

WHITE MOUNTAIN APACHE TRIBE

DOMESTIC RELATIONS CODE

Effective September 9, 2015

**WHITE MOUNTAIN APACHE
DOMESTIC RELATIONS CODE**

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WHITE MOUNTAIN APACHE DOMESTIC RELATIONS CODE

[NOTE: Except as otherwise noted, the Domestic Relations Code was derived from Ordinance No. 96, enacted May 1, 1974; amended in 1987 by Resolution Nos. 01-1987-31 and 02-1987-61 but no Ordinance Number was assigned; and amended by Ordinance No. 261, enacted September 9, 2015.]

CHAPTER ONE MARRIAGE AND DIVORCE

SECTION 1.1 MARRIAGES

The White Mountain Apache Tribal Court may issue marriage licenses to proper persons, one of whom is a member of the Tribe, or a member of a federally recognized Tribe. Any Tribal traditional marriage not so licensed shall not be recognized as valid. The Tribal Court is hereby authorized and instructed to issue marriage certificates to all these persons known to be living together as husband and wife previous to August 26, 1938. Marriage certificates issued shall become a matter of record in the Tribal Court, copies of which shall be furnished to the Agency and Tribal Council Secretary.

SECTION 1.2 RECORDING OF MARRIAGES AND DIVORCES

All Indian marriages and divorces, whether consummated in accordance with State laws, or any legal agency having authority to issue marriage and divorce certificates, or in accordance with Tribal law, shall be recorded within thirty (30) days with the White Mountain Apache Tribal Court and copies shall be furnished to the Agency office by the Court.

SECTION 1.3 MARRIAGE

Marriage is a personal relation arising out of civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage but must be followed by a solemnization.

SECTION 1.4 SOLEMNIZATION OF A MARRIAGE

A marriage may be solemnized by any recognized clergyman or other official authorized to perform the ceremony by the laws of the State of Arizona, or the laws of the White Mountain Apache Tribe pursuant to Section 1.16 of this Code, but only after issuance of a license.

SECTION 1.5 MARRIAGE LICENSE

A. Any resident of the Fort Apache Indian Reservation, eligible by age and otherwise, as hereinafter provided may obtain a marriage license in conformity with State Law or the laws of the White Mountain Apache Tribe from the Court, and such marriages consummated by authority of such license shall be legal in every respect in the United States. A fee set by the Tribal Court shall

be paid upon the issuance of a marriage license.

B. Persons under eighteen (18) years of age are to be considered minors; and whenever parents or guardians give consent to the marriage between minors, the parents or guardians shall appear before, and execute and file with the Court a form titled, "*Consent to Marriage of Minor*", and he or she thereby assumes the responsibility, in part, to provide for the minors and children born until the minor parents come of age. The assumption of this responsibility is included in the written consent.

C. A marriage license must not in any case be granted where either party is under age necessary to render the marriage absolutely valid, without previous consent of the parent or guardian of such minor, nor shall a marriage license be issued to divorcees until six (6) months after the issuance of the divorce decree.

D. The marriage must be solemnized before the expiration of the marriage license.

SECTION 1.6 PROHIBITED VOID MARRIAGES

Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters, of the one-half as well as the whole blood, and between uncles and nieces, aunts and nephews, and between first cousins or within the maternal clan are incestuous and void.

SECTION 1.7 WITNESSES

A marriage ceremony shall be performed in the presence of at least two (2) witnesses of lawful age, and a certificate of such marriage shall be signed by at least two (2) witnesses which shall be returned by the person performing the marriage to the White Mountain Apache Tribal Court (for recording) within a period of ten (10) days.

SECTION 1.8 CEREMONIAL MARRIAGE - ONLY RECOGNIZED

A marriage may not be performed by agreement without a marriage ceremony, and no marriage performed within this jurisdiction is valid unless a license be issued as herein provided and the marriage solemnized according to the laws of the White Mountain Apache Tribe and a record of same filed with the White Mountain Apache Tribal Court.

SECTION 1.9 ANNULMENT OF MARRIAGE

The Court may dissolve a marriage and may decree the marriage to be null and void for any of the following causes existing at the time of the marriage:

A. Where the case shall be an impediment rendering such contract void.

B. That the party on whose behalf it is sought to have the marriage annulled was under the age of consent, and such marriage was contracted without the consent of his or her parents or

guardian or person having charge of him or her, unless after attaining the age of consent such party for any time freely cohabited with the other as husband and wife.

C. The husband and wife of either party is living and the marriage with such former husband or wife was then in force.

D. That the consent of either party was obtained by fraud unless such party after wards freely cohabited with the other as husband and wife having knowledge of such fraud.

SECTION 1.10 DIVORCE

The Court may grant or issue a divorce from the bonds of matrimony in any of the following cases, provided that after a divorce has been granted the parties thereto may not marry until six (6) months after the issuance of the divorce decree:

A. When adultery has been committed by either party.

B. When one of the parties was declared physically or mentally incompetent by a physician prior to the marriage and the same has continued to the time of the commencement of the divorce action.

C. When either party has willfully deserted the other.

D. For the habitual intemperance of either party.

E. Where the husband or wife is guilty of cruel treatment or outrages toward the other, whether by the use of personal violence or other means.

F. When either has neglected to provide the other party or family with the common necessities of life, having the ability to provide the same, or failing to do so by reason of his or her idleness, or dissipation.

G. Prior to the marriage either party shall have been convicted of a felony or infamous crime in any state or country without the knowledge of the other party of such fact at the time of such marriage.

H. In favor of the husband when the wife at the time of the marriage was pregnant by a man other than the husband, and without the husband's knowledge at the time of such marriage.

I. Irreconcilable incompatibility or differences.

SECTION 1.11 PROCEDURE FOR ANNULMENT OR DIVORCE

A. Any person applying for annulment or divorce shall deposit with the Tribal Court a fee set by the Court at the time of the action. In case the defendant files a cross complaint, the Court may require the defendant to pay into the Court a fee of like amount. Fees may be waived upon proof of indigency satisfactory to the Court.

B. The complaining party shall file with the Court a verified complaint stating concisely his or her cause for action and thereupon the Court shall issue a summons in the name of the Tribal Court, to the defendant apprising him or her of the pendency of action and the summons shall concisely state the grounds upon which annulment or divorce is asked.

C. The summons when issued, together with the copy of the complaint shall be delivered to any authorized officer of the Court for service. Service of process shall be effectuated in accordance with the Rules of Civil Procedure, Chapter Three, Part II, Rule 4.

D. The Court shall thereupon make and enter findings of facts and conclusions of law, and issue the decree signed by the Chief Judge or Associate Judge which shall be effective from date of signature.

SECTION 1.12 LEGITIMACY OF CHILDREN NOT AFFECTED

A divorce shall not affect the legitimacy of the children.

SECTION 1.13 PERMANENT ALIMONY, CUSTODY OF CHILDREN AND COST

A. In the final decree of divorce the Court may, in addition to the division of the common property of the parties, direct either party to pay the other such amounts as may be necessary for the support and maintenance of the other party and the minor children of the parties. The custody of the children may be awarded to the wife or husband as may be necessary or proper, and the Court may decree that alimony may be paid in one sum or installments, and in such decree or decree of annulment of the marriage the Court may make such disposition of and provision for their minor children, as shall be most expedient under all circumstances for their present comfort and future well being.

B. The Court may assess the cost to either or both parties of the suit, and may in the decree change the name of the wife if especially asked for in her pleadings.

SECTION 1.14 MODIFICATION OF JUDGMENT AFFECTING ALIMONY AND SUPPORT OF MINOR CHILDREN

The Court may, from time to time, after the entry of the final decree or on petition of either party, amend, revise and alter such portions of the decree as relate to the payment of money for the support and maintenance of either party or the support of their children, as may be just, and amend, change, or alter any provision therein respecting the care, custody, or maintenance of the children of the parties as the circumstances of the parents and the welfare of the children may require.

SECTION 1.15 DETERMINATION OF PATERNITY AND SUPPORT

The Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain the judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance by the Court.

SECTION 1.16 THOSE AUTHORIZED TO OFFICIATE AT A WEDDING

A. The following are authorized to solemnize marriages between persons who are authorized to marry:

1. Duly licensed or ordained clergymen.
2. Judges of courts of record.

B. For the purposes of this Section, “licensed or ordained clergymen” includes ministers, elders or other persons who by custom or tradition, or rules and regulations of a religious society or sect are authorized or permitted to solemnize marriages or to officiate at marriage ceremonies.

SECTION 1.17 RECORDING LICENSES

A. The clerk of the Tribal Court shall maintain a record of all marriage licenses issued.

B. The person solemnizing the rites of matrimony shall endorse the act of solemnization on the license and shall return the license to the clerk within thirty (30) days after the solemnization. The returned marriage license shall be recorded by the clerk.

C. If the marriage license is lost before the endorsement of solemnization, the persons who wish to marry shall reapply to the Court for a marriage license and pay a fee pursuant to Section 1.5.

D. If the license that bears the endorsement of solemnization is lost, the clerk shall issue a replacement license that must be signed by the person who solemnized the marriage, the persons married and two of the witnesses to the marriage ceremony. The signed replacement license shall be returned to the clerk who shall record the license. If the persons married are unable to obtain all of the required signatures, either of them or their representative may apply to the Court for an Order to authorize the issuance of a duplicate endorsed marriage license. The application shall be by a sworn statement that describes the circumstances of the marriage ceremony and that contains the notarized signatures of the applicant and, if possible, both persons married, the person who solemnized the marriage and at least two (2) witnesses to the marriage ceremony. If the application is submitted by a representative, the Court shall determine if the representative is an appropriate requesting party. Pursuant to a Court order, the clerk shall issue and record a duplicate endorsed marriage license.

Form No. 1

WHITE MOUNTAIN APACHE TRIBAL COURT

APPLICATION FOR MARRIAGE LICENSE

IN THE MATTER OF THE APPLICATION OF)
)
_____)
)
and _____))
)
_____)

FOR A LICENSE TO MARRY

Fort Apache Indian Reservation)
County of Navajo) ss:
State of Arizona)

The undersigned, being first duly sworn, upon his (her) oath does declare, depose and certify: that _____ (Name in Full), is his (her) true name; that his (her) date of birth is _____, that he (she) is a resident of _____ (Town, County and State), that he (she) is not related to _____ (husband or wife), by blood or clan, and that he (she) has not been granted a divorce by any Court within the period of six (6) months.

(Signature of Applicant)

SUBSCRIBED and SWORN to before me, this _____ day of _____, 20_____.

(Tribal Court)

By: _____

(SEAL)

Book: _____
Page: _____

Form No. 2

WHITE MOUNTAIN APACHE TRIBAL COURT

MARRIAGE LICENSE

To any regularly licensed or Ordained Minister of the Gospel, or any Justice of the Peace within this County:

You are hereby authorized to solemnize the

rites of matrimony

Between

_____ and _____ and
endorse the name on this License and make return thereof to this office according to Tribal law, which provides that recording shall be made within a period of ten (10) days.

In Witness Whereof, I have hereunto set my hand and
affixed my official seal this ____ day of
_____, 20____.

(SEAL)

(Clerk of the Court)

By: _____

(Fill Out in Duplicate)