
11 marriage.
12
- 13 I. Hearings shall be held within six (6) months of the date that the petition is filed, with
14 actions involving the custody of minor children taking precedence over all other civil
15 cases.
16
- 17 J. At the hearing, both parties shall have the opportunity to testify, call witnesses, present
18 evidence and cross-examine their spouse and any other witnesses.
19
- 20 K. The intentional filing of groundless petitions shall result in the imposition of sanctions.
21
- 22 L. A final order of the Tribal Court may be appealed in the same fashion and manner as any
23 other order of the Court.
24
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26 **SECTION VI. DIVISION OF PROPERTY**
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28 When a divorce is granted, the Court shall order distribution of all real and personal property in
29 an equitable fashion and shall allocate the marital financial obligations of the parties, in whole to
30 either party, or partially to each party.
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33 **SECTION VII. ALIMONY**
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35 Alimony is a form of support to a dependent spouse. The spouse must be substantially
36 dependent on the income of another spouse for the regular necessities of life. The amount of
37 alimony or spousal support will vary with the disparity of the party's incomes and the length of
38 the marriage. Alimony may be awarded for a term of years and/or upon the death or remarriage
39 of the parties.
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LEG-317

- 1 A. After the equitable distribution of assets and liabilities, the Court may grant alimony to
2 either party, in a lump sum payment or in periodic payments or both.
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5 B. The Court shall consider the length of the marriage, the age, physical and emotional
6 conditions of each of the parties and all sources of available income to either party.
7
8 1. All sources of available income. The Court shall recognize all sources of current
9 available separate household income when the parties have mutually and
10 voluntarily lived separate and apart without cohabitation for a period of at least
11 one (1) year immediately prior to the filing of the petition for divorce.
12 2. Such order may be modified, on motion of either party to reflect changes in either
13 party's economic circumstances.
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15 C. Groundless filings may result in the imposition of sanctions.
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17 D. The Court, upon motion, shall terminate alimony to any spouse who has remarried or
18 upon the death of either party.
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21 **SECTION VIII. CHILD CUSTODY, VISITATION AND SUPPORT**
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- 24 **A.** In any action for divorce, the Court shall have the authority to determine the custody of
25 any child less than eighteen (18) years of age. Custody is the care, control and
26 maintenance of a child which includes legal and physical custody.
27
28 1. Legal custody is the decision-making authority.
29
30 2. Physical custody is the caregiving authority.
31
32 **B.** The Court shall have jurisdiction to award custody of a minor child to one of the parents,
33 or both of the parents.
34

- 1 **C.** The court must order joint physical custody of a child to both parents unless the court
2 determines that joint physical custody is not in the best interests of the child as set forth
3 in this Statute.
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- 5 **D.** A person who is giving legal custody may make important life decisions for a child, such
6 as health care, education, child care and general welfare.
7
- 8 **1.** Joint legal custody gives both parents the right to make these decisions.
 - 9
 - 10 **2.** Sole legal custody gives one parent all decision-making responsibilities.
11
- 12 **E.** A person who is giving physical custody has actual physical residency of a child.
13
- 14 **1.** Joint physical custody means that each parent will have specific times with a child.
 - 15
 - 16 **2.** Sole physical custody means that one parent provides for the day-to-day care for the child
17 and the non-custodial parent may be given parenting time.
18
- 19 **F.** In determining the best interest of the child, the Court shall consider all relevant factors
20 including:
21
- 22 **1.** The love, affection, and other emotional ties existing between the parent involved
23 and the child.
 - 24
 - 25 **2.** The capacity and disposition of the parent to give the child love, affection, and
26 guidance and to continue the child's education.
27
 - 28 **3.** The capacity and disposition of a parent, for reasons other than poverty, to
29 provide adequate food, clothing, shelter, medical care, education, or supervision
30 necessary for the child's health and well-being.
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 - 32 **4.** The ability of a parent to provide a stable and satisfactory environment for the
33 child.

LEG-317

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- 5. The mental and physical health of the parent.
- 6. The home, school, and community record of the child.
- 7. The wishes of the child may be weighed by the Court, but are not controlling to the Court’s decision. The Judge will meet with the child in his or her chambers to discuss the child’s wishes.
- 8. The interaction and interrelationship of the child with siblings and any other person who may significantly affect the child’s best interest.
- 9. The willingness and ability of each of the parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- 10. Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- 11. Any other factor considered by the court to be relevant to a particular child custody dispute.

- G.** The Court shall not consider conduct of a proposed custodian that does not affect his or her relationship to the child.
- H.** The Court shall have no presumption that one parent is better suited to be a custodian because of gender.
- I.** Differences in financial circumstances alone shall not be a deciding factor in the determination of custody.

- 1 **J.** The Court shall have the authority to require the non-custodial parent to pay such sum as
2 the Court may determine appropriate and proper for the support and maintenance of the
3 child.
4
- 5 **K.** The Court shall designate visitation for the non-custodian parent or parent(s) and shall
6 provide for the foster and expansion of the relationship between the non-custodial
7 parent(s) and the child whenever possible, unless the Court finds, after a hearing, that
8 visitation would endanger seriously the child’s physical, mental or emotional health.
9
- 10 **L.** The Court, upon petition of either parent to whom custody or visitation of the minor child
11 may be awarded, may revise, amend or alter any order concerning the care, custody,
12 support or visitation rights with any child consistent with the best interests of the child.
13
- 14 **M.** Changes in domicile where the custodial parent wants to move out-side of the Tribal
15 Territorial Jurisdiction, shall require prior Court approval. The Court shall consider the
16 following factors:
17
- 18 1. Consent of both parents.
 - 19
 - 20 2. Prospective advantages of the move for improvement of the general quality of life
21 for the custodial parent and child.
22
 - 23 3. The likelihood of the custodial parent complying with the Tribal Court Order once
24 he or she is no longer resides within the Tribal Territory.
25
 - 26 4. The extent to which there will be a realistic opportunity for non-custodial
27 visitation which can continued to foster the relationship between the non-custodial
28 parent(s) and the child.
29
- 30 **N.** Both custodial and non-custodial parents shall notify the Court of any changes in
31 domicile or residency.
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LEG-317

- 1 **O.** When the Court has ordered periodic support payments under this code, and the parent
2 does not pay as ordered, the Court shall use the same methods to collect these payments
3 as it would to enforce any money judgment in a civil action, including contempt.
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6 **SECTION IX. TEMPORARY INTERIM ORDERS**
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8 **A.** The Court may issue temporary orders during the pending of all proceedings involving
9 child custody, child support, visitation, alimony and the possession of real and personal
10 property.
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12 **B.** Such orders may be granted upon the motion of either party or on the Court's own
13 motion. A hearing shall be held prior to the issuance of such orders, unless the Court
14 determines that an emergency exists or a party cannot be found, in which case such
15 orders may be issued ex-parte.
16

17 **C.** Emergency may be interpreted to include, but not limited to:
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- 19 1. a danger of physical abuse to the spouse or the party's child(ren);
- 20 2. severe emotional abuse;
- 21 3. a lack of means for interim subsistence; or
- 22 4. the danger that the child(ren) will be removed from jurisdiction.
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24 **D.** If the initial order is issued ex-parte, a full hearing on the temporary order shall be held
25 within fourteen (14) days.
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28 **SECTION X. ENFORCEMENT**
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30 When either party to a divorce proceeding shall fail willfully to comply with an order of the
31 Tribal Court, the other party may file a petition with the Court alleging such failure. The Court
32 shall then issue notice to the party, which shall include a copy of the petition, and set a date for
33 the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply
34 with its order, and issue any order which it shall deem just and proper under the circumstances

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SECTION XI. SAVING CLAUSE

In the event that any phrase, provision, part, paragraph, subsection or section of this statute is found by a court of competent jurisdiction to violate the Constitution, laws, ordinances or statutes of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or section shall be considered to stand alone and to be deleted from this statute, the entirety of the balance of the statute to remain in full and binding force and effect.

SECTION XII. EFFECTIVE DATE

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

CERTIFICATION