

Ordinance Number: 8.500

Original Date: May 15, 2015

Subject: Dissolution of Marriage Ordinance

DISSOLUTION OF MARRIAGE ORDINANCE

Siletz Tribal Code § 8.500

§ 8.500 TITLE

This ordinance shall be known as the "Dissolution of Marriage Ordinance of the Confederated Tribes of Siletz Indians."

§ 8.501 PURPOSE AND AUTHORITY

(a) Pursuant to the Constitution of the Confederated Tribes of Siletz Indians and the Siletz Tribal Council Rules of Procedure, §2.108(a), the Tribal Council has legislative authority to establish Tribal Ordinances. In order to protect, preserve and promote the health and welfare of the Tribe and its members, the Tribal Council has established this Dissolution of Marriage Ordinance, which sets out rules to govern the dissolution of marriages involving at least one Tribal member.

(b) The Tribal Council finds that marriage is a fundamental human right, and an institution that strengthens family relationships and preserves the integrity, cohesiveness, and continuity of the Siletz Tribe. The Tribe further finds that it is essential to the political integrity of the Tribe to have the ability to dissolve marriages that are created under Tribal law. The Tribe further finds that this Ordinance deals with purely intramural relationships among persons who are recognized members of the Tribe's community.

§ 8.502 DEFINITIONS

(a) **Address** means a residence, mailing or contact address in the same state or reservation as the person's home.

(b) **Divorce or Dissolution** means the legal termination of a valid marriage by the Tribal Court.

(c) **Tribe** means the Confederated Tribes of Siletz Indians.

(d) **Tribal Court** means the Siletz Tribal Court.

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(e) **Tribal member** means a person who is an enrolled member of the Confederated Tribes of Siletz Indians.

(f) **Reservation** means those lands held in trust by the Federal government for the benefit of the Tribe for the purposes of this Ordinance.

(g) **Legal Separation** means a legal separation of the property, children, and assets of two parties, at the completion of which the parties are still legally married.

(h) **Annulment** means the legal termination of a voidable marriage as defined in Siletz Tribal Code § 8.412.

§ 8.503 JURISDICTION AND BACKGROUND

The Tribe has the jurisdiction to grant a divorce, legal separation, or annulment based on the merits when a marriage is created under Tribal law, or when at least one of the parties is a Tribal member and the other party consents to the jurisdiction of the Tribal Court. The Tribal Court has jurisdiction to hear all divorce, annulment, and legal separation proceedings, as granted by the Siletz Tribal Court Rules and Procedures.

§ 8.504 GROUND FOR DIVORCE

The sole grounds for divorce shall be that the differences between the parties have caused the irremediable breakdown of the marriage.

§ 8.505 DIVORCE, LEGAL SEPARATION AND ANNULMENT PROCEDURE

Proceedings in divorce, legal separation and annulment shall be commenced and conducted in the manner provided by Siletz Tribal Court Rules and Procedures, except as otherwise specifically provided in this chapter. Grounds for annulment are established in Siletz Tribal Code § 8.412, Voidable Marriages.

§ 8.506 FILING FEE

A filing fee may be established and published by the Chief Judge of the Tribal Court through supplemental court rules. The Chief Judge shall have the authority to waive the fee, if he or she feels such a waiver will serve the interest of justice.

§ 8.507 REQUIREMENTS FOR DISSOLUTION AND/OR LEGAL SEPARATION

(a) A marriage may be dissolved or a legal separation established only when all the following conditions are met:

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- (1) Irreconcilable differences have caused the breakdown of the marriage and the marriage should be dissolved, or a legal separation established.
- (2) There are no children of the marriage, natural or adopted, and the wife (to the best of her knowledge) is not pregnant; or a written agreement has been filed resolving all issues of child custody, support and visitation.
- (3) Neither party has an interest in real property not held in trust, outside of the service area, except for the lease or rental of a residence.
- (4) No unpaid obligations totaling \$5,000 have been made or assumed by either or both persons after the date of the marriage, except the unpaid balance of an automobile and of a student loan.
- (5) The parties have signed: (a) a written agreement regarding the division of personal property, assets acquired during the marriage and debts incurred during the marriage; and (b) any documents (title certificates, bills of sale or other evidence of transfer of ownership) necessary to comply with the agreement.
- (6) Both parties have waived any right to spousal support.
- (7) One Spouse is a Tribal member or a resident of the reservation.
- (8) If a spouse is neither a Tribal member nor a *resident* of the reservation, that spouse has consented to the jurisdiction of the Tribal Court, waiving the *right* to contest to the jurisdiction of the Tribal Court to enter a final judgment.
- (9) That, if the Court feels that it would be beneficial and the parties agree the court may order mediation or any other alternative dispute resolution process, if the parties' financial situation allows.

(b) In making a determination under subsections (a)(4) through (a)(7), the Court must take the following factors into account:

The parties must show the court:

- (1) Whether the home or real property at issue is being leased or purchased from the Tribe or any other Tribal entity;
- (2) A statement from the applicable Tribal entity whether there are any laws or regulations applicable to the home or real property that require that the

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occupant be an "Indian" as that term is defined by applicable federal or Tribal law;

- (3) Whether there are any constraints in the funding source(s) involved in the purchase, rental, maintenance, or operation of the home or other real property that require that the occupant be an "Indian" as that term is defined by applicable federal or Tribal law; and
- (4) Whether there are any requirements or constraint in the rental agreement, lease, homebuyer agreement, restrictive covenant, or other applicable instruments that would be breached if one of the parties was granted the exclusive right to occupy the premises.

(c) The Court shall not take action that could jeopardize any funding received by the Tribe or any Tribal entity, that could put the Tribe or any Tribal entity in violation of applicable law or regulation, or that could result in a breach of a rental agreement, lease, home buyer agreement, restrictive covenant, or other applicable instrument. The Court may request input from the Tribe or any applicable Tribal entity to assist it in making such determination.

§ 8.508 FILING A JOINT PETITION, CONTENT AND FORM

The proceeding for the Dissolution of Marriage shall commence by filing a joint petition with the Clerk. The petition shall be signed and verified under oath by both parties, and shall state that as of the date of its filing each requirement in Section (a) except for (5)(b) has been met. The Petition shall state the mailing address of both parties, and shall also state whether or not both parties choose to have their original maiden name restored, If so, both parties shall state the name to be restored.

§ 8.509 PROVISIONS OF FINAL DECREE

(a) When the Court issues a decree of annulment, legal separation, or divorce it has the further power to decree:

- (1) To return the surname of either party to their surname before the marriage; and
- (2) To order either party to sign or deliver all necessary legal documents to effect the provisions of this decree.

(b) Appearance: Entry or Final Judgment: Waiting Period: Notice: Not more than 90 days from the date of filing the Joint Petition for Dissolution of Marriage, one or both spouses may appear in the Tribal Court and an application for final judgment shall be entered, provided, the agreement for property division, and any child support appears to be fair. The final judgment

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shall return both spouses to the status of single, and shall permit either party to marry after the judgment has been entered.

(c) Final Judgment as Final Decree: When entered, the Final Judgment shall document a final decree of the rights and obligations of both parties regarding property rights and child custody, support, and visitation as agreed, and shall document a waiver of the respective right to spousal support.

§ 8.510 ACTION/PETITION TO SET ASIDE FINAL JUDGMENT

A final judgment entered shall not influence nor bar the rights of either party to petition the Court to set aside or amend the final judgment for fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal Law.

§ 8.511 RETAINING CUSTODY OF THE CASE

The Court shall retain jurisdiction of a case for one (1) year following the entry of final judgment in all matters except the status of the marriage, where proof exists that the parties did not meet all requirements when the petition was filed.

§ 8.512 PAYMENT OF COSTS AND ATTORNEY FEES

The Court may consider the relative financial resources of both parties and order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Chapter and for reasonable counselor attorney fees or other professional fees, including sums for legal services rendered and costs.

§ 8.513 DEFAULT

In the case default is made in the payment of any monies falling due under the terms of an Order pending action, any such delinquent amount shall be entered and docketed as a judgment, and execution may issue to enforce payment in the same manner and with the same effect as the final decree.

§ 8.514 SEVERABILITY

If any provision of this Ordinance or the application of any provision of this Ordinance to any person or circumstance is held invalid by a court of competent jurisdiction, that provision shall be severed from the Ordinance and the remainder of this Ordinance shall remain in full force and effect.

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§ 8.515 **NO WAIVER OF SOVEREIGN IMMUNITY**

Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Tribe or any Tribal official, agent or employee or representative, which the Tribe expressly asserts.

§ 8.516 **EFFECTIVE DATE**

This Chapter shall not become effective until the promulgation of regulations to implement these provisions, including form documents for use by the Siletz Tribal Court.