

WAGANAKISING ODAWAK STATUTE # 2023-019
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 Statute 2023-001.

SECTION II. DEFINITIONS

- A. “Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

- B. “Domicile” means the permanent home where a person physically resides or intends to return.

- C. “Marriage” means the legal and voluntary union of two persons to the exclusion of all others

- D. “Reservation” means the areas referenced in Public Law 103-324, 25 U.S.C. §1300k-2(b)(2)(A) as “the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third and fourth’ of the Treaty of 1855, 11 Stat. 621.”

- E. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means all land that is held in trust by the United States government for the benefit of the Tribe.

- F. “Tribe” means the Little Traverse Bay Bands of Odawa Indians.

SECTION III. JURISDICTION

A. The Court shall have jurisdiction over proceedings for the dissolution of marriage when any of the following circumstances apply:

1. The underlying marriage certificate was issued by the Tribe's Marriage Clerk.
2. At least one party to the proceedings is a citizen of the Tribe and is domiciled within the Reservation when the petition for divorce is filed.
3. At least one party to the proceedings is a citizen of the Tribe and the Court determinates that it is appropriate to exercise jurisdiction.

B. When exercising jurisdiction under this statute, the Court shall, in an equitable fashion:

1. Resolve issues related to the division of personal property.
2. Resolve issues related to the division of real property located within the Tribe's territorial jurisdiction, factoring in the division of any real property located elsewhere.
3. Resolve issues related to alimony.
4. Resolve issues related to child custody, visitation and child support when jurisdiction is proper under and in accordance with the Tribe's parentage and custody laws.
5. Resolve any other issues related to financial or other obligations.

SECTION IV. SIMPLE DISSOLUTION

A. An action for Simple Dissolution shall be commenced by the filing of a joint petition by the parties that contains the following:

1. The full legal name, address, social security number and driver's license number of each party to the marriage;

2. The Tribal Citizenship number of at least one of the parties;
 3. The location of each party's domicile and the length of time each has resided at that domicile;
 4. A statement that the parties have no children under the age of 18, unless emancipated, or no dependent children together, and the wife is not pregnant;
 5. The maiden name of the child-bearing spouse and/or her name prior to the marriage if different;
 6. The date and location of the marriage;
 7. The date and location of the separation of the parties;
 8. A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one year;
 9. A proposed division of marital property and debt that contains provisions about how personal belongings, assets, property, and their debts are going to be divided once the parties are no longer married. Or a statement that there are no personal belongings, assets, debts, or property such as homes, cars, etc.
 10. A statement that neither party is requesting alimony.
- B.** A simple dissolution shall be granted by the Court without a hearing.

SECTION V. DISSOLUTION OF MARRIAGE

- A.** A decree of dissolution of marriage shall be granted without regard to the fault of the parties and upon a finding that the marriage has broken down irretrievably, and that there remains no reasonable likelihood that the marriage can be preserved; or the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one year

immediately prior to the filing of the petition for divorce.

B. Fault of a party or basis for the breakdown of the marriage, is a relevant factor in awarding alimony or spousal support notwithstanding the decree of dissolution of marriage granted without regard to the fault of the parties.

C. An action for divorce shall be commenced by the filing of a petition by one of the parties and shall contain the following:

1. The full legal name, address, social security number and driver's license number of each party to the marriage;
2. The location of each party's domicile and the length of time each has resided at that domicile;
3. The Tribal Citizenship number of at least one of the parties;
4. The names and birth dates of any children born of the marriage or of any children born prior to the marriage where one of the parties is asserted to be the father;
5. A statement as to whether or not a spouse is pregnant at the time the petition is filed;
6. The maiden name of the child-bearing spouse and/or her name prior to the marriage if different;
7. The date and location of the marriage;
8. The date and location of the separation of the parties;
9. A proposed division of marital property and debt, and custody of children, if any.
10. A statement that there has been a breakdown in the marital relationship to the point that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved, or that the parties have lived separate and apart for one year.

- C.** The non-petitioning party may file a response to the petition within 30 days of receipt of the petition.
- D.** The response may state the facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property, child custody arrangement, or other relief different than that proposed by the petitioner.
- E.** A copy of the response must be served on the petitioning spouse.
- F.** Following a petition for divorce, and after the opportunity for the non-petitioning party to respond, the Tribal Court shall hold a hearing unless the parties have stipulated to all matters and issues pending.
- G.** If the parties stipulate, and the Tribal Court is convinced that the stipulation is fair and equitable, the court may enter a decree without a hearing.
- H.** If minor children are involved, the Court may order the parties to counseling, continue the action for a maximum of three months to enable the parties to reconcile, or take such other actions as may be in the best interests of the parties or the minor children of the marriage.
- I.** Hearings shall be held within six months of the date that the petition is filed, with actions involving the custody of minor children taking precedence over all other civil cases.
- J.** At the hearing, both parties shall have the opportunity to testify, call witnesses, present evidence and cross-examine their spouse and any other witnesses.
- K.** The intentional filing of groundless petitions shall result in the imposition of sanctions.
- L.** A final order of the Tribal Court may be appealed in the same fashion and manner as any other order of the Court.

SECTION VI. ALIMONY

Alimony is a form of support to a dependent spouse. The spouse must be substantially dependent on the income of another spouse for the regular necessities of life. The amount of

alimony or spousal support will vary with the disparity of the party's incomes and the length of the marriage. Alimony may be awarded for a term of years and/or upon the death or remarriage of the parties.

A. After the equitable distribution of assets and liabilities, the Court may grant alimony to either party, in a lump sum payment or in periodic payments or both.

B. The Court shall consider the length of the marriage, the age, physical and emotional conditions of each of the parties and all sources of available income to either party.

1. All sources of available income. The Court shall recognize all sources of current available separate household income when the parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least one year immediately prior to the filing of the petition for divorce.

2. Such order may be modified, on motion of either party to reflect changes in either party's economic circumstances.

C. Groundless filings may result in the imposition of sanctions.

D. The Court, upon motion, shall terminate alimony to any spouse who has remarried or upon the death of either party.

SECTION VII. TEMPORARY INTERIM ORDERS

A. The Court may issue temporary orders during the pendency of all proceedings involving child custody, child support, visitation, alimony and the possession of real and personal property.

B. Such orders may be granted upon the motion of either party or on the Court's own motion. A hearing shall be held prior to the issuance of such orders, unless the Court determines that an emergency exists or a party cannot be found, in which case such orders may be issued without a hearing.

C. Emergency may be interpreted to include, but not limited to:

1. A danger of physical abuse to the spouse or the party's child(ren);
2. Severe emotional abuse;
3. A lack of means for interim subsistence; or
4. The danger that the child(ren) will be removed from jurisdiction.

D. If the initial order is issued without a hearing, a full hearing on the temporary order shall be held within 14 days.

SECTION VIII. ENFORCEMENT

When either party to a divorce proceeding shall fail willfully to comply with an order of the Tribal Court, the other party may file a petition with the Court alleging such failure. The Court shall then issue notice to the party, which shall include a copy of the petition, and set a date for the hearing. At the hearing, the Court shall take testimony as to the alleged failure to comply with its order, and issue any order which it shall deem just and proper under the circumstances.

SECTION IX. SEVERABILITY

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 X. EFFECTIVE DATE

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

CERTIFICATION

As the Tribal Council Legislative Leader and Tribal Council Secretary, we certify that this Statute was duly adopted by the Tribal Council of the Little Traverse Bay Bands of Odawa Indians at a regular meeting of the Tribal Council held on September 28, 2023 at which a quorum was present, by a vote of 8 in favor, 0 opposed, 1 abstentions, and 0 absent as recorded by this roll call:

	In Favor	Opposed	Abstained	Absent
Fred Kiogima	X			
Tamara Munson	X			
William Ortiz	X			
Aaron Otto			X	
Melissa Pamp	X			
Jordan Shananaquet	X			
Leroy Shomin	X			
Emily Proctor	X			
Marcella Reyes	X			

Date: 10/03/23 _____
Marcella R. Reyes
 Marcella Reyes, Legislative Leader

Date: 10/03/23 _____
Emily Proctor
 Emily Proctor, Tribal Council Secretary

Received by the Executive Office on 10/03/2023 by Hunt Johnson

Pursuant to Article VII, Section D, Subsection 1 of the Little Traverse Bay Bands of Odawa Indians Constitution adopted on February 1, 2005 the Executive concurs in this action of the Tribal Council.

Date: 10-06-2023 _____
Regina Gasco Bentley
 Regina Gasco Bentley, Tribal Chairperson

Received from the Executive on 10.11.2023 by Emily Proctor