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**PONCA TRIBE OF NEBRASKA
LAW AND ORDER CODE**

**TITLE I
GENERAL PROVISIONS**

**CHAPTER 1
PRELIMINARY PROVISIONS**

Section 1-1-1. Constitutional Authority. This Law and Order Code is adopted pursuant to the authority vested in the Ponca Tribal Council under the Constitution of the Ponca Tribe of Nebraska.

Section 1-1-2. Name of Code. This Law and Order Code shall be known as the Law and Order Code of the Ponca Tribe of Nebraska and may be referred to as the Code, or Ponca Tribe of Nebraska Code, and may be abbreviated as PTN TLOC.

Section 1-1-3. Prior Inconsistent Ordinances Repealed. Any and all ordinances of the Ponca Tribal Council which conflict in any way with the provisions of this Law and Order Code are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit and/or purpose of this Law and Order Code. All prior ordinances and resolutions of the Tribal Council dealing with the same subject matter as the titles of this Code are repealed as of the effective date of this Code.

Section 1-1-4. Amendment of Law and Order Code. This Law and Order Code may be amended, additions made hereto, or deletions made therefrom, in the manner provided for the adoption of Tribal Council ordinances. Amendments and additions to this Law and Order Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and/or annexation hereof.

Section 1-1-5. Effective Date. This Code shall become effective upon passage by the Tribal Council in accordance with the Tribal Ordinance governing adoption of Ordinance.

**CHAPTER 2
ESTABLISHMENT OF COURTS;
JUDGES AND OTHER COURT PERSONNEL**

Section 1-2-1. Courts Established. There is hereby established a court of general jurisdiction known as the Tribal Court of the Ponca Tribe of Nebraska, which shall include divisions known as

the Juvenile Court, the Administrative Court, civil court, mental health commitment and the Court of Appeals.

Section 1-2-2. Judges.

1. There shall be appointed one Chief Judge and associate judges who may be called into service when the **need** arises.

2. There may be appointed appellate judges who shall be called into service when the **need** arises.

3. The appointment, qualification, and compensation to be received by such judges shall be determined by the Tribal Council, provided, however, that once appointed a judge shall not have his compensation decreased during his term of office, and provided further that no judge shall be suspended or removed from office prior to the expiration of his term, except as provided hereinafter.

4. Judges shall be appointed to six year terms and may be appointed to successive terms of office.

5. Judges shall be selected for appointment by the Tribal Council from nominees received from the Judicial Nominating Committee. The Judicial Nominating Committee shall consist of five members appointed by the Ponca Tribal Council, with each district having at least one representative on the Committee. The Committee shall select from applicants those persons they deem to be qualified to serve as judges of the court. All qualified applicants shall be certified to the Tribal Council. The Ponca Tribal Council shall conduct an open hearing for each nominated person and then select from the candidates the Chief Judge **or** associate judges.

Section 1-2-3. Removal of Judges. During tenure in office, a judge may be removed from office for any one of the following reasons: habitual neglect of duties of office; oppression in office for personal gain or advantage; or conviction in any court of competent jurisdiction of a felony or crime involving moral turpitude. Removal shall be by petition, signed by at least twenty-five percent of the voters voting in the last tribal election. The Petition for removal shall be filed with the Tribal Council. Any Judge subject to removal shall be entitled to a hearing before the Tribal Council and the right to due process of the law. A hearing for removal of any judge upon a petition shall be conducted by the Tribal Council and a two-thirds affirmative vote of the full Tribal Council shall be required to remove the judge from office.

Section 1-2-4. Powers and Duties of Judges. The following are powers and duties of the Judges of the Tribal Court:

1. Judges shall administer justice and discharge all duties imposed upon them by the constitution of the Ponca Tribe of Nebraska and by laws, and shall bear and decide matters of a judicial nature and enter judgments and orders disposing of such matters. In the absence of the Tribal Court Administrator, a judge may perform the Tribal Court Administrator's duties in addition to his own.

2. The Chief Judge shall be responsible for the administration of the court, including assignment of cases and the management of the Court's calendar and business. The Chief Judge shall designate an associate judge to act as Chief Judge in his absence.

3. All judges of the court shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association until such time as a Ponca Tribe of Nebraska Code of Judicial Conduct may be adopted by the Tribal Bar Association or the Tribal Judge's Association.

4. All Judges shall have power to:

A. Preserve and enforce order in their immediate presence, and in proceedings before him, when he is engaged in the performance of his judicial duty;

B. Compel obedience to his lawful orders;

C. Compel the attendance of persons to testify in proceedings before him as provided by law;

D. Administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties; and

E. Punish for civil contempt to assure the effectual exercise of these powers.

Section 1-2-5. Disqualification of Judges. The following rules shall apply to all judges:

1. A judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, in the first degree, or

where he feels that he will not be able to render a just decision.

2. Any party to a legal proceedings may request a change of assignment of judges to hear the proceedings by following the rules proscribed in Title 2, Rule 33.

Section 1-2-6. Separation of Powers. There shall be a separation of power between the Tribal court and the Tribal council. Decisions of the Tribal court may be appealed to the Ponca Tribal Appellate Court, but shall not be subject to review by the Tribal Council.

Section 1-2-7. Oath of Office of Judge. Every judge, prior to taking office or acting in such office, shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support, defend, and uphold the Ponca Tribal Constitution, that I will support, uphold and enforce the Law and Order Code of the Ponca Tribe of Nebraska, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

Said oath shall be administered by the Chairperson of the Tribal Council.

Section 1-2-8. Tribal Court Administrator. There shall be a Tribal Court Administrator whose duties shall be described in Section 1-2-9. The appointment, qualifications, terms of office, and compensation of the Tribal Court Administrator shall be determined by the Tribal Council. Additional court personnel may be hired as the need arises.

Section 1-2-9. Duties of the Tribal Court Administrator. It shall be the duty of the Tribal Court Administrator to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, Tribal resolution or as otherwise established; and further to keep a written record of all proceedings of the Court; to administer oaths, to collect and account for all fines, fees or other charges which cause money to come to the Court; to deposit and account for all such moneys in the manner prescribed by the Tribal Council; and to disburse such money as authorized by law. The Tribal Court Administrator shall further assist the Court in any way required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render assistance to individual members of the Tribe or their

counsel in the drafting of documents incidental to proceedings in the Court. The Tribal Court Administrator may not give legal advice.

Section 1-2-10. Locations/Sessions of Court. The Court of the Ponca Tribe of Nebraska may convene for hearing cases in Niobrara, Norfolk, Omaha, or Lincoln, Nebraska, and at such other locations within Ponca Territory which is necessary to provide for the orderly administration of justice. Sessions of the Court for trial of cases in all Divisions, excepting the Appellate Division, shall be held by the Chief Judge, or in case of his disability, absence or unavailability, by an associate judge, provided however, that an associate judge may be called in to hear cases at any time for any reasonable cause by the Chief Judge.

Section 1-2-11. Rules of the Court Procedures. The time and place of court sessions, and all other details of judicial procedure not prescribed by this Code shall be governed by Rules of Court promulgated as herein provided. It shall be the duty of judges of the court to make recommendations to the Council for enactment or amendment of such Rules of Court as they believe to be in the interests of improved judicial procedures. In case of failure of the Tribal Council to establish or approve Rules of Tribal Court, the judges acting jointly with the advice and consent of the Law and Justice Committee appointed by the Council shall have authority to establish such rules. Rules of Tribal Court, enacted or amended in the above manner, will be made a part of this Code, but failure to so codify them shall not affect their validity.

Section 1-2-12. Tribal court funds. Any funds received by the Court, whether in the form of filing fees, costs, or other fees, shall be deposited into a tribal court account which shall be held by the Ponca Tribe. Such funds may be used for Tribal Court development and expenses as directed by the Tribal Council. The funds shall be disbursed in the manner for disbursing all other tribal funds.

CHAPTER 3
CONTEMPTS

Section 1-3-1. Acts or Failure to Act Which Constitute Contempt of Court. The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of court:

1. Disorderly, contemptuous, or insulting behavior toward a Judge while holding court, which tends to interrupt the course of the proceedings or undermine the dignity of the court.

2. A breach of the peace, or loud, boisterous conduct which tends to interrupt the court in a judicial proceeding.

3. Deceit, or abuse of process or proceedings of the court by a party or counselor to a judicial proceeding.

4. Disobedience to a lawful judgment, order or process of the court.

5. Assuming to be an officer, spokesman or other official of the court and acting as such without authority.

6. Rescuing or taking any person or property from the court or an officer acting under court order, contrary to the order of the court.

7. Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a court proceeding or attending court.

8. Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

9. Any other interference with the process, proceeding, or dignity of the court, or of a Judge of the court while in performance of his official duties.

Section 1-3-2. Civil Contempt. The following rules apply to civil contempt:

1. A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

2. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the court or to the complaining party.

Section 1-3-3. Contempt Procedures. The following rules apply to contempt procedures:

1. A direct contempt is one committed in the presence of the court or so near thereto as to be disruptive of the court proceedings, and such may be adjudged and punished summarily.

2. All other contempts shall be determined by a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

CHAPTER 4 JURISDICTION

Section 1-4-1. Territorial Jurisdiction. The general jurisdiction of the Tribal Court and the effective area of this Code shall be all territory of the Ponca Tribe of Nebraska, including, but not limited to, those lands and communities defined as Indian Country, by 18 U.S.C. Section 1151, including those lands held in trust by the United States for the benefit of the Tribe and members of the Tribe, and dependent Indian communities; all lands within any service area of the Tribe as defined by Public Law 101-484 and any amendments thereto and all lands within the territory to which the Ponca Tribe of Nebraska and its members retain aboriginal right, title or interest, and those lands to which right, title or interest is reserved under the Treaty, March 12, 1858, 12 Stat. 997, and created or reserved under the Treaty of March 10, 1865, 14 Stat. 675. As to those lands defined as Indian Country, the Court's jurisdiction shall be over all persons therein. As to lands ceded to the United States, or to which the Tribe retains right, title or interest, the Court retains original, exclusive jurisdiction over members of the Tribe engaged in hunting, fishing, and gathering for subsistence, ceremonial and religious purposes.

Section 1-4-2. Personal Jurisdiction.

1. As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, or corporation.

2. Subject to any contrary provision, exceptions or limitations contained in either federal law, the tribal

Constitution, or as expressly stated elsewhere in this Code, the Court of the Ponca Tribe shall have civil jurisdiction over the following person:

A. Any person residing, located or present within the territorial jurisdiction of the Tribe for any civil cause of action;

B. Any person who transacts, conducts, or performs any business or activity within the territorial jurisdiction of the Tribe, either in person or by an agent or representative, for any cause of action;

C. Any person who commits a tortious act or engages in tortious conduct within the territorial jurisdiction of the Tribe, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

3. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

Section 1-4-3. General Subject Matter Jurisdiction-Limitation.

Subject to any contrary provisions, exceptions, or limitations contained in federal law or the Tribal Constitution, the Courts of the Ponca Tribe of Nebraska shall have jurisdiction over all civil causes of action arising within the territorial jurisdiction of the Tribe except the Court shall not assume jurisdiction over any matter which does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its members may be directly or indirectly affected. The Court shall have original jurisdiction over all actions arising under the Constitution, laws, Ordinances, and Treaties of the Tribe.

Section 1-4-4. Concurrent Jurisdiction.

The jurisdiction invoked by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Code does not recognize, grant, or cede jurisdiction to any political or government entity in which jurisdiction does not otherwise exist in law.

Section 1-4-5. Exclusive Original Jurisdiction.

The Courts of the Ponca Tribe of Nebraska shall have exclusive original and

appellate jurisdiction in all matters in which the Ponca Tribe, any governmental subdivision, whether governmental or commercial in nature, or its officers or employees are parties in their official capacities. Nothing contained in the preceding paragraph or elsewhere in this code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises unless specifically denominated as such.

CHAPTER 5 COUNSELORS AND PROFESSIONAL ATTORNEYS

Section 1-5-1. Lay Counsel. Any person appearing as a party in any judicial proceeding before a court of the Ponca Tribe of Nebraska shall have the right to be represented by a lay counselor and to have such person assist in the preparation and presentation of his case.

The Ponca Tribe of Nebraska shall have no obligation to provide or pay for such lay counselors and such obligation shall rest entirely with the person desiring such a counselor.

Any person appearing as a lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the Court as would a professional attorney, and the attorney/client testimonial privilege shall apply in appropriate circumstances. Any person appearing as a lay counselor shall also be subject to the same standards of competency as licensed attorneys appearing before the Court.

Lay counselors shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted without personally appearing;

I do solemnly swear (affirm):

That I will support and defend the Constitution and By-Laws, Law and Order Code and all resolutions and ordinances of the Ponca Tribe; that I will maintain the respect due the Courts and Judicial officers of the Ponca Tribe; that I will never seek to mislead the judge or jury by any artifice or false statement or fact or law; that I will maintain the confidences and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval; that I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required in justice by the cause with which I am associated; that I will never reject, from any consideration personal to myself, the

cause of the defenseless or oppressed or delay any man's cause for lucre or malice.

Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their representative capacity.

Section 1-5-2. Right to be Represented by an Attorney. Any person appearing as a party in any action shall have the right to be represented by an attorney of his own choice at his own expense; provided, however, that the Ponca Tribe of Nebraska has no obligation to provide or pay for such an attorney; provided further, that any such attorney appearing before the Courts of the Ponca Tribe of Nebraska shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

Section 1-5-3. Eligibility for Admission. Any attorney who is an active member in good standing of the Nebraska Bar, or any attorney certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Ponca Tribe of Nebraska.

Section 1-5-4. Procedure for Admission. Any professional attorney desiring to be admitted to practice before the Courts of the Ponca Tribe of Nebraska shall apply for admission by certifying under oath, either verbally or in writing to the following:

1. That he is an active member in good standing of the Nebraska State Bar or is certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States.

2. That if admitted to practice before the Courts of the Ponca Tribe of Nebraska, he will take the required oath as prescribed in the Law and Order Code for Attorneys and be bound thereby.

An admission fee of \$100.00 shall be tendered with the application, subject to return if the application is denied. An admission fee of \$100.00 shall also be required of lay counselors appearing before the Court but may be waived by the Court.

The fee shall be waived for attorneys employed by the Tribe and for others upon Tribal Council resolution. The fee shall go into a special Bar Admission Fund to be used for training of Tribal Court staff, lay counselors and other officers of the Tribal Court. If a Ponca Tribal Bar Association is formed, then that association shall assume responsibility and control for the collection and expenditures of these fees. The Tribal Court or, if organized, the Bar Association, shall retain the right to establish and require the taking of a bar examination for admission to practice before the Ponca Tribal Court.

Upon receipt of an application for admission to practice before the Courts of the Ponca Tribe, the Chief Judge shall review the application and may, but need not, investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Chief Judge shall notify such person who may then appear in person to take the oath prescribed herein or may subscribe his signature to such oath and forward it to the Chief Judge.

Upon taking of the oath, either orally or in writing, the Chief Judge shall cause a certificate to be issued evidencing the admission of the attorney to practice before the Courts of the Ponca Tribe.

Any person denied admission shall have a right to appeal and have a due process hearing before the Tribal Appellate Court.

Section 1-5-5. Disbarment and Discipline. Whenever it is made to appear to the Chief Judge that any attorney admitted to practice before the Tribal Courts has been disbarred or suspended from the practice of law in the State of Nebraska or other state to which reference for admission to practice before the Tribal Courts was made, he shall immediately be given notice at his last known address that he shall be suspended from practice before the Tribal Courts of the Ponca Tribe of Nebraska for an indefinite period unless he appears within five (5) days and shows good cause why such order should not be made.

Any judge who finds an attorney admitted to practice before the Tribal Court to be in contempt of Court may, in addition to any other sanction imposed, order the attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Courts of the Ponca Tribe.

The Chief Judge may, upon receiving a written, verified complaint which indicates that an attorney admitted to practice before the Tribal Court has acted in an unethical or otherwise

improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing, to hear all evidence relevant to the matter, and may order the suspension of such an attorney if such appears reasonably necessary or appropriate. If the Chief Judge is the complainant, another tribal judge shall hear and decide the matter.

All suspensions from practicing before the Tribal Courts shall be for an indefinite period unless the Judge specifically orders otherwise. An attorney suspended for an indefinite period, or one suspended for a specific period, may petition the Tribal Court for permission to re-apply for permission to practice at the end of one year or the specific period of suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct, that he has been adequately reprovved and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

Any person appearing as lay counsel for another may be suspended from further appearance as such for misconduct or improper behavior by any judge upon the same conditions of notice and hearing provided professional attorneys.

Section 1-5-6. Oath of Attorneys and Counselors. Upon admission to practice as provided herein, an attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted without personally appearing;

I do solemnly swear (affirm):

That I will support and defend the Constitution and By-Laws, Law and Order Code and all resolutions and ordinances of the Ponca Tribe; that I will maintain the respect due the Courts and Judicial officers of the Ponca Tribe; that I will not counsel or maintain any suit or proceedings which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land; that I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement or fact or law; that I will maintain the confidences and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval; that I will abstain from all offensive personality and advance no fact prejudicial to the

honor or reputation of a party or witness, unless required in justice by the cause with which I am associated; that I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed or delay any man's cause for lucre or malice.

Section 1-5-7. Non-Resident Attorneys. Any Tribal Judge may waive the formal admission procedure and payment of the fee as required herein in the case of any attorney, not a resident of the State of Nebraska, making an appearance for the limited purpose of a single, specific case, if such attorney is associated in such case with an attorney or counselor who is formally admitted to practice before the Tribal Court.

CHAPTER 6 JURORS

Section 1-6-1. Qualifications of Jurors. All tribal members within the territorial jurisdiction of the Tribe, eighteen (18) years of age or older, of sound mind and who are able to read, write, and understand the English language, shall be eligible to serve as jurors.

Section 1-6-2. Jury List. Each year, the Tribal Council, or the Tribal Court Administrator, at the direction of the Tribal Council, shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names and which shall contain the names of persons eligible to serve as jurors.

Section 1-6-3. Jury Trials. The Tribal Court Administrator shall subpoena not less than twenty (20) persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a matter before the Court.

The selection from the list of eligible jurors shall be by lot or some other means of random, impartial selection.

Selection of jurors to hear the case shall be accomplished as provided for in the rules of procedure elsewhere in this Code.

Section 1-6-4. Power to Excuse Jurors. Only the Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror, doing so on account of sickness, disability, extreme hardship or other good cause shown upon a request for excuse by the person subpoenaed.

Section 1-6-5. Compensation of Jurors. Each juror who is called and reports for jury duty or who serves on a jury shall be

entitled to receive such fees for daily service and/or mileage, if any, as the Tribal Council shall establish by resolution or as established by a rule of the Court.

CHAPTER 7
SUBPOENAS AND SERVICE OF OTHER PAPERS

Section 1-7-1. Issuance of Subpoenas. The Tribal Court Administrator shall issue subpoenas to compel the attendance of witnesses, jurors or such other persons as a Judge may direct for a trial, hearing, or other proceedings before the Tribal Court.

Section 1-7-2. Services of Subpoenas; Return of Service. Subpoenas in all cases shall be served by Law Enforcement Officers, or other person designated by the Chief Judge.

Except by order of the Court based upon good cause shown, no subpoena shall be served between the hours of 10:00 p.m. and 7:00 a.m. or on Sundays or legal holidays.

The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service.

The person serving a subpoena shall make a return to the Tribal Court Administrator stating the name of the case, the name of the person served, the place, date, and time of service and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

CHAPTER 8
GENERAL PROVISIONS
SOVEREIGN IMMUNITY, LIMITATIONS OF ACTIONS

Section 1-8-1. Adoption by Reference Not a Waiver of Sovereign Power of the Ponca Tribe. The adoption of any law, code or other document by reference into this code shall in no way constitute a waiver or cession of any sovereign power of the Ponca Tribe of Nebraska to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Ponca Tribe of Nebraska.

Section 1-8-2. Sovereign Immunity. Except as required by federal law, or the Constitution of the Ponca Tribe of Nebraska, or if specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Ponca Tribe of Nebraska shall be immune from suit in any civil action, and

its officers and employees immune from suit for any liability arising from the performance of their official duties. The Tribe shall not be liable for damages arising from the conduct of any of its employees which is not within the scope of the officer or employee's official duties.

In no case, shall ARBITRATION language in a contract for goods or services constitute an express waiver of the sovereign immunity of the Ponca Tribe of Nebraska or its entities, officers and employees, unless expressly agreed to by the Tribal Council.

Section 1-8-3. Actions By or Against the Tribe or It's Officers or Employees. In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply.

1. The periods of time specified for civil cases or appeals in which an answer, reply, or other pleading, or response of any kind shall be required, shall be double the period specified.

2. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

3. Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

Section 1-8-4. Limitations in Civil Actions. Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions shall apply:

1. Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action accrued.

2. Any action against the Tribe or its officers derivative of lease of tribal land must be commenced within six (6) years of the date the cause of action occurred.

3. Any action against the Tribe or its officers alleging intentional torts shall be commenced within one (1) year of the date the cause of action occurred.

4. Any other action against the Tribe or its officers must be commenced within two (2) years of the date the cause of action accrued, provided, however, that any cause of action that is based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting fraud or mistake.

5. Any other action must be commenced within three (3) years of the date the cause of action accrued, provided, however, that the cause of action based on fraud or misrepresentation shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or misrepresentation.

None of the above limitations of action shall be construed as a waiver of the Tribe's sovereign immunity.

Section 1-8-5. Recognition of Foreign Court Orders/Judgments. The Ponca Tribe of Nebraska shall recognize and give full faith and credit to valid foreign court judgments and orders; provided, however, that the foreign court shall give full faith and credit to Tribal Court orders; and provided further, that the foreign court judgment is not contrary to the public policy of the Ponca Tribe of Nebraska.

Section 1-8-6. Principles of Construction. The following principles of construction will apply to this Code unless a different construction is obviously intended:

1. Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.

2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.

3. Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of the Code unless a contrary meaning is clearly intended.

4. This Code shall be construed as a whole to give effect to all its parts in a logical and consistent manner.

5. If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.

6. Any other issuances of construction shall be handled in accordance with generally-accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

Section 1-8-7. Definitions. The following definitions will apply for the purpose of this Code:

1. "Constitution" shall mean the Constitution of the Ponca Tribe of Nebraska.

2. "Court" shall mean the court of the Ponca Tribe of Nebraska;

3. "Indian" or "Indian Person" shall include any person of Indian descent who is a member of any federally recognized Tribe;

4. "Member" shall include a person whose name appears on the Membership Roll of the Ponca Tribe;

5. "Tribal Council" shall mean the Ponca Tribal Council.

6. "Tribe" shall mean the Ponca Tribe of Nebraska unless another or specific Indian Tribe is clearly intended.

CHAPTER 9

WEAPONS ON PONCA TRIBE OF NEBRASKA PROPERTY

Section 1-9-1. Purpose. The purpose of this chapter is to ensure the safety of tribal members and all others on Ponca Tribe of Nebraska public property by categorically excluding the possession of firearms of any kind on all public property, buildings and vehicles of the Ponca Tribe of Nebraska.

Section 1-9-2. Provisions.

1. The Ponca Tribe of Nebraska strictly prohibits any firearms, licensed or unlicensed, or other deadly weapons on or in any public Ponca Tribe of Nebraska building, facilities, or vehicles.

2. The Ponca Tribe of Nebraska reserves the right to inspect any person as well as any articles and property in any person's possession to detect firearms or other weapons.

3. Any gun, deadly weapon, or dangerous instrument on or in the Ponca Tribe of Nebraska owned or leased premises, facilities, or vehicles may be confiscated.

4. Nothing in this Chapter shall be construed to prohibit the Ponca Tribe game-keeper or other individual specifically identified by the Tribal Council from maintaining firearms or other deadly weapons on tribal property for the purpose of maintaining the Tribe's buffalo herd or other game-keeping duties.

5. Violation of this policy shall result in loss of services, being banned from the Ponca Tribe of Nebraska premises, facilities, and vehicles for a time period set by the Ponca Tribe of Nebraska Tribal Council; and shall further result in the possible referral to appropriate law enforcement agencies for possible criminal charges.

TITLE II
RULES OF CIVIL PROCEDURE

CHAPTER 1
GENERAL PROVISIONS

Rule 1. Scope of Rules.

A. Scope. Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedure in the Tribal and Appellate Courts of the Ponca Tribe of Nebraska in all actions, suits and proceedings of a civil nature, in all proceedings established by law, to the extent no different rule is specified.

B. Construction. These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

C. One Form of Action. There shall be one form of action known, except juvenile proceedings, as a "civil action".

D. Collateral References. Any procedures or matters not specifically set forth herein shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principles of fairness and justice as prescribed and interpreted by the Court.

CHAPTER 2
COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

Rule 2. Commencement of Action; Service of Process.

A. Commencement of Action. A civil action is commenced by filing a written complaint with the Tribal Court Administrator. The Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Tribal Court Administrator.

B. Service of process. Service of process shall consist of delivering to the party served a copy of the complaint along with the summons, which need not be issued by the Judge or Tribal Court Administrator, which advises the defendant that he is required to answer the complaint within **thirty** (30) days or a default judgment will be entered against him.

1. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service and shall be filed with the Tribal Court Administrator.

2. Service may be made on a party by delivery of the required papers to the party himself or upon some person of suitable age and discretion over fourteen (14) years of age at the party's house or principal place of business, or an officer, managing agent, employee, or partner of a non-individual party.

3. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four (4) weeks and by leaving an extra copy of the complaint or paper with the Court for the party.

4. Service may be made by any law enforcement officer.

5. Service upon a resident otherwise subject to the jurisdiction of the Ponca Tribal Court may be made anywhere in the United States **and shall be made on the party in the same manner as service is made within tribal territory, by any person who is authorized to serve process by the laws of the nation, state, territory or Indian tribe wherein such person is found.**

6. If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

C. All papers required to be filed shall be served as under this rule, or except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, First Class postage pre-paid and properly addressed.

Rule 3. Time.

A. Computation. In computing any period of time set forth herein, the day that the period is to commence from shall not be counted and the last day of the period shall be counted; provided however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

B. Enlargement. The Court, for good cause shown, may enlarge the prescribed period of time within which any required act may be done.

C. Notice of Motions. Written motions and notice of hearing thereon, other than one which may be heard ex parte, shall be served not later than five (5) days prior to the time specified for hearing.

D. Service by Mail. Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such additional time shall not cause Saturdays, Sundays or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 4. Pleading, Motions and Orders.

A. Pleadings. There shall be a complaint and an answer; and a responsive pleading shall be allowed whenever, by crossclaim, counterclaim or otherwise, a party is first claimed against unless the Court shall otherwise order. The Court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

B. Motions and Orders.

1. Motions. An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefore stated with particularity. A motion and notice of motion may be set forth together.

2. Orders. An order includes every direction of the Court whether included in a judgment or not, and may not be made without notice to adverse parties nor vacated or modified without notice, except as provided herein.

3. Hearings on Motions and Orders. A motion or hearing on an order shall be automatically continued if the judge before whom it was to be heard is unable to hear it on the day specified and no other judge is available to hear it.

4. No court order shall be issued unless a civil action has been commenced as provided in Rule 2(A).

Rule 5. General Rules of Pleading.

A. Claims for relief. A pleading which sets forth a claim for affirmative relief shall contain:

1. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter.

2. A short, plain statement of the claim showing that the pleader is entitled to relief; and

3. A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

B. Defenses and Denials. A party shall state in plain, concise terms the grounds upon which he bases his defense to claims pleaded against him, and shall admit or deny the claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and be made as to specified parts but not all of a claim, statement, or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed, the claims of the adverse party shall be deemed denied.

C. General Content of Claims and Defenses. Claims and defenses shall be simply, concisely, and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

D. Affirmative Defenses. Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleading as if it has been properly designated if justice so requires.

E. Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

Rule 6. Form of Pleadings.

A. Caption. Every pleading shall contain a caption heading, the name of the Court, the title of the action, the

Court file number if known, and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties, except the name of the first party on each side may be used on all pleadings except the complaint.

B. Paragraphs. All averments of claim or defense shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

C. Exhibits, Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

D. Paper Used in Pleading. Insofar as is possible, pleadings and other papers filed in any action shall be on regular size paper, double-spaced, except for matters customarily single-spaced, contain at least a 2-inch top margin and a 1-inch left side margin, and contain the court file number on the first page thereof. Substantial compliance with this rule will be sufficient for all parties not represented by a professional attorney.

Rule 7. Defenses and Objections.

A. When Presented. A defendant or other party against whom a claim has been made for affirmative relief shall have thirty (30) days from the date of service upon him to answer or respond to the claim.

B. Motions. Motions to dismiss or to make the opposing parties' pleadings more definite may be made prior to answering a claim and an answer will not be due until **ten** (10) days after the disposition of the motion by the court.

Rule 8. Counterclaim or Crossclaim.

A. Counterclaim. A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims shall be resolved at trial.

B. Crossclaim. A party against whom a claim is made may assert any claim he has against a co-party and have such claim resolved at trial.

C. Third Party Claim. A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

Rule 9. Amendment of Pleadings.

A. Amendment Before Trial. A party may amend his pleadings **once** before the opposing party has replied or if no reply is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date rescheduled if necessary. Other amendments shall be allowed only upon motion and order of the Court.

B. At Trial. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 10. Parties.

A. Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

B. Guardian Ad Litem. When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court may appoint a guardian ad litem to represent such person in the suit or action.

C. Joinder of Parties. To the greatest extent possible given the jurisdiction of the Ponca Tribal Court, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 11. Intervention. A person may intervene and be treated in all respect as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 12. Substitution of Parties. If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 13. Discovery.

A. Interrogatories. A party may submit written interrogatories to any other party who must answer them in writing, under oath, within **thirty** (30) days of receipt of such.

B. Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than **ten** (10) days notice, specifying the time and place where such will occur.

C. Production, Entry, or Inspection. A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within **thirty** (30) days reply as to whether or not such will be allowed and if not, why not.

D. Scope of Discovery. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

E. Protective Order. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression, or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

F. Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain act, claim, or defense be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party in an aggravated case.

G. Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purposes.

Rule 14. Jury Trials.

A. When Allowed. Trials of all civil actions shall be to the Court without a jury unless a party to the action files a request for a jury trial and pays a fee of \$25.00 not less than **thirty** (30) days prior to the scheduled date of trial. A judge may, upon good cause shown, waive pre-payment of the required fee.

B. Issues Triable. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than **fifteen** (15) days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge.

1. A judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.

2. A judge may, upon motion of any party or its own initiative, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order that no jury trial be held on such issues.

3. A judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

Rule 15. Assigning Case for Trial.

A. Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the Court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

B. Postponement. Upon motion of a party, the Court may in its discretion, and upon such terms as it deems just, including the payment of any cost occasioned by such postponement, postpone a trial or proceeding upon good cause shown.

Rule 16. Dismissal of Actions.

A. Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice to dismiss and his claim shall be deemed dismissed without prejudice. In all other circumstances, a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings, provided, however, if a crossclaim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship.

B. Involuntary Dismissal. A party against whom a claim has been made may move the court to dismiss the claim of the adverse party upon any of the following grounds:

1. Failure of the adverse party to prosecute his claim;

2. Failure of the adverse party to comply substantially with these rules;

3. Failure of the adverse party to comply with an order of the court;

4. At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or

5. Whenever dismissal appears proper based upon a failure to prove a claim.

C. Such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

D. The Court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

Rule 17. Consolidation; Separate Trials.

A. Consolidation. The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating to the action or if such will tend to avoid necessary cost or delay.

B. Separate Trials. The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 18. Evidence.

A. Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Rules of Evidence or as specified in this Law and Order Code shall be admissible and the competency of witnesses to testify shall be similarly determined.

B. Examination and Cross Examination.

1. A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

2. A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

3. Cross examination shall be limited to the general scope of direct examination; provided, however, that full examination of all witnesses to assure complete development of all relevant facts shall be allowed.

C. Physical Evidence. Written documents and other physical evidence shall be received upon being identified authenticated, and shown to be relevant to the action.

D. Official Documents. Official documents or an official law, record or copy thereof may be admitted into evidence upon

the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such thing and stating that it is a true and correct representation of what it purports to be.

E. Record of Excluded Evidence. In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the judge may receive such excluded testimony into the record.

F. Supplemental Rules. To the extent the rules of evidence are insufficient, the Court may follow the federal rules of evidence in any action or proceeding under this code. The rules of evidence may be waived at the discretion of the Court, where the parties are unrepresented by counsel.

Rule 19. Subpoenas.

A. Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued by the Court and served as provided in Rule 2.

B. Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court.

C. Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

Rule 20. Jurors.

A. Number of Jurors; Alternate. There shall be six (6) jurors chosen to hear a case plus the Court may allow one (1) additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

B. Examination of Jurors. The Court shall permit the parties or their counsel (but not both) to conduct the examination of prospective jurors and may itself examine the jurors.

C. Challenges.

1. A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.

2. Challenges to jurors are either preemptory or for cause. Each party or side shall be entitled to three (3) preemptory challenges.

3. Challenges for cause shall be made against potential jurors on the grounds that they are not entitled or qualified to be jurors, they are familiar with the case, have formed opinions regarding the case, or if for any other reason it appears likely or reasonably possible that they will not be able to render a fair, impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

D. Selection of Jury. The Tribal Court Administrator shall draw lots to determine potential jurors and shall replace jurors for whom challenge for cause is sustained until a full panel is passed for cause. Upon exercise of preemptory challenges, the Tribal Court Administrator shall administer the oath to the jurors selected for the trial, the form of which shall be prescribed by rule of the Court.

E. Discharge of Juror. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror the parties may agree to complete the action with the remaining jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

F. View of Jury. The Court may, for good cause shown, allow the jury to view the property or place of occurrence of disputed or otherwise relevant event.

G. Separation of the Jury. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

H. Deliberation. Once the case is submitted to them, the jury shall retire to deliberate in private quarters under the charge of an officer of the Court called the bailiff, who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

I. Things Taken by Jury. The jury may take with them when deliberating any of the following:

1. The Court's instructions;
2. Papers or things received in evidence as exhibits;
3. Notes taken by the jurors themselves, but not notes taken by non-jurors.

4. Additional Instructions. If, after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

J. No Verdict. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retired.

K. Declaration of the Verdict. When all or at least five (5) of the six (6) jury members agree on a verdict, they shall so inform the bailiff who shall notify the Court. The jury shall be conducted into the courtroom and the Tribal Court Administrator shall call the jury roll; the verdict shall be given in writing to the Tribal Court Administrator and then read by the Tribal Court Administrator; inquiry shall be made by the Court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If sufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is read or recorded incorrectly by the Tribal Court Administrator or foreman, the jury shall retire to correct the verdict.

Rule 21. Special Verdicts and Interrogatories. The Court may in its discretion require the jury to return their verdict in the form of specific findings on specified issues and may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

Rule 22. Instructions to the Jury; Arguments.

A. Instructions. At the close of the evidence or at such earlier time as the Court may direct, any party may file written requested instructions for the Court to give the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury.

B. Arguments. Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole judges of the facts.

Rule 23. Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.

A. Motion for a Directed Verdict. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefor and may be granted by the Court without the assent of the jury.

B. Motion for Judgment Notwithstanding the Verdict. A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted may, within ten (10) days after entry of judgment, move to have the verdict and any judgment entered hereon set aside and entered according to his motion for directed verdict; or if there has been a verdict, the party may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with its decision on the motions.

Rule 24. Finding by the Court. In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such process, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or added to, and the judgment may be amended accordingly.

Rule 25. Judgments; Costs.

A. Definition. A judgment includes any order finally and conclusively determining the rights of the parties.

B. Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period commence to run.

C. Demand for Judgment.

1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claims; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.

2. Judgment by Default. A judgment by default shall not be different in kind or form, or exceed in amount that specifically prayed for in the demand for judgment.

D. Costs. Unless the Court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified memorandum of his costs and necessary disbursements within five (5) days of the entry of judgment and serve a copy of such on the opposing party. If such are not objected to within ten (10) days, they shall be deemed to be part of, and included in, the judgment rendered. The appellate court may award costs in a like manner.

E. Attorney's Fees. The Court shall not award attorney's fees in a case unless such have been specifically provided for by a contract or agreement of the parties which is under dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party

Rule 26. Default.

A. Entry Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be

proved by affidavit and judgment upon demand by default granted to the opposing party.

B. Judgment by Default. Judgment by default may be entered by the Court if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served. Judgment by default for other relief can be entered only upon receipt of whatever evidence the Court deems necessary to establish the claim. Notice of entry of a default of judgment shall be served upon the party against whom it is taken.

C. Setting Aside Default. The Court may, for good cause shown, set aside either an entry of default or a default judgment.

Rule 27. Summary Judgment. Any time after thirty (30) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than ten (10) days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two (2) days prior to the hearing.

Rule 28. Entry of Judgment.

A. Judgment. Judgment upon verdict of a jury shall be signed by the Tribal Court Administrator and filed. All other judgments shall be signed by the judge and filed with the Tribal Court Administrator.

B. Effectiveness; Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Tribal Court Administrator shall immediately make a notation of the judgment in the judgment docket.

C. Death of a Party. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered thereon.

D. Satisfaction of Judgment. A judgment may be satisfied in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath

and filing an acknowledgement of satisfaction specifying the amount paid and whether such is full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Tribal Court Administrator shall file all satisfactions of judgment and note the amount thereof in the judgment docket.

E. Effect of Satisfaction; Limitation. A judgment satisfied in whole with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter extended once more by the same procedure.

Rule 29. New Trials; Amendments.

A. Grounds, Time. Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment, for any of the following reasons:

1. Error or irregularity which prevented any party from receiving a fair trial;
2. Misconduct of the jury or jury members;
3. Accident or surprise, or newly discovered evidence which with due diligence could not have been guarded against or produced at trial;
4. Damages so excessive or inadequate that they appear to have been given under the influence of passion or prejudice;
5. Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
6. Error in law.

B. Harmless Error. A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not result in substantial injustice.

C. Support for Motion. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

D. Court Initiative. The Court may, on its own initiative, not later than ten (10) days after entry of judgment, order a new trial on any grounds ascertainable by a party to the action, and shall specify the reasons for so ordering.

E. Motion to Alter or Amend Judgment. A motion to alter or amend a judgment shall be served not later than ten (10) days after entry of judgment.

Rule 30. Relief From Judgment or Order.

A. Clerical Mistake. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the Appellate Court, and thereafter while the appeal is pending may be corrected with leave of the Appellate Court.

B. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1. Mistake, inadvertence, surprise, or excusable neglect;

2. Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 29(a);

3. Fraud, misrepresentation or other misconduct of an adverse party;

4. When, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action;

5. The judgment is void;

6. The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been

reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

7. Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than three (3) months after the judgment, order, or proceeding was entered or taken. A motion under subdivision (B) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 31. Harmless Error. No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order, or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceedings shall disregard any error or defect which does not affect the substantial rights of the parties.

Rule 32. Stay of Proceedings To Enforce a Judgment.

A. Stay-Upon Entry of Judgment. Proceedings to enforce any judgment may be instituted no sooner than thirty (30) days after service except as otherwise provided in this Code.

B. Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

C. Stay Upon Appeal. When an appeal is taken, the appellant may, by giving a bond in an amount set by the Court, obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

D. Stay in Favor of the Tribe, Officer or Agency Thereof. When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation or other security shall be required from the appellant.

E. Power of Appellate Court Not Limited. The provisions of this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings in the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

F. Stay of Judgment Upon Multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 25, the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

G. Waiver of Undertaking. In all cases the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking is required by these rules, a deposit in court in the amount of such undertaking, or such lesser amounts as the Court may order, is equivalent to the filing of the undertaking.

H. Other Relief. No stay, injunction, waiver of undertaking or security for costs or any other relief from a judgment or order may be granted by the Court without actual notice and opportunity to be heard on the part of the prevailing party to the action.

Rule 33. Disability or Disqualification of a Judge.

A. Disability. If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the Court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the Court may perform those duties, but if such other judge is satisfied that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

B. Disqualification. Whenever a party to any action or proceeding, civil or criminal, or his attorney shall make and file an affidavit that the judge before whom such an action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposing party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge (naming him/her), which judge shall then pass upon the legal sufficiency of the affidavit. If the judge against whom the affidavit is directed does not question the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

C. "Sufficiency" for the purpose of this rule means whether the affidavit sets forth facts which, if true, would warrant disqualification of a judge. There shall be no hearing or other inquiry as to whether the facts as stated in the affidavit are indeed true, so as to preserve the dignity of the Court and avoid the hint or appearance of impropriety.

Rule 34. Injunctions.

A. Preliminary Injunctions; Notice. No preliminary injunction shall be issued without notice to the adverse party.

B. Temporary Restraining Order; Notice; Rehearing; Duration. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be filed forthwith in the Tribal Court Administrator's office and entered of record; shall define the

injury and state why it is irreparable and why the order has been granted without notice; and shall expire by its terms within such time after entry, not to exceed fifteen (15) days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, a motion for a preliminary injunction or show cause hearing must be set down for hearing at the earliest possible time, taking precedence over all other matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move for its dissolution or modification, and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

C. Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Ponca Tribe of Nebraska, or of an officer or agency of either; nor shall it be required of a married person in a suit against the other party to the marriage contract.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the Court and irrevocably appoints the Tribal Court Administrator as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion and such notice of the motion as the court prescribes may be served on the Tribal Court Administrator who shall forthwith mail copies to the persons giving the security if their addresses are known.

D. Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is

binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

E. Grounds for Injunction. An injunction may be granted:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

2. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

3. When it appears during the litigation that either party is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

4. In all other cases where an injunction would be proper in equity.

Rule 35. Extraordinary Writs.

A. Grounds for Relief. Where no other plain, speedy and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for one of the following reasons:

1. Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office; or

2. Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; or

3. Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from

which he is unlawfully excluded by such inferior tribunal, board or person; or

4. Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

Rule 36. Execution.

A. Time. If within thirty (30) days after entry of a judgment awarding money damages and/or costs against a party, or within thirty (30) days after final judgment, it is made to appear to the Court that the judgment debtor has been served notice of entry of judgment and not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the Court shall, upon notice to the judgment creditor, heard ex parte, order Law Enforcement to execute on the personal property of the judgment debtor as provided herein.

B. Procedure. The Court shall order the judgment debtor to appear before it and answer under oath regarding all his personal property. The Court shall then determine that property of the judgment debtor is available for execution and order Law Enforcement to seize as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court. Sale of the seized property shall be at a public auction conducted by Law Enforcement after giving at least ten (10) days public notice posted in at least three (3) conspicuous public places. Property shall be sold to the highest bidder who shall make payment for property in cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the Court reciting the details of the sale.

C. Exemption from Execution. The Court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment the loss of which will not impose an immediate substantial hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family,

except property conveyed to the debtor's family in contemplation of the judgment being entered against him or gifts.

D. Redemption From Sale. At any time within six (6) months after sale under this Rule, the judgment debtor may redeem his property from the purchaser thereof by paying the amount such purchaser paid for the property, plus eight percent (8%) interest, plus any expenses actually incurred by the purchaser, such as taxes and insurance, to maintain property.

Rule 37. Appeal.

A. Appellate Court. All appeals from the Ponca Tribal Court shall be heard by the Ponca Tribal Appellate court or the appropriate appellate court of which the Tribe is a member. If the Tribe is a member of a court of appeals, the rules of that appellate court shall apply.

B. Right to Appeal. Any party who is aggrieved any final order, commitment or judgment of the trial court may appeal in the manner prescribed in this rule.

C. Time, Notice of Appeal. Within thirty (30) days from the entry of the order of judgment appealed from, the party making the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order or judgment appealed from and a short statement of the reasons or grounds for the appeal. The Tribal Court Administrator shall file the notice, and mail copies to be provided by the appealing party, to all other parties to the appeal at their last known address.

D. Parties. The party taking the appeal shall be referred to as the appellant; all other parties shall be referred to as respondents. The name of the case shall be the same as that used in the trial court.

E. Bond on Appeal. At the time of the Notice of Appeal, the appellant shall file a bond in an amount set by the trial court upon notice to opposing parties.

F. Stay Pending Appeal. In any case which an appeal is perfected as required by this Rule, the appellant may petition the Tribal Court upon notice to all respondents for an order staying the order, commitment or judgment rendered, conditioned upon execution of a bond to guarantee performance of judgment, order or commitment. A stay shall only be granted in those

cases in which manifest injustice would result if no stay were issued.

G. Tribal Court Administrator. The Tribal Court Administrator shall also serve as the Tribal Court Administrator for appellate proceedings. Within fifteen (15) days after a Notice of Appeal is filed, the Tribal Court Administrator shall prepare, certify and file with the appropriate Appellate Court all papers comprising the record of the case appealed. A separate docket shall be maintained for the Appellate Court in which shall be recorded each stage of the proceedings on each case appealed.

H. Subpoenas. The presiding judge of the Appellate Court shall, when hearing a case, have authority by subpoena to compel a witness to attend and testify or compel the production of documents where such is deemed necessary to the rendition of the Court's opinion. There shall not, however, be a new trial in the Appellate Court and, except in cases where the findings of fact of the Tribal Court are clearly erroneous, there will be no review of the factual findings of the Tribal Court.

I. Briefs and Memoranda. Within thirty (30) days of the filing of the Notice of Appeal or within such longer time as the Appellate Court shall allow, the appellant shall file a written brief, memorandum or statement in support of his appeal. An original and three (3) copies shall be filed with the Tribal Court Administrator and one (1) additional copy shall be served upon or mailed to each other party or his counselor or attorney. The respondent shall have thirty (30) days after receipt of the appellant's brief, memorandum or statement within which to file a reply brief, memorandum or statement and shall file and serve such in the same manner as the appellant's brief, memorandum or statement. No response shall be allowed either party without leave of the Appellate Court.

J. Argument. The Appellate Court shall decide all cases upon the briefs, memoranda and statements filed plus the record of the Tribal Court without oral argument unless either party requests oral argument and shows to the Court that such will aid the Court's decision, or unless the Court decides on its own motion to hear oral argument.

K. Decision. The Appellate Court shall issue a written decision and all judgments on appeal shall be final.

Rule 38. Citation. These Rules shall be known as the Ponca Tribe of Nebraska Rules of Civil Procedure and may be abbreviated "P.T.N.R.C.P."

TITLE III
CHILD WELFARE

CHAPTER 1
GENERAL PROVISIONS

Section 3-1-1. Purpose. The purpose of this title is to provide for the protection of children under the jurisdiction of the Tribe and to secure the care and guidance, preferable in his/her own home, which will serve the spiritual, emotional, mental, and physical welfare of such children and the best interests of the Ponca Tribe of Nebraska. The primary objectives of these laws are to strengthen family ties; to preserve and strengthen the cultural and tribal identity of Ponca children; to secure for every child removed from his/her home that care, control, and guidance as nearly equivalent to that which he/she should be given by his/her parents to help the child develop into a responsible, well-adjusted adult; to improve any conditions or home environment which may be contributing to the child's delinquency; and to protect the peace and security of the tribal community, and its individual residents from child abuse, and neglect. This Code is also intended to provide procedures for securing the Ponca Tribe's jurisdiction over children who are members of the Tribe or who are eligible for membership in the Tribe and who are the subject of state child custody proceeding as defined by the Indian Child Welfare Act.

Section 3-1-2. Definitions.

- (1) "Abandoned" means the failure of the parent to provide reasonable support and to maintain "any" contact with a child, including the provision of adequate supervision. Failure to maintain a normal parental relationship with a child without just cause for a period of one year shall constitute prima facie evidence of abandonment. Custody with extended family members or voluntary consent to placement does not constitute abandonment.
- (2) "Abused or neglected Child" is a child as defined in Chapter 5.
- (3) "Adjudication" means a finding by the Court that the facts alleged in a petition have been proven and that subsequent judgment has ensued.
- (4) "Adjudicatory Hearing" is a hearing to determine whether the allegations in a petition alleging that a

child is abused or neglected are supported by clear and convincing evidence or whether the allegations in a petition alleging that a child is in need of supervision are supported by evidence beyond a reasonable doubt.

- (5) "Adult" for the purposes of this Title, is a person eighteen (18) years of age or over, except any person under twenty-one (21) years of age who is under the continuing jurisdiction of the Court or who is before the Court for an alleged delinquent act committed before the person's eighteenth birthday, or who is sixteen (16) years of age or older and is the custodial parent of a child or who has otherwise been emancipated by the Court.
- (6) "Advisory Hearing" is an initial hearing conducted by the Court to inform the child and the child's parent(s) of their statutory and constitutional rights.
- (7) "Child" is a person who is under the age of eighteen (18) years.
- (8) "Child in need of supervision" is a child as defined in Chapter 6.
- (9) "Court" means the Ponca Tribe of Nebraska Tribal Juvenile Court.
- (10) "Custodian" is any person who has legal custody of a child under tribal law or state law or to whom temporary physical custody, care, and control has been transferred by the child's parent **or** guardian.
- (11) "Delinquent act" means an act, which, if committed by an adult, is designated a crime under Federal or State law.
- (12) "Department of Social Services" is the Tribal Department of Social Services.
- (13) "Detention" is the temporary custody of a child in a secured physically restricting facility.
- (14) "Dispositional Hearing" is a hearing after adjudication at which the Court makes a final decision in the case.

- (15) "Extended family member" is a person who has reached the age of eighteen (18) and who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, cousin, step-parent, a person who has adopted the child through either formal legal means or traditional tribal adoption or a significant family friend either identified by the family or the Tribal Council.
- (16) "Foster Care" is any action removing a child from his/her parents or custodian for temporary placement in a foster home or institution or the home of a guardian or where the parent or custodian cannot have the child returned upon demand, but where parental rights have not been terminated.
- (17) "Guardian" is a person other than the child's parent who is by law responsible for that child.
- (18) "Involuntary Placement" is the temporary custody placement of a child by a person authorized by law to place children without the consent of the child's parent or custodian.
- (19) "Juvenile offender" is a child who commits a delinquent act "and has been adjudicated to have committed said act".
- (20) "Least restrictive alternative" is the least drastic method of achieving "the best interests of a child"; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of feasibly achieving that objective.
- (21) "Parent" is any biological parent or parents of a child or any person who has lawfully adopted a child, including adoptions under tribal law. It does not include unwed fathers where paternity has not been acknowledged or established.
- (22) "Placement" is the temporary placement of a child in the physical, but not legal custody, of an individual or agency pending "a final determination of where the child shall reside on a permanent basis".
- (23) "Protective Supervision" is a legal status created by court order under which an alleged or adjudicated

abused or neglected child is permitted to remain in the home of the child's parents, guardian, or custodian or is placed with a relative or other suitable person and supervision and assistance is provided by the Court, Department of Social Services, or other agency designated by the Court.

- (24) "Time" In computing any time prescribed under this Code, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.
- (25) "Termination of Parental Rights Proceeding" means any action resulting in the termination of the parent-child relationship.
- (26) "Tribal Attorney" means an attorney employed by the Tribe to handle legal matters in the Ponca Tribe of Nebraska Tribal Court on behalf of the Tribe.
- (26) "Tribe" means Ponca Tribe of Nebraska.
- (27) "Voluntary Placement" means an action removing a child from his/her home and placing the child in the temporary custody of another either by the parent or by a person authorized by law to place children with the consent of the child's parent, guardian, or custodian.

Section 3-1-3. Jurisdiction. The Tribal Court has original jurisdiction over all matters under this Title which involve children who are members of the Tribe or who are eligible for membership in the Tribe.

CHAPTER 2 DEPARTMENT OF SOCIAL SERVICES

Section 3-2-1. Creation. There is hereby created a Department of Social Services. The Department of Social Services shall be under the authority of the Tribe.

Section 3-2-2. Responsibility. The Department of Social Services shall assist in the enforcement of all laws relating to the welfare of children, including laws related to abuse and neglect, and all other laws designed to protect and assist children and shall take the initiative in securing enforcement of laws for the protection of children where no adequate provision is made for such enforcement.

Section 3-2-3. Rules and Regulations. The Department of Social Services shall promulgate rules and regulations for the enforcement of child welfare laws including standards for child care agencies, foster care standards and licensing requirements, adoption services, alcohol/drug counseling services, foster care payments and any other rules, consistent with these laws, which are necessary for carrying out the purposes of this Title.

Section 3-2-4. Foster Care Licensing. The Tribe, through the Department of Social Services, may issue tribal licenses for foster care homes. Licensing requirements and standards shall be set by the Department of Social Services but shall at a minimum include:

1. Cleanliness standards;
2. Water and light standards;
3. Health standards;
4. Occupancy standards;
5. Provisions for medical and dental care;
6. Provisions for food, furnishings, clothing, and necessities;
7. Standards for individuals licensed as foster care parents; and
8. Fire standards.

CHAPTER 3 INDIAN CHILD WELFARE ACT REQUIREMENTS

Section 3-3-1. Purpose. The purpose of this Chapter is to ensure that the requirements and purposes of the Indian Child Welfare Act are followed whenever a Ponca child is the subject of a child custody proceeding as defined by the Indian Child Welfare Act and that the Tribe's rights under the Act are carried into effect.

Section 3-3-2. Transfer Jurisdiction. Whenever a child who is enrolled or is eligible for enrollment in the Tribe is the subject of a State court child custody proceeding as defined by the Indian Child Welfare Act, the Tribe shall take the following steps to secure the Tribe's jurisdiction over the child:

- (1) In the case of a child who resides within any service area of the Tribe as defined by P.L. 101-484, or any amendments thereto, the Tribe may file a motion to transfer jurisdiction to the Tribal Court. If the motion is denied the case may be appealed, at the discretion of the Tribe.
- (2) In the case of any child who resides outside of any of the Tribe's service areas as defined by P.L. 101-484, or any amendments thereto, the Tribe may file a motion to transfer jurisdiction to the Tribal Court.

The guidelines for determining whether to request a transfer under sub-section 2 above include:

- (1) The child's ties, if any, with the Tribe;
- (2) Whether the child was previously a resident of a tribal service area;
- (3) Whether the child has been abandoned by his parents, guardian, or Indian custodian;
- (4) Whether the parents have requested a transfer of jurisdiction to Tribal Court;
- (5) Whether the child is of sufficient age or maturity to express an opinion as to whether he/she desires to be returned to the jurisdiction of the Tribe;
- (6) The stability of the child's family residing within the territorial jurisdiction of the Tribe;
- (7) Whether the Tribe has expressed by resolution that it is in the best interest of the Tribe and the child to request a transfer of jurisdiction.

If a child is transferred to the jurisdiction of the Tribal Court, the Court shall proceed with the case under the procedures provided in this chapter and chapters 5 and 6.

Section 3-3-3. Intervention. Whenever a child who is enrolled or who is eligible for enrollment with the Tribe is the subject

of a state child custody proceeding as defined by the Indian Child Welfare Act, the Tribe may file a motion to intervene in the case if the Tribe has been denied a transfer of jurisdiction or if the Tribe has declined a transfer of jurisdiction. The purposes of the Tribe's intervention include, but are not limited to, ensuring that the placement preferences of the Indian Child Welfare Act are followed and to ensure that any disposition of the child is culturally and socially appropriate for the child's needs and the Tribe's interests.

Section 3-3-4. Exception/Extraordinary Circumstances. The requirements for transfer of jurisdiction and intervention set out in Sections 3-3-2 and 3-3-3 may be waived by the Tribe if extraordinary circumstances exist. Extraordinary circumstances include, but are not limited to, excessive costs to the Tribe in either transferring the case to the Tribal Court or intervening.

Section 3-3-5. Enforcement. Enforcement of this chapter will be the responsibility of the Tribal Attorney, the Indian Child Welfare Act Program, and the Tribe.

Section 3-3-6. Indian Child Welfare Advisory Board.

(A) There is hereby established an Indian Child Welfare Advisory Board which shall be composed of five (5) members appointed by the Tribal Council for a term of two (2) years. Two (2) members of the Board shall be from the Tribal Social Services Department, one (1) member shall be from the Tribal Health Department, one (1) member shall be from the Judicial Department and one (1) member shall be from the Tribal Council.

(B) The duties of the Board shall be as follows:

(1) To advise the Tribal Court on the status and disposition of cases involving children who are members of the Tribe or eligible to become members;

(2) Such other duties as the Tribal Council may from time to time assign the Board.

Section 3-3-7. Applicable Law. Any person responsible for enforcement of these provisions shall follow tribal law, the Indian Child Welfare Act, and the Code of Federal Regulations in enforcing these requirements, including notice, motions, transfers, and intervention requirements.

Section 3-3-8. ICWA Experts.

The Ponca Tribe shall identify, train and designate experts to be used in Indian Child Welfare Act proceedings.

**CHAPTER 4
JUVENILE COURT**

Section 3-4-1. Creation. There is hereby created a juvenile court which shall be known as the Ponca Tribe of Nebraska Tribal Juvenile Court and any duly appointed or elected judge of the Court when exercising jurisdiction under this Title shall be known as the Ponca Tribal Juvenile Judge.

Section 3-4-2. Proceedings in the Best Interest of the Child. Proceedings under this Title shall be in the best interests of the child.

Section 3-4-2(a) Telephone/Facsimile Orders. The Court may issue orders by telephone and/or facsimile machine and such orders shall have the same force and effect as original written orders. Telephone orders shall be followed by a written order as soon thereafter as possible.

Section 3-4-2(b). Exclusion of Child from Proceedings. If the Court finds it is in the best interest of the child, the child may be temporarily excluded from an in-need-of-supervision hearing and during the taking of evidence on issues of need for treatment and rehabilitation in juvenile offender hearings. A child may be temporarily excluded by the Court during a hearing on dispositional issues under the same method.

Section 3-4-3. Tribal Attorney to Represent the Tribe. The Tribal Attorney shall represent the Tribe in all proceedings brought under this Title.

Section 3-4-4. Preliminary Investigation. A preliminary investigation shall be conducted by the Tribal Attorney upon receipt of a written report from the Department of Social Services, law enforcement or another individual or entity, that a child is, or appears to be, within the purview of this Title. The Tribal Attorney shall make a determination based on the reports and investigations of law enforcement and the Department of Social Services of whether further action is warranted. On the basis of the investigation, the Tribal Attorney shall decide whether to pursue an action under this Title.

Section 3-4-5. Court Ordered Temporary Custody. The Court may order temporary custody of any child during any scheduled hearing. Without a scheduled hearing, the Court may immediately issue a written temporary custody order in the following instances on the receipt of an affidavit or, on receipt of sworn oral testimony communicated by telephone or other appropriate means:

- (1) On application by the Tribal Attorney, regarding an apparent, alleged, or adjudicated abused or neglected child stating good cause to believe as follows:
 - (a) The child is abandoned or is seriously endangered by his/her environment; or
 - (b) There exists an imminent danger to the child's life or safety and immediate removal of the child from his/her parents, guardian or custodian appears to be necessary for the protection of the child;
- (2) On application by the Tribal Attorney, respecting an alleged or adjudicated child in need of supervision stating reasonable cause pursuant to Chapter 6 to believe as follows:
 - (a) The child presents a serious danger **to himself** or there is need for protection of others from the child; or
 - (b) The child has run away or escaped from the child's parents, guardian or custodian.

Section 3-4-6. Temporary Custody Placement. An alleged abused or neglected child placed in custody by the Court under Section 3-4-5 shall be placed in the temporary custody of the Department of Social Services for foster care placement in accordance with the placement preferences set out in Section 3-5-13. An alleged child in need of supervision taken into temporary custody under Section 3-4-5 and not released to the child's parents, guardian or custodian may be placed in foster care, shelter or detention as designated by the Court to be the least restrictive alternative for the child. The Department of Social Services shall promptly notify the Tribal Attorney of the child's placement.

No child may be held in temporary custody longer than forty-eight (48) hours, excluding Saturdays, Sundays, and

holidays, unless a petition has been filed and the Court orders longer custody during a scheduled hearing or a telephonic hearing.

The Court may at any time order the release of a child from temporary custody with or without restriction regarding the care and protection of an alleged child in need for supervision at a time, date and place to be determined by the Court.

Section 3-4-7. Options of the Court Following Temporary Custody Hearing for Abused or Neglected Child. If the child is an alleged abused or neglected child, after the temporary custody hearing the Court may:

- (1) Order the release of the child from temporary custody, either with or without restriction regarding the care or protection of the child; or
- (2) Continue the temporary custody under the terms and conditions for duration and placement that the Court requires, including the placement of temporary custody of the child with the Department of Social Services, in foster care or shelter. If temporary custody of the child is continued by the Court, the Court may provide for visitation of the child by the child's parents, guardian or custodian or family members in keeping with the best interests of the child.

If the child is in the temporary custody of the Department of Social Services and has not been adjudicated abused or neglected, the Court shall review the child's temporary custody placement at least once every sixty (60) days. The Court shall determine, on a case-by-case basis, whether a review hearing is needed

Section 3-4-8. Release of Child in Need of Supervision Following Temporary Custody Hearing. In the case of an apparent, alleged or adjudicated child in need of supervision, after the temporary custody hearing the court shall release the child from temporary custody to the child's parents, guardian or custodian, with or without condition or upon written promise of the child's parents, guardian or custodian regarding care or supervision of the child, unless the Court finds that the child should continue to be held in temporary custody for any of the following reasons:

- (1) The child has failed to comply with a Court ordered program; or

- (2) The child has a demonstrated propensity to run away from his/her home, from Court ordered placement outside of his/her home, or from agencies charged with providing temporary care for the child; or
- (3) There are specific, articulated circumstances which justify the detention for the protection of the child from potentially immediate harm to the child's self or to others; or
- (4) Any other reason that the Court deems necessary and in the best interest of the child.

Section 3-4-9. Confidentiality of Records. The records of law enforcement officers and tribal agencies concerning all children taken into temporary custody or issued a summons under the Chapter shall be maintained separately from the records regarding detention of adult persons. The records of children may not be inspected by or disclosed to the public except:

- (1) By order of the Court; or
- (2) Any child or his parent, guardian or custodian may authorize the release of records to representatives of the United States military for the purpose of enlistment into military service.

Section 3-4-10. Release of Information on Identity of child prohibited by Court Order. No fingerprints, photograph, name, address or other information concerning the identity of a child taken into temporary custody may be released or transmitted to the Federal Bureau of Investigation or any other person or agency except in the following circumstances:

- (1) To the person or party specifically authorized by order of court;
- (2) Information concerning children may be released, pursuant to an order of the Court, to persons or agencies who have a legitimate interest in the child, to the child's parents, guardian or custodian, or to the child's attorney.

Section 3-4-11. Rights of Parents, Guardian or Custodian. The Court shall advise the child's parents, guardian or custodian involved in any proceeding under this Title of their constitutional and statutory rights, including their right to be

represented by an attorney pursuant to the Indian Civil Rights Act, at the first appearance of the parties before the Court.

Section 3-4-12. Conduct of Hearings. Hearings under this Chapter and Chapter 5 and 6 shall be conducted as follows:

- (1) Adjudicatory hearings shall be conducted in accordance with the rules of civil procedure under Title 2 of the Ponca Tribe of Nebraska Law and Order Code, except as otherwise provided in this Chapter;
- (2) Dispositional hearings and all other hearings shall be tried to the Court and conducted and designed to inform the Court fully of the exact status of the child and to ascertain history, environment and the past and present physical, mental and moral condition of the child and of the child's parents, guardian or custodian;
- (3) A verbatim record shall be taken of all hearings, except telephonic hearings; and
- (4) All hearings and actions under this Chapter and Chapters 5 and 6 are closed. The Court may, in its discretion, allow extended family members to be present during hearings.

Section 3-4-13. Inspection of Court Proceedings. Records of Court proceedings, including reports of the Department of Social Services, records and reports of court services officers, under this Chapter and Chapters 5 and 6 shall be open to inspection by the child's parents, guardians or custodian, and by other respondent parties involved in the proceedings by order of the Court, their attorneys, the child's attorney and by any department or agency having custody of the child. The Court may place appropriate restrictions on such inspections to ensure the confidentiality of records.

Section 3-4-14. Witnesses. A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his/her own behalf or on behalf of the child. Upon application to the Court, compulsory process shall be issued for the attendance of witnesses on the behalf of the child.

The name, picture, place of residence or identify of any person appearing as a witness in proceedings under this Chapter

or Chapters 5 and 6 may not be published or broadcast in any news media or given any other publicity.

Section 3-4-15. Examinations. The Court may require an apparent, alleged or adjudicated abused or neglected child or child in need of supervision to be examined by a physician or qualified mental health professional. Referrals for such examinations will be to the Tribal Health Department. The Court may direct that an examination or evaluation report be submitted to the Court and such report may be considered by the Court at an adjudicatory or dispositional hearing. Unless otherwise ordered by the Court, the Tribal Health Department shall bear the costs of the examination(s).

Section 3-4-16. Petitions Alleging Abused or Neglected Child and Child in Need of Supervision. The Tribal Attorney, or in the absence of the Tribal Attorney, the Department of Social Services, may file with the Tribal Court Administrator a written petition alleging a child to be an abused or neglected child or a child in need of supervision or a delinquent child, as defined by this Chapter and Chapters 5 and 6.

The petition shall include the following:

- (1) The child's name, date of birth and residence;
- (2) The names and residences of the child's parents, guardians, or, if not known, of the child's nearest known relative;
- (3) A statement of the facts which bring the child within the court's jurisdiction; and
- (4) A request that the Court adjudicate the child to be an abused or neglected child, a child in need of supervision or a delinquent child, according to applicable statutory definition and that appropriate proceedings be conducted regarding adjudication and disposition.

Two (2) or more children having one (1) or more common parent, guardian or custodian and a common home environment may be included in the same petition.

If the petition alleges a child to be an abused or neglected child, the petition shall recite that the action is brought by the Tribe on behalf of the child. Petitions filed

regarding an alleged child in need of supervision shall be brought on behalf of the Tribe.

Affidavits of social workers of the Department of Social Services, law enforcement officers or court service officers may be incorporated by reference as part of the petition.

The child's parents, guardian or custodian, as applicable, shall be included as named respondents in the petition.

Section 3-4-17. Summons/Service of Process. Upon the filing of a petition, the Court or the Tribal Attorney shall issue a summons stating the time, date, and place for the hearing on the petition that is directed to the child's parents, guardian or custodian, if any. If the petition declares the parties are unknown, then to "All Whom it May Concern" shall be sufficient to authorize the Court to hear and determine the action as though the parties had been described by their proper names. The summons shall:

- (1) Require the persons named in it to appear, at a stated time, date and place and to respond to the petition and shall advise the persons named that failure to appear is an admission to the allegations contained in the petition;
- (2) State that the persons named and the child who is the subject of the petition have the right to an attorney, pursuant to the Indian Civil Rights Act, at all stages in the proceedings;
- (3) If the petition alleges the child to be an abused or neglected child, include a statement that termination of parental rights is a possible remedy under the proceedings;
- (4) If the petition alleges the child to be a child in need of supervision, require the parents of the party having custody of the child to appear with the child at the time, date and place stated in the summons.

The summons shall be served in the same manner as personal service of summons according to Tribal Rules of Civil Procedure or by publication as provided in this Title not less than thirty (30) days before the date of the hearing on the petition and shall be served as follows:

- (1) On the child if the child is an alleged child in need of supervision or is a child who is apparently emancipated or is living independently and not residing with a parent, guardian or custodian; and
- (2) On the child's parents, guardian or custodian if the child is an alleged abused or neglected child.

Section 3-4-18. Publication of Summons. When a petition or an affidavit of the Tribal Attorney discloses that any person or party to be served with the summons is outside the jurisdiction of the Tribal Court, or upon due diligence cannot be found, or is concealed, or whose mail at the last known address has been returned, or whose location is unknown, or is affected by the designation "All Whom It May Concern" the summons, modified to declare the initials of the child in lieu of the name of the child, shall be published once in a newspaper of general circulation published in the county in which the child or the parents reside or in another newspaper designated by the Court as most likely to give notice to the party to be served. Publication of the summons shall be made not less than thirty (30) days before the date of the hearing on the petition. Notice given by the publication is the only required notice to the concerned parties to be served who are described in this Section.

Section 3-4-19. Warrants Issued Against Parents, Guardian or Custodian. If the summons is not served on the child's parents, guardian or custodian, or if any party fails to obey the summons, or if it is made apparent to the Court by affidavit of the Tribal Attorney, which may be on information and belief, that a summons will be ineffective to secure the required presence of the child, a warrant may be issued by the Court against the parents, guardian or custodian of the child requiring that the party or the party and the child be brought before the Court. If the Court requires the presence of any child, a warrant may be issued by the Court against the child directing the child to appear before the Court.

When a warrant is issued, a law enforcement officer shall take the child into custody and bring the child before the Court. In lieu of taking custody of the child, the Court or any officer processing the warrant may accept the verbal or written promise of the child's parents, guardian or custodian served with summons to be personally responsible for bringing the child before the Court as required by the summons or the warrant.

Section 3-4-20. Appearance and Answer/Failure as Default. Every person or party to whom notice is given by summons and all other interested parties affected by the designation "All Whom It May Concern" may appear, either in person or by attorney, pursuant to summons, and answer, either in writing or orally in open court, in response to the petition. If any party fails to appear pursuant to summons or fails to answer or appear pursuant to summons or fails to answer or otherwise respond to the petition, the party shall be deemed by the Court to be in default and the petition shall be taken as admitted to by the party.

Section 3-4-21. Initial Appearance/Advisory Hearing. Upon the initial appearance of the parties pursuant to summons or at any adjournment or continuance on an appearance, the Court shall conduct an advisory hearing before the adjudicatory hearing on the petition as follows:

- (1) The Court shall first:
 - (a) Ascertain the need for any joinder or deletion of parties, determine true names and addresses of parties and their relationship to the child, and determine the true name, date and place of birth, address and custodial status of the child;
 - (b) Advise the parties of the nature of the proceedings, the allegations contained in the petition, the burden of proof of the Tribe, and constitutional and statutory rights of the parties; and
 - (c) Advise the parties of their right to be represented by an attorney at their own cost; and
- (2) The Court shall then receive the answer, response, denial or admission of the parties and the child as follows:
 - (a) If the petition alleges the child to be abused or neglected, the parents, guardian or custodian of the child may admit the allegations contained in the petition and the Court may accept the admissions if the Court is satisfied there is a factual basis for them;
 - (b) If the petition alleges the child to be in need of supervision, the parents, guardian or

custodian of the child and the child may admit the allegations contained in the petition and the Court may accept the admission if the Court is satisfied there is a factual basis for them.

Section 3-4-22. Petitions Admitted to By All Parties. When all parties admit the allegations contained in the petition and the Court accepts the admission, the Court may find, conclude and make a decision as to adjudication of the child under the applicable provisions of Chapters 5 and 6. The Court may then proceed with the dispositional phase of the proceedings without conducting a formal adjudicatory hearing on the petition. The Court shall set a later time and date for the dispositional hearing. The Court shall then determine interim dispositional arrangements concerning the child and the parties.

If the petition is not admitted by all parties, including the child, if appropriate, or if the petition is denied by any necessary party or the child, if appropriate, the Court shall proceed with the adjudicatory hearing on the petition or schedule the adjudicatory hearing for a later time and date.

If the advisory hearing is adjourned and continued to a later date or if the advisory hearing is completed and the adjudicatory hearing on the petition is scheduled for a later time and date, the Court shall make an interim order regarding temporary custody of the child.

Section 3-4-23. Adjudicatory Hearing. Following an advisory hearing on a petition, the Court shall conduct an adjudicatory hearing. The Court shall consider whether the allegations of the petition are supported by clear and convincing evidence concerning an alleged abused or neglected child or whether the allegations of the petition are supported by evidence beyond a reasonable doubt concerning an alleged child in need of supervision. In cases concerning abused or neglected children, evidence that child abuse has occurred is prima facie evidence that the child is an abused or neglected child regardless of allegations contained in the petition, and such evidence is sufficient to support an adjudication of the child as an abused or neglected child.

Written reports and other material and information relating to the child's mental, physical and social history may be received and considered by the Court at the hearing together with other evidence relating to allegations of the petition or circumstances then affecting the child. If requested by the child or the child's parents, guardian or custodian or other

interested party appearing as a respondent in the action, the Court shall require the party who prepared the reports or material to appear as a witness and be subject to both direct and cross-examination. In the absence of a request regarding the appearance of the party, the Court shall require the party preparing reports or material to appear and testify if the Court finds that interests of the child or the child's parents, guardian or custodian or any other respondent to the proceedings so require.

Section 3-4-24. Final Order Where All Allegations Not Supported by Evidence. If the Court finds that the allegations of a petition are not supported by clear and convincing evidence in cases concerning an alleged abused or neglected child or are not supported by evidence beyond a reasonable doubt in cases concerning alleged children in need of supervision, the Court shall enter a final order accordingly and the action shall be terminated. In the case of an alleged abused or neglected child, the Court shall enter findings and conclusions in addition to the final order. On termination of the action, the child, the child's parents, guardian or custodian and other respondent parties shall be released from any restriction or temporary order previously issued by the Court and from the jurisdiction of the Court. The final order terminating the action is a final order for purposes of appeal by the Tribe or by an alleged abused or neglected child or any party respondent not in agreement with the non-adjudication of the alleged abused or neglected child and resulting termination of the action.

Section 3-4-25. Order of Adjudication Where Allegations Supported by the Evidence. If the Court finds the allegations of the petition are supported by clear and convincing evidence in cases concerning an alleged abused or neglected child or are supported by evidence beyond a reasonable doubt in cases concerning an alleged child in need of supervision, the Court shall adjudicate the child accordingly and shall issue findings of fact, conclusions of law and an order of adjudication stating the child to be an abused or neglected child, or a child in need of supervision. The order of adjudication is a final order and is subject to appeal according to the tribal rules governing civil appeals.

The Court shall proceed with the dispositional phase of the proceedings and shall issue an order setting the time, date and place of the dispositional hearing and prescribing notice of the hearing.

The Court shall issue an interim dispositional decree governing custody, placement, care, shelter or detention of the child pending the dispositional hearing.

Section 3-4-26. Exams, Reports, and Investigations of Adjudicated Child Before Final Disposition. After adjudication of a child as an abused or neglected child, or a child in need of supervision and before the final disposition of the case, the Court may require the following examinations and investigations and reports of them:

- (1) The Court may order the child's parents, guardian, custodian or relative of the child who might be considered as a potential caretaker of the child on disposition to submit to psychological, psychiatric or mental examination and evaluation by a qualified mental health professional or physicians and submit the report to the Court. The order may be issued by the Court on motion of the Tribe, the child, any interested party, or on the Court's own motion. The order directing the examination and evaluation shall state the time, place, manner, conditions and scope of the examination and evaluation to be made and the person or persons by whom it is to be made.
- (2) The Court may order homestudy investigations and reports of the investigations concerning the child's parents, guardian, custodian, any other party respondent or a relative of the child who may be a potential caretaker of the child on disposition. The order for a homestudy investigation and a report of the investigation shall state the conditions and scope of the investigation. Reports received by the Court pursuant to this section may be released by the Court to attorneys of record for the parties and may be received by the Court as evidence in the dispositional phase of the proceedings.

Section 3-4-27. Continuance. At any time after filing of the petition and before final disposition of the case, the Court may continue the case where the circumstances of the case require the need for continuance. The Court shall issue an order to continue custody of any child for up to but no longer than three (3) months.

Section 3-4-28. Dispositional Hearing/Final Decree. After adjudication, the Court shall conduct dispositional hearings in accordance with Chapter 5 and 6, and consider evidence regarding

proper disposition of the child according to the least restrictive alternative and commensurate with the best interests of the child with due regard to the rights and interests of the child's parents, guardians, custodians, other party respondents, and the Tribe. Dispositional evidence may include social study reports, mental and medical examinations and evaluation reports, homestudy investigation report and any other evidence related to appropriate disposition of the child.

The Court shall issue findings of fact, conclusions of law and a final decree of disposition. The decree shall be the final order of the Court for the purpose of an appeal by any party according to the rules governing civil appeals.

Notice of entry of an order of adjudication or final decree of disposition in any case shall be served on the parties to the action.

Section 3-4-29. Order of Decree of Guardianship of Child. Any child adjudicated to be an abused or neglected child, or child in need of supervision, and awarded by the Court to a guardian or institution, shall be held by the guardian or institution by virtue of the order or decree entered of record in the case. The Court may consult with the abused or neglected child, in an age-appropriate manner, regarding his or her permanency planning. The Court shall order a decree as proof of the authority of the guardian or institution over the child.

Section 3-4-30. Orders for Support. Upon **adjudication and removal of the** child from the custody of the child's parents, guardian or custodian, the Court may order the child's parent, guardian or custodian to contribute to the financial support of the child where it appears the child's parents, guardian or custodian is financially able to do so.

Section 3-4-31. Guardianship of the Estate of the Child. Unless otherwise specifically ordered by the Court in its order or decree, nothing in this Chapter or any other Chapter of this Title gives the guardianship of the estate of the child to any guardian appointed, or changes the age of minority of a child for any purpose unless the child is a person under age twenty-one (21) years who is under the continuing jurisdiction of the Court. The Court may appoint a guardian of the estate of the child who is under the age of eighteen (18) years if the child is within the jurisdiction of the Court and the Court specifically finds that appointment of a guardian of the estate is necessary and appropriate under the circumstances and is in the best interests of the child.

Section 3-4-32. Period of Continuation of Guardianship/Application for New Guardian, Restoration to Parents or Discharge of Guardianship. Guardianship of the person or of the estate of the child shall continue until the Court orders otherwise, but not after the child has attained the age of majority. The child or representative of the child, or any interested party may from time to time, upon a proper showing, apply to the Court for the appointment of a new guardian, for restoration of the child to the custody of the child's parents, if parental rights have not been terminated, or for the discharge of the guardian appointed by the Court at the final disposition of the child.

Section 3-4-33. Orders for Protection. The Court may enter an order of protection in addition to, or as condition of, any decree of disposition authorized by this Chapter. The order of protection shall set forth reasonable conditions of behavior to be observed for a specified period by any person who is a party to such proceedings.

The order of protection may require any person or party:

- (1) To stay away from the child or the child's home;
- (2) To permit a parent or other person to visit a child at stated periods and places, with or without supervision;
- (3) To abstain from offensive conduct against a child or the child's parents, guardian, custodian or other person having custody or temporary care of the child;
- (4) To give proper care and maintenance of the child's home;
- (5) To refrain from any acts that tend to make a home an improper place for a child;
- (6) To cooperate with and participate in any physical or mental examination and evaluation, counseling, treatment, therapy or childcare or parenting classes considered necessary by the court for the benefit of the child.

After notice and a hearing is given to any person or party subject to an order for protection, the order may be terminated, modified or extended for a specified period of time if the Court finds it in the best interests of the child.

Section 3-4-34. Modification or Setting Aside Order or Decree. The Court may modify or set aside any order or decree. Modification of a prior order or decree shall not be made without a hearing under either of the following circumstances:

- (1) Upon violation of the terms of probation governing a child in need of supervision; or
- (2) The effect of modifying or setting aside the order or decree would be to deprive a parent of custody of the child or make a change in custody.

Section 3-4-35. Petition for Modification or Termination of Custody Decree. After placement of custody of a child by the Court with an individual, institution or agency, a parent whose parental rights have not been terminated, or a former guardian or custodian of the child may petition the Court for restoration of custody or other modification or termination of the prior custodial order or decree on the grounds that a change of circumstance has occurred which requires the modification or termination in the best interests of the child and the Tribe.

Section 3-4-36. Petition for New Hearing on Grounds of New Evidence. A child and/or a representative of the child or a child's parents, guardian or custodian may petition the Court for a new hearing, related to adjudication or disposition, on the ground of newly discovered evidence which was not known and could not, with due diligence, have been available at the original adjudicatory or dispositional hearing. A hearing on the petition shall be conducted and, upon a finding by the Court that new evidence exists which might affect the original order or decree, the Court shall order a new hearing, **limited to consideration of newly discovered evidence**, and shall proceed with a revised determination of the case as warranted by the evidence. **In all cases, the decision to hold a new hearing shall be discretionary with the Court.**

CHAPTER 5 PROTECTION OF CHILDREN FROM ABUSE AND NEGLECT

Section 3-5-1. Purpose. The purpose of this Chapter is to protect children from abuse and neglect. Adjudication of a child as an abused or neglected child is an adjudication of the status or condition of the child.

Section 3-5-2. Abused or Neglected Child Defined. The definition of an abused or neglected child shall be a child:

- (1) Whose parent, guardian or custodian has abandoned the child or has subjected the child to mistreatment or physical battering;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian or custodian fails or refuses to provide prior or necessary subsistence, supervision, education, medical care or any other care necessary for the child's health, guidance or well-being;
- (5) Who is homeless, without proper care or not domiciled with the child's parent, guardian or custodian through no fault of the child's parent, guardian or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture.
- (8) Who is subject to sexual abuse, sexual molestation or sexual exploitation by the child's parent, guardian, custodian or any other person; or
- (9) Who is left unattended or unsupervised for extended periods of time, if under fourteen (14) years of age, in circumstances that pose a risk of substantial harm to the child.

Section 3-5-3. Person Mandated to Report Child Abuse or Neglect.

Any person who is a health care provider, mental health professional or counselor, social worker, law enforcement officer, teacher, school counselor or licensed or registered child care provider who has reasonable cause to believe that a child has been abused or neglected is required to report such information. The report shall be made to the Tribal Attorney, the tribal Department of Social Services or to law enforcement officials. Reports shall include the name, address, and age of the child, the name and address of the child's parents, guardian

or custodian, if known, and details of suspected or known instances of child abuse or neglect. The Department of Social Services shall be the central registry for such information.

Section 3-5-4. Investigation. Upon receipt of a report pursuant to Section 3-5-3 or any other report of child abuse or neglect, the Department of Social Services and law enforcement officers shall investigate the report. Investigating personnel have the authority to interview a child out of the presence of the child's parents, guardian or custodian without advanced notice or consent. Investigations may include the taking of photographs of the areas of trauma visible on the child and medical examinations or testing of the child without the consent of the parent, guardian or custodian. Investigations by the Department of Social Services shall be made and completed within thirty (30) days of receiving notice of the alleged abuse or neglect.

Section 3-5-5. Substantiated/Unsubstantiated Reports. Upon completion of an investigation of alleged abuse or neglect, the Department of Social Services shall make a determination as to whether evidence exists to substantiate the allegation of abuse or neglect. If the report is substantiated, the information shall be added to the central registry for child abuse and neglect and then forwarded to the Tribal Attorney for appropriate action. If the allegations are not substantiated by the evidence, the Department of Social Services shall close the case. The case will not be recorded into the central registry.

Section 3-5-6. Release of Information. Upon receipt by the Department of Social Services of a request showing that it is necessary for the individual to have information in the performance of official functions related to child abuse or neglect, the Department of Social Services shall release records, files or other information to the following parties:

- (1) The Tribal Attorney, law enforcement agencies, and protective service workers investigating reports of known or suspected child abuse or neglect;
- (2) The attorney or guardian ad litem of the child who is the subject of the information;
- (3) Tribal institutions and agencies that have legal responsibility or authorization to care for, treat or supervise a child who is the subject of the information or report;

- (4) A licensed child/pediatric psychiatrist, psychologist or mental health counselor; and
- (5) A physician who has before him a child whom the physician reasonably believes may be abused or neglected.

Section 3-5-7. Confidentiality. All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure of records, files or other information may be made except as authorized in this Title. Any person, who knowingly violates the confidential nature of the records, files or information shall be subject to punishment as provided for in this Code or any other policy, ordinance or rule of the Tribe.

Information received by an authorized party pursuant to Sections 3-5-5 and 3-5-6 shall be held confidential by the receiving party. However, the Court may order the release of the information or any portion of it necessary for determination of an issue before the Court.

The privilege of confidentiality may not be claimed in any judicial proceeding involving an alleged abused or neglected child or resulting from the giving, or cause the giving of, a report concerning abuse or neglect of child pursuant to this Chapter.

Section 3-5-8. Immunity From Liability. Any person or party acting in good faith in the making of a report or the submission of copies of medical examination, treatment or hospitalization records pursuant to this Chapter, is immune from liability, civil or criminal, that might otherwise be incurred or imposed and has the same immunity for participation in any judicial proceeding resulting from the report. Immunity also extends to persons involved in the investigation and treatment of child abuse or neglect or making a temporary placement of the child pursuant to this Chapter or to any person who in good faith cooperates with the Department of Social Services in investigation, placement or treatment plan. The provisions of this section allowing the granting of immunity do not extend to any person alleged to have committed an act or acts of child abuse or neglect. It is not a violation of this Chapter for a parent to leave a child who is ninety (90) days of age or younger at a Ponca Tribal Office during operating hours, or a hospital in a Ponca Tribe of Nebraska Designated Service area. Should a child be left with personnel at the aforementioned

locations, the appropriate Tribal and State entities will be notified for proper care of the child.

Section 3-5-9. Child Protection Teams. The Department of Social Services may appoint a child protection team to assist in prevention and treatment of child abuse and neglect. The child protection team may include licensed or certified medical and health professionals, court services officers, representatives of the Department of Social Services, mental health professionals, representatives of the public school, attorneys and representatives of the tribal community. The Department of Social Services shall promulgate rules and regulations for the development of a child protection team.

Section 3-5-10. Appointment of a Guardian Ad Litem. The Court may appoint a guardian ad litem for an alleged or adjudicated abused or neglected child to represent the best interests of the child. The guardian ad litem is an officer of the Court for the purpose of representing the child's best interests. The guardian ad litem shall receive all reports concerning the child pursuant to Sections 3-5-5 and 3-5-6. The guardian ad litem shall investigate the circumstances of each case the guardian is appointed to represent. The investigation shall include contacts with family members, school officials, and other individuals having pertinent information regarding the child.

Section 3-5-11. Remedial Measures to Prevent Removal of Children From Their Home. Except as provided in Chapter 4, Section 3-4-7, prior to the removal of an alleged or adjudicated abused or neglected child from the home of the child's parents, guardian or custodian, the Court shall make reasonable efforts to prevent or eliminate the need for removal of the child. Under any circumstance, other than an emergency, any party seeking to effect the removal of a child from the child's home for foster care placement or termination of parental rights must first satisfy the Court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the family unit and that these efforts have proven unsuccessful.

Section 3-5-12. Standards for Removal/Foster Care Placements. A child may not be removed from the child's home and placed in foster care, except as provided in Section 3-4-6, until the Court has made a judicial determination, supported by clear and convincing evidence, that the continued custody of the child by the child's parent, guardian or custodian is likely to result in serious emotional or physical harm to the child and that

remedial measures under Section 3-5-11 have been attempted by the Court and have proven unsuccessful.

Section 3-5-13. Foster Care Placement Preferences. When any child is placed in foster care, the child shall be placed in the least restrictive setting which most approximates a family and in which the child's needs may be met. The Court may consult with the child, in an age-appropriate manner, to determine what foster care placement is in the best interests of the child. In any foster care or pre-adoptive placement, a preference shall be given in the absence of good cause to the contrary, to placement in the following order:

- (1) A member of the child's extended family;
- (2) An Indian foster home licensed by either the Tribe or the State of Nebraska;
- (3) Any foster home licensed by the State of Nebraska or any State within the Ponca Tribe of Nebraska service areas; or
- (4) An institution for children approved by the Tribe and the Court.

Section 3-5-14. Final Decree of Disposition. The Court shall enter a final decree of disposition which shall include one or more of the following provisions appropriate as the least restrictive alternative available;

- (1) Place the child in the custody of one or both parents or in the custody of another individual under the preferences set out in Section 3-5-13, without a Court approved plan for long term foster care, subject to the conditions that the Court deems necessary and appropriate;
- (2) Place the child in the custody of the Department of Social Services pursuant to a Court approved plan for placement under Section 3-5-13.
- (3) Order that the child be examined by a physician or qualified mental health professional or that the child receive other special care or be placed in a suitable facility for such purposes as the Court deems necessary or appropriate. Further hearings shall be held as necessary following any examination.

If disposition of the child under this Section involves the removal from, or the non-return of the child to, the home of the child's parents, guardian or custodian and placement of the child in the custody of the Department of Social Services for placement in foster care, the court shall include in the decree a written judicial determination, supported by clear and convincing evidence, that the continued custody of the child by the child's parents, guardian or custodian is likely to result in serious emotional or physical harm to the child and that remedial and rehabilitative measures have been attempted and proven unsuccessful.

Section 3-5-15. Criteria for Determining Continued Placement.

In conducting the review hearing required by 3-5-14, the Court may continue placement of the child separate from the home of the child's parents, guardian or custodian upon a written judicial determination that return of the child to the home would likely result in serious emotional or physical harm to the child and that remedial and rehabilitative measures which would make it possible for the child to return to the home have been attempted and proven unsuccessful. The Court may consult with the child, in an age-appropriate manner when making its continued placement determination. In making this determination, the Court may consider the following criteria:

- (1) The goals of the foster care placement and the appropriateness of the foster care;
- (2) The assistance and services which have been offered to reunite the child with the child's parents, guardian or custodian and the good faith efforts, or their lack, and ability of the child's parents, guardian or custodian to cooperate with the department and to effectively utilize the assistance and services for the benefit and welfare of the child; and
- (3) If the return of the child to the home of the child's parents, guardian or custodian is not likely, the reasonable efforts of the department that have been made or should be made to provide for other methods of care in keeping with the best interests of the child.

Section 3-5-16. Termination of Parental Rights. The Court shall affirmatively find that good cause exists for termination of the parental rights of the child's parent(s) and the Court shall enter an order terminating parental rights when an abused or neglected child has been in the custody of the Department of Social Services without a Court approved plan for long-term

foster care and parental rights have not been terminated and it appears at a dispositional or review hearing:

- (1) That all reasonable efforts have been made to rehabilitate the family; and
- (2) That the conditions which led to the removal of the child still exist; and
- (3) There is little likelihood that those conditions will be remedied so that the child can be returned to the custody of the child's parent; and
- (4) Evidence exists beyond a reasonable doubt that the custody of the child with the child's parent would likely result in serious emotional or physical harm to the child.

The Court shall give notification of such termination of parental rights to the child's home tribe. Upon entry of the final decree of disposition terminating the parental rights of one or both parents, the Court shall award the Department of Social Services custody and guardianship of the child for the purpose of placing the child for adoption and authorizing any notice or consent of any parent or child. Upon entry of final decree of disposition terminating the parental rights of one parent, the Court may leave the child in the custody of the remaining parent and end all proceedings.

If the Court does not find that good cause exists for termination of parental rights, the Court shall make further disposition of the child as follows:

- (1) Return custody of the child to the child's parents, guardian or custodian, with or without supervision; or
- (2) Continue foster care placement of the child for a specified period of time, and if the child is sixteen years of age or older, direct the Department of Social Services to determine the services needed to assist the child to make the transition from foster care to independent living and, if appropriate, provide a plan for independent living for the child; or
- (3) Place the child in the custody of the Department of Social Services, a foster home or other child care facility for long-term foster care under a court approved plan, with or without guardianship of the

child, and determine visitation rights of the child's parents, guardian or custodian. Under this subdivision, the Court may retain jurisdiction of the action and proceedings for future consideration of termination of parental rights.

In no case may a child remain in foster care for a period in excess of eighteen (18) months without the Court entering an order setting forth one of the above options. The transfer of proper jurisdiction is mandatory which shall include the State of Nebraska, the home state of the child, or the child's appropriate tribal court.

Section 3-5-17. Voluntary Termination. A child's parent(s) may voluntarily consent to termination of parental rights. The consent shall be executed in writing and recorded in a hearing (which shall include a telephone hearing) in which the parent(s) shall acknowledge in writing and under oath that the terms and consequences of the consent were fully understood by the parent. The parent may withdraw consent at any time prior to the entry of a final decree of termination and request return of the child.

Section 3-5-18. Termination of Parental Rights Based on Abandonment. The Court may terminate the parental rights of one or both parents upon a showing that the parent(s) have totally abandoned the child for at least six (6) months and during this period the parents have made no attempt to resume physical custody of the child or make suitable arrangements for the child. Termination under these conditions shall be made in accordance with Section 3-5-16.

Section 3-5-19. Notice of Final Decree. Notice of entry of order of adjudication or final decree of disposition issued by the Court shall be served on the child's attorney or guardian ad litem, and other respondent parties. Notice by publication shall be published in a newspaper most likely to provide notice to the parties for at least thirty (30) days and shall be completed five (5) days after the date of publication. Appeal from a final decree begins on the day following the date of completed service of the notice of entry regardless of the manner in which the notice of entry is served. An appeal of a final order must be entered within thirty (30) days of the final date of order.

Section 3-5-20. Continuing Jurisdiction. In any action involving the termination of parental rights, the Court shall have continuing jurisdiction of the action and of the child for

purposes of reviewing the status of the child until the adoption is fully completed. The Department of Social Services, or any other party having custody or guardianship of the child pending adoption, may petition the Court to review the status of the child at any time before the adoption of the child is completed. The Court may issue any order or decrees necessary to protect the child's interests, to preserve the child's welfare, and to facilitate adoption of the child.

Adoption proceedings shall be conducted pursuant to Title IV, Chapter 8, Section 4-8-3 through 4-8-18 of this Code.

CHAPTER 6 CHILDREN IN NEED OF SUPERVISION

Section 3-6-1. Purpose. The purpose of this Chapter is to establish an effective tribal system for children in need of supervision.

Section 3-6-2. Definition of Child in Need of Supervision. In this Chapter, the term "child in need of supervision" means:

- (1) Any child of compulsory school age as defined by state law, who is habitually absent from school without legal excuse; or
- (2) Any child who has run away from home or is otherwise beyond the control of the child's parents, guardian or custodian; or
- (3) Any child whose behavior or condition endangers the child's own welfare or the welfare of others.

Section 3-6-3. Temporary Custody/Circumstances Requiring Release. A child alleged to be in need of supervision may be taken into custody under the provisions of Section 3-4-7. A child taken into temporary custody by a law enforcement officer prior to a temporary custody hearing shall be released to the child's parent, guardian or custodian unless the child's parent, guardian or custodian cannot be located. A child may not be placed in detention unless the Court finds that the parents, guardian or custodian are not available or are not suitable to care for the child, and finds at least one of the following circumstances to exist:

- (1) The child has failed to comply with court services or a court ordered program;

- (2) The child has demonstrated propensity to run away from home, flee from court-ordered placement outside of the child's home or flee from agencies charged with providing temporary care for the child; or
- (3) The child is under court ordered detention; or
- (4) There are specific articulated circumstances that justify the detention for the protection of the child.

The shelter or detention provided shall be at the least restrictive alternative available.

Section 3-6-4. Medical or Mental Health Care for the Child. The Court may order the child to be examined or treated by a physician or qualified mental health professional or to receive other special care may place the child in a hospital or other suitable facility for such purposes.

Section 3-6-5. Decree of Disposition. Upon adjudication as a child in need of supervision, the Court shall enter a decree of disposition according to the least restrictive alternative available in the best interests of the child. The Court decree shall contain any of the following:

- (1) Placement of the child on probation;
- (2) Placement of the child under protective supervision with the custody of one or both parents, guardian, custodian, relative or another suitable person under conditions imposed by the Court;
- (3) Placement of the child in a detention facility;
- (4) Order the child to pay restitution for any damage done to property under conditions set by the Court if payment can be enforced without serious hardship to the child;
- (5) Placement of the child in a group care facility or a foster home under supervision of a court services officer;
- (6) Order the child to be examined and treated at a place suited to the needs of the child;
- (7) Order traditional/cultural forms of treatment or care which may be appropriate for the child's needs, only with the consent of the parent, guardian or custodian;

- (8) Order the child to perform community service.

The terms and conditions of probation and the progress of each child placed on probation shall be reviewed at least once every six (6) months. The court may release a child from probation or modify the terms and conditions of the child's probation at any time. Any child who has satisfactorily complied with the terms, conditions and duration of probation shall be released from probation.

Section 3-6-6. Probation Officers. Any child who has been adjudicated delinquent may be placed under the supervision of a probation officer.

Section 3-6-7. Revocation of Probation. The following provisions apply when a petition is filed alleging that a child has violated the terms and conditions of probation:

- (1) The Court shall set a hearing on the alleged violation and shall give five (5) days notice to the child, or to the child's parents, guardian or custodian;
- (2) The child and the child's parents, guardian or custodian shall be given a written statement concerning the alleged violation;
- (3) If the Court finds by preponderance of the evidence that the child violated the terms and conditions of probation, the court may modify the terms and conditions of probation, revoke probation or take other action permitted by this Chapter, according to the least restrictive alternative which is in the best interests of the child, the public and the Tribe;
- (4) If the Court finds that the child did not violate the terms and conditions of probation as alleged, the Court shall dismiss the proceedings and continue the child on probation under the terms and conditions previously prescribed.

TITLE IV
DOMESTIC RELATIONS

CHAPTER 1
MARRIAGE

Section 4-1-1. Authority. The Ponca Tribe of Nebraska shall have the authority to issue marriage licenses to individuals who are residents within the territorial jurisdiction of the Ponca Tribe of Nebraska.

Section 4-1-2. Marriage License. No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Tribal Court Administrator. The Tribal Court Administrator shall issue a marriage license to persons who appear entitled to be married as provided in this Code upon payment of a \$25.00 fee. The Tribal Court Administrator shall keep a record of all marriage licenses and certificates issued.

Section 4-1-3. Existing Marriages. All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Ponca Tribe of Nebraska. All marriages performed within Ponca Tribe of Nebraska jurisdiction prior to the effective date of this Code, including those perfected according to any Tribal custom and tradition, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the Tribal Court Administrator by affidavit or otherwise of the validity of their marriage, and payment of a \$25.00 fee.

Section 4-1-4. Persons Who May Marry. No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

1. They are at least eighteen (18) years of age, or at least sixteen (16) years of age but less than eighteen (18) years of age, and have the written consent of their parents or guardians properly notarized, to marry; and

2. At least one of the persons to be married is a resident Ponca tribal member.

Section 4-1-5. Solemnization. To be valid, a marriage shall be solemnized within the Ponca territorial jurisdiction in the presence of at least two (2) witnesses. A marriage may be solemnized by any of the following individuals:

1. Recognized clergyman or persons recognized by their religions as having authority to marry;
2. A judge of the Ponca Tribe of Nebraska;
3. The Tribal Court Administrator of the Ponca Tribe of Nebraska;
4. Any person recognized by Nebraska law as having authority to marry.

No marriage solemnized before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties that such person had such authority and that they have been lawfully married.

Section 4-1-6. Marriage Ceremony. No particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he/she thereafter declares them to be husband and wife.

Section 4-1-7. Void Marriages. The following marriages shall be void:

1. Marriages between ancestors and their descendants, between brothers and sisters of half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between cousins in the first and second degree, are void from the beginning whether or not the degree of relationship is legitimate or illegitimate;

2. Marriages between a person who is, at the time of the marriage, married to another person who is still living; provided, however, that such marriage will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married;

3. Actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or

4. Actually believed, in good faith, that his or her prior spouse was dead.

Section 4-1-8. Voidable Marriage. If either party to a marriage is incapable of entering into the marital state because of some

physical cause or if the consent of either party to the marriage was obtained by force, fraud or coercion the marriage shall be voidable.

CHAPTER 2 ANNULMENT

Section 4-2-1. Grounds for Annulment. A marriage may be annulled for any of the following causes existing at the time of marriage:

1. When the party, in whose behalf it is sought to have the marriage annulled, was under the age of eighteen (18) years, and such marriage was contracted without the consent of his or her parents or guardian, unless, after attaining the age of consent, such party freely cohabits with the other as husband and wife;

2. When the former spouse of either party is living, and the marriage with such former spouse was then in force;

3. When either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;

4. When the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife;

5. When the consent of either party was obtained by force, unless the party afterwards freely cohabited with the other as husband and wife.

Section 4-2-2. Action to Annul; Parties and Limitations. An action to obtain a decree of annulment of a marriage must be commenced within the periods and by the parties as follows:

1. For cause set out in Section 4-2-1, Subsection 1, by the party to the marriage who was married under the age of legal consent, within two (2) years after arriving at the age of consent, or by a parent, guardian or other persons having charge of such minor any time before such married minor has attained the age of legal consent;

2. For causes set out in Section 4-2-1, Subsection 2, by either party during the life of the other or by the former husband or wife;

3. For causes set out in Subsection 4-2-1, Subsection 3, by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

4. For causes set out in Section 4-2-1, Subsection 4, by the party injured, within two (2) years after the discovery of the facts constituting a fraud;

5. For causes set out in Section 4-2-1, Subsection 5, by the injured party within four (4) years after the marriage.

Section 4-2-3. Legitimacy of Children. When a marriage is annulled for any reason, other than for fraud, where the wife is pregnant with a child from a man other than the husband, children begotten before judgment are legitimate and succeed to the estate of both parents. The court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances of the parties may require.

Section 4-2-4. Conclusiveness of Judgment of Annulment. A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

CHAPTER 3 DIVORCE AND SEPARATE MAINTENANCE

Section 4-3-1. Authority. The Tribal Court shall have the authority to grant divorces to individuals who are residents within the territorial jurisdiction of the Ponca Tribe whether the marriage was consummated under marriage license issued by the Tribal Court Administrator or under any other proper civil authority.

Section 4-3-2. Divorce and Annulment Procedure. Except as otherwise specifically provided, proceedings in divorce and annulment shall be commenced and conducted in the manner provided for in this code for civil actions. A final decree of divorce shall restore the parties to the status of unmarried person.

Section 4-3-3. Residence Requirements for Divorce, Annulment, or Separate Maintenance. The plaintiff in an action for divorce, annulment or separate maintenance must, at the time the action is commenced, be a resident within the territorial jurisdiction of the Ponca Tribe of Nebraska, and in order that each party be entitled to the entry of a decree or judgment of divorce,

annulment or separate maintenance, that residence must be maintained until the decree is entered.

Section 4-3-4. Waiting Period Before Trial of Divorce, Annulment or Separate Maintenance/Mediation. An action for divorce, annulment or separate maintenance shall not be heard, tried, or determined by the Tribal Court until at least thirty (30) days have elapsed from the completed service of the plaintiff's summons and complaint therein. During said waiting period the Court may issue all orders required in respect to temporary alimony, child support and child custody or to protect any of the parties of the action during the pendency thereof. During the waiting period the parties to the action may be required to attempt mediation to settle any issues including custody, visitation, child support, and property division. The mediator shall be selected by the parties with the approval of the court. The terms of the mediation, if any, shall not be binding upon the Court.

Section 4-3-5. Grounds for Divorce. A divorce may be granted for any of the following causes:

1. Irreconcilable differences;
2. Adultery;
3. Willful desertion of the Plaintiff by the Defendant for more than six (6) months;
4. Habitual drunkenness or drug incapacitation of the defendant for a period of at least one (1) year;
5. Conviction of a felony;
6. Extreme cruelty;
7. Permanent insanity of the defendant; provided, however, that no divorce shall be granted on this ground unless the defendant has been duly and regularly adjudicated insane by a court of competent jurisdiction and such insanity reasonably appears to be permanent; further no divorce shall be granted unless a guardian ad litem has been appointed to represent the defendant in the divorce proceedings.

Section 4-3-6. Limitations. A divorce may be denied:

1. When the cause is adultery and the action is not commenced within one (1) year after its discovery by the injured party;

2. When the cause is conviction of an offense and the action is not commenced before the expiration of one (1) year after a pardon or the termination of the period of sentence; or

3. In all cases except irreconcilable differences, when there is unreasonable lapse of time before the commencement of the action, or two (2) years have passed since the grounds become, or should have become, known to the complaining party.

Section 4-3-7. Automatic Temporary Restraining Order Upon Service-Modification or Revocation. Upon the filing of a summons and complaint for divorce or separate maintenance by the plaintiff, and upon personal service of the summons and complaint on the defendant, a temporary restraining order shall be in effect against both parties until the final decree is entered, the complaint dismissed, or until further order of the court. The restraining order shall provide the following:

1. Restrain both parties from transferring, encumbering, concealing or in any way dissipating or disposing of any marital assets without the written consent of the other party or an order of the Court, except as may be necessary in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the Court for all extraordinary expenditures made after the temporary restraining order is in effect;

2. Restraining both parties from molesting or disturbing the peace of the other party; and

3. Restraining both parties from removing any minor child of the parties from the reservation without the written consent of the other party or an order of the Court.

The provisions of the temporary restraining order shall be printed upon the summons and shall become an order of the Court upon fulfillment of the requirements of service. However, nothing in this paragraph precludes either party from applying to the Court for any further relief or for the modification or revocation of any order.

Section 4-3-8. Temporary Alimony and Suit Money; Restraint. The Court may, after notice and hearing:

1. Order either party to pay to the Tribal Court Administrator for the benefit of the other party a sum of money for the separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action;

2. Restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the divorce proceedings.

Section 4-3-9. Pleadings; Findings; Decree. The complaint shall be in writing and signed by the plaintiff. No decree of divorce shall be granted upon default or otherwise, except upon legal evidence taken in the case by the Court who shall make and file its findings and decree upon the evidence.

Section 4-3-10. Irreconcilable Differences Defined. Irreconcilable differences are those that are determined by the Court to be substantial reasons for not continuing the marriage, and which make it appear that the marriage should be dissolved.

Section 4-3-11. Dissolution of Marriage; Legal Separation; Continuance-Orders During Continuance; Consent of Parties. If, from the evidence at the hearing, the Court finds that there are irreconcilable differences that have caused the irremediable breakdown of the marriage, it shall order the dissolution of the marriage or a legal separation. If it appears that there is a reasonable possibility of reconciliation, the Court shall continue the proceeding for a period not to exceed thirty (30) days. During the period of the continuance, the Court may enter any order for the support and maintenance of the parties, the custody, support, maintenance and education of the minor children of the marriage, attorney fees and for the preservation of the property of the parties. At any time after the termination of the thirty (30) days period, either party may move for the dissolution of the marriage or a legal separation.

Section 4-3-12. Use of Affidavits to Establish Jurisdiction and Grounds For Divorce. In any action for divorce or separate maintenance in which the parties have consented to the use of irreconcilable differences, the Court may grant the divorce based on the affidavits of the parties establishing the requisite jurisdiction and grounds for the divorce or separate maintenance action without requiring their personal appearance.

Section 4-3-13. Validation of Divorce Granted Without Personal Appearance. Any divorce or separate maintenance which has been

granted without the personal appearance of a party is hereby legalized and validated.

Section 4-3-14. Disposition of Property and Child Custody. When a decree of divorce is granted, the Court shall make such orders in relation to the children, property and parties, and the maintenance of the parties and children by alimony and child support as may be equitable. Subsequent changes or new orders may be made by the Court with respect to the custody of the children or the distribution of property as shall be reasonable and proper upon notice of hearing.

Section 4-3-15. Custody of Children in Case of Separation. In any case of separation of husband and wife having minor children, or whenever a marriage is declared void or dissolved, the Court shall make such order for the future care and custody of the children, and the court shall consider the best interest of the child and the past conduct and demonstrated predictions of each of the parties. If the Court determines that the children are of sufficient age, the Court may inquire of the children and take into consideration the children's desires regarding the future custody; however, such expressed desires shall not be controlling and the Court may nevertheless determine the children's custody otherwise. The Court may at any time vacate or modify an order entered pursuant to this section.

Section 4-3-16. Action For Separate Maintenance Without Divorce-Alimony and Support. An action for separate maintenance may be maintained without request for divorce, upon any grounds that would be grounds for divorce, and in such cases the Court shall have power to award temporary alimony, custody, and support for the children of the parties.

Section 4-3-17. Restoration of Former Name to Wife; Validation of Prior Decrees. Whenever a decree of divorce is granted, the trial court may, in its discretion or upon the application of either party by the terms of the decree, restore to the woman her maiden name or the name she legally bore prior to her marriage to the husband in the divorce suit. All decrees of divorce previously entered restoring to the divorced woman her former name under this section are declared legal and valid and effective from their date of entry.

CHAPTER 4
ENFORCEMENT OF CUSTODY AND VISITATION RIGHTS

Section 4-4-1. Visitation. Upon the dissolution of a marriage or order for separate maintenance, and an award of custody of the party's children to either party, the non-custodial parent shall be entitled to reasonable visitation, subject to any restrictions that the Court deems necessary in the best interests of the child(ren).

Section 4-4-2. Custody and Visitation Rights Enforceable by Contempt Proceedings. After notice and hearing, any decree or order of the Court relating to custody of or visitation with a child may be enforced by contempt.

Section 4-4-3. Written Requests for Order to Show Cause for Violation of Visitation or Custody Decree; Hearing Date. Any party granted visitation or custody rights to a child by a Court decree may request the Court to enter an order to show cause why the other party should not be held in contempt of court for violation of the decree relating to visitation or custody of the child. Upon receipt of a written request for an order to show cause, the Court may issue such an order and forthwith schedule a hearing date not less than thirty (30) days in the future. No particular formality may be required of the moving party in making a written request for an order to show cause.

Section 4-4-4. Affirmative Defense by Contemnor. An alleged contemnor may plead and prove that the movant voluntarily relinquished the actual care, control, and possession of the child for the time encompassed by the court-ordered periods of possession. Such relinquishment is an affirmative defense in whole or part to the order to show cause.

Section 4-4-5. Violation of Custody or Visitation Decree; Punishment. Each violation of the custody or visitation provisions of a Court decree may be punished by fine not to exceed \$1000.00.

CHAPTER 5
CHILD SUPPORT

Section 4-5-1. Obligations of Parents to Support Child(ren). The parents of a child are jointly and severally obligated for the necessary maintenance, education and support of the child in accordance with their respective means. Until established by order of the Court, the minimum child support obligation of a parent who fails to furnish maintenance, education and support

for his child, following a continuing absence from the home is the obligors share of the amount shown in the support guidelines, commencing on the first day of the absence. For the purpose of this section, "continued absence from the home" means that the parent or child is physically absent from the home for a period of at least thirty (30) consecutive days, and the nature of the absence constitutes family disassociation because of substantial severance of marital and family ties and responsibilities, resulting in the child losing or having a substantial reduction of physical care, communication, guidance and support from the parent.

Section 4-5-2. Amount of Support Obligation. The child support obligation may be established in accordance with the child support obligation guidelines set by the State of Nebraska. A judge may deviate from the guidelines upon agreement of the parties or where it appears that application of the guidelines would cause a financial hardship on either party.

Section 4-5-3. Modification. A judge may modify a previous order of the Court upon petition of either party and a finding that good cause exists for modification.

Section 4-5-4. Enforcement and Modification of Foreign Court Orders. Any Court order for child support from any other court of competent jurisdiction shall be enforced in accordance with tribal law, and where appropriate federal law. No foreign court order for support shall be enforced until it has been recognized by the Tribal Court.

Section 4-5-5. Notice to Obligor when Foreign Court Order for Support is Received. Upon receipt of a child support order from another court, the Tribal Court shall notify the obligor of such order for support that the Court is in receipt of the order and that the obligor has the right to object to Tribal Court enforcement of such an order. The obligor shall have the right to object to enforcement of the order and shall be given two (2) weeks to file a written objection to enforcement of the order. If the obligor fails to object, the Tribal Court shall be authorized to enforce the foreign court order in accordance with Section 4-5-4 of this Chapter.

Section 4-5-6. Hearing on Obligor's Objection to Enforcement of Foreign Court Order for Child Support. Upon receipt of an obligor's written objection to enforcement of a foreign court order, the Tribal Court Administrator shall schedule a hearing on the objection. The obligor shall be entitled to present any evidence supporting a legal cause why the order should not be

enforced. The judge shall make a determination in accordance with Section 4-5-4.

Section 4-5-7. Enforcement of Tribal Court Orders for Support.

Upon entry of a Tribal Court order for support, the Judge shall authorize either a direct payment to the obligee by the obligor or payment to the Tribal Court Administrator by the obligor. If the obligor shall fail to pay the support obligation in accordance with the order, the Court shall be authorized to issue an order for withholding of the obligor's wages. Such order may include an amount necessary to cover any arrearages owed by the obligor to the obligee. In no case may the order for withholding exceed more than fifty percent (50%) of the obligor's wages.

Section 4-5-8. Definitions. For purposes of this Chapter, the following definitions apply:

1. "Foreign Court Order for Support" means any court order for child support from any court of competent jurisdiction.
2. "Obligee" means an individual entitled to receive child support under a court order for child support.
3. "Obligor" means the individual who is required to pay child support under a Court order for child support.

**CHAPTER 6
PARENT AND CHILD**

Section 4-6-1. Parents Equally Entitled to Custody and Earnings of Child-Death or Abandonment by One Parent. The father and mother of an unmarried minor child are equally entitled to the child's custody, service, and earnings. If either the father or mother is dead or refuses to take the custody of the children or has abandoned the family, the other is entitled to the child's custody, service, and earnings.

Section 4-6-2. Order for Joint Legal Custody; Factors for Court's Consideration. In any custody dispute between parents, the Court may order joint legal custody so that both parents retain full parental rights and responsibilities with respect to their child and so that both parents must confer on major decisions affecting the welfare of the child. In ordering joint legal custody, the Court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child's welfare or may divide those aspects between the parties based on the best

interests of the child. If it appears to the Court to be in the best interests of the child, the Court may order, or the parties may agree, how any such responsibilities shall be divided. Such areas of responsibility may include primary physical residence, education, medical and dental care, and any other responsibilities that the Court finds unique to a particular family or in the best interests of the child.

Section 4-6-3. Residential Parent to Make Routine Decisions Concerning Child. During the time a child, over whom the Court has ordered joint legal custody to both parents, resides with either parent, that parent shall decide all routine matters concerning the child.

Section 4-6-4. Denial of Access to Certain Records and Information Pertaining to Minor Child Prohibited. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, including counseling, dental, optometric and similar health care, and school records, may not be denied to a parent because such parent is not the child's primary residential parent.

Section 4-6-5. Father's Rights Not Superior to Mother's While Separated. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

Section 4-6-6. Custody and Earnings of Children Born Out of Wedlock. The mother of an unmarried minor born out of wedlock is entitled to its custody, services, and earnings subject to the Court's right to award custody of the child to either parent, considering the best interests of the child as to its temporal mental and moral welfare.

Section 4-6-7. Parent and Child Not Answerable for Act of Other. Except as provided by Section 4-6-8, neither parent nor child is answerable as such, for the act of the other.

Section 4-6-8. Parental Liability for Willful Acts of Child; Limitation of Recovery; Motor Vehicle Cases Excepted; Specific Findings in Disputed Cases. Any person, firm, association, private or public corporation, including the Ponca Tribe of Nebraska and its political subdivisions, suffering damages to real, personal, or mixed property, or personal injury, through the malicious and willful act or acts of a minor child or

children under the age of eighteen (18) years while residing with their parents, shall have therefor a cause of action against and to recover from the parents of such child or children. In each case, the amount of recovery against one or both parents shall be limited to actual damages of \$1,500.00 and the taxable court costs, and does not apply to damages proximately caused through the operation of a motor vehicle by the minor child or children. If the issue is disputed, any determination that a parent is not responsible for the full amount of actual damages and costs unauthorized by this section shall be justified in a specific finding, in writing, or on the record.

Section 4-6-9. Parental Duty to Support Child. The parents of any child are under a legal duty to support their child in accordance with the provisions of Chapter 4, until the child attains the age of eighteen (18), or until the child attains the age of nineteen (19) if he is a full-time student in a secondary school.

Section 4-6-10. Emancipation by Express Agreement; Approval of the Court. Emancipation is express when it is by agreement of both parents, if living, and if not, the surviving parent and the child. Any such express agreement of emancipation shall be presented to the Court for approval. The Court shall issue a declaration of emancipation if it finds the emancipation would not be contrary to the child's best interests. The declaration of emancipation and a copy of the agreement shall be filed by the Tribal Court Administrator.

Section 4-6-11. Emancipated Minor Defined. Any person under the age of eighteen (18) years who:

1. Has entered into a valid marriage, whether or not such marriage was terminated by dissolution; or
2. Is on active duty with any of the armed forces of the United States of America; or
3. Has received a declaration of emancipation pursuant to Section 4-6-13; is an emancipated minor.

Section 4-6-12. Age of Majority for Certain Purposes; Parent or Guardian Liability. An emancipated minor shall be considered as being over the age of majority for the following purposes;

1. For the purpose of consenting to medical, chiropractic, optometric, dental or psychiatric care, without parental consent, knowledge, or liability;

2. For the purpose of his capacity to enter into a binding contract;

3. For the purpose of his capacity to sue and be sued in his own name;

4. For the purpose of his right to support by his parents;

5. For purposes of the rights of his parents to his earnings, and to control him;

6. For the purpose of establishing his own residence;

7. For the purpose of buying or selling real property;

8. For the purpose of ending all vicarious liability of the minor's parents or guardian for the minor's torts; and

9. For the purpose of enrolling in any school or college.

Nothing in this section may be construed to relieve the minor's parents or guardian from any liability for the torts of an emancipated minor if the liability arises out of an agency relationship, out of the operation of a motor vehicle as provided in Section 4-6-8 or some other principle of law other than the parent-child relationship.

Section 4-6-13. Petition for Emancipation; Procedure. A minor who is a member of the Tribe may petition the Court for a declaration of emancipation. The petition shall be verified and shall set for with specificity all of the following:

1. That he is at least sixteen (16) years of age;

2. That he willingly lives separate and apart from his parents or guardian with the consent or acquiescence of his parents or guardian;

3. That he is managing his own financial affairs;

4. That the source of his income is not derived from any activity declared to be a crime by the laws of the Ponca Tribe of Nebraska or the laws of the United States.

Before the petition is heard, such notice as the Court deems reasonable shall be given to the minor's parents, guardian or other person entitled to the custody of the minor, or proof made to the Court that their addresses are unknown, or that for other reasons such notice cannot be given. If a minor is a ward or dependent child of the Tribe, notice shall be given to the appropriate tribal agency.

The Court shall sustain the petition if it finds that the minor is a person that fulfills the requirements of this section and that emancipation would not be contrary to the child's best interests.

If the petition is sustained, the Court shall forthwith issue a declaration of emancipation, which shall be filed by the Tribal Court Administrator.

If the petition is denied, the minor may appeal to the decision in accordance with the rules of civil procedures.

If the petition is sustained, the parents or guardian may appeal to the Tribal Court if they have appeared in the proceedings and opposed the granting of the petition.

A declaration is conclusive evidence that the minor is emancipated.

Section 4-6-14. Rescission of Declaration of Emancipation. A minor declared emancipated under Section 4-6-13 or 4-6-10, or his conservator, may petition the Court to rescind the declaration.

Before the petition is heard, such notice as the Court deems reasonable shall be given to the minor's parents or guardian or proof made to the Court that their addresses are unknown, or that for other reasons such notice cannot be given. However, no liability may accrue to any parent or guardian not given actual notice, as a result of rescission of the declaration of emancipation, until such parent or guardian is given actual notice.

The Court shall sustain the petition and rescind the declaration of emancipation if it finds that the minor is indigent and has no means of support.

If the petition is sustained, the court shall forthwith issue a court order rescinding the declaration of emancipation

granted under Section 4-6-13, which shall be filed by the Tribal Court Administrator.

Rescission of the declaration of emancipation does not alter any contractual obligations or rights or any property rights or interests which arose during the period that the declaration was in effect.

Section 4-6-15. Declaration Obtained by Fraud Voidable; Proceedings. A declaration of emancipation obtained by fraud or by the withholding of material information is voidable. The voiding of any such declaration pursuant to this section does not alter any contractual obligations or rights or any property rights or interests which arose during the period that the declaration was in effect.

A proceeding under this section may be commenced by any person or by any public or private agency. Notice of the commencement of such a proceeding and of any order declaring the declaration of emancipation to be void shall be consistent with the requirements of Section 4-6-16.

CHAPTER 7 PROTECTION FROM DOMESTIC ABUSE

Section 4-7-1. Purpose. The purpose of this Chapter is to provide for the protection of Tribal members under the jurisdiction of the Ponca Tribe of Nebraska Tribal Court and to secure the safety, which will serve the spiritual, emotional, mental, physical, and financial welfare of such Tribal members and the best interests of the Ponca Tribe of Nebraska. The primary objectives of these laws are to improve any conditions or home environment which may be jeopardizing the Tribal member's safety; to preserve the Tribal member's freedom to work, live, and worship without threat of harm by another individual; and to protect the peace and security of the tribal community, and its individual residents from abuse. This Code is also intended to provide procedures for securing a Protection Order or Consent Agreement through the Ponca Tribe of Nebraska Tribal Court. An application for relief under this Section may be filed in Tribal Court. Definitions. Terms used in this Chapter are inclusive unless a different meaning is clearly indicated by the context, mean:

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together, including spouses or former spouses, children, persons who have had a child in common

whether or not they have been married or had lived together at any time, other persons related by blood or marriage, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other:

- (a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;
- (b) placing, by physical menace or threat, another in fear of imminent serious bodily injury;
- (c) attempting to cause or intentionally, knowingly or recklessly causing mental and/or emotional injury or anguish; or
- (d) attempting to cause or intentionally, knowingly or recklessly refusing to provide for the physical needs of a person, including but not limited to a family or household member, a minor or an incompetent person, by a person with whom the law or society places this responsibility or by a person who has undertaken this responsibility. "Physical needs" include food, clothing, shelter, health care or other services which are necessary to maintain the person's mental and physical health.

(2) "Adult" means any person eighteen (18) years of age or older, or any person under (18) years of age who has been emancipated by marriage.

(3) "Dispositional Hearing" is a hearing after adjudication at which the Court makes a final decision in the case.

(2) "Family or household member," spouse, former spouses, persons related by consanguinity, adoption of law, persons living in the same household, persons who have lived together, or persons who have had a child together;

(3) "Protection Order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member, whether or not the dwelling or residence is shared. A protection order has

a duration of one (1) year or less, however, the applicant may reapply for additional terms; and

(4) "Temporary protection order," an order restraining any family or household member from committing any act of domestic abuse or an order excluding any family or household member from the dwelling or residence of another family or household member whether or not a dwelling or residence is shared. A temporary protection order has a duration of thirty (30) days.

Section 4-7-2. Petition for Protection Order-Parties-Allegations-Affidavit-Pending Action-Costs-Standard Petition Form.

- (1) A petition filed under the provisions of this Chapter shall state:
 - (a) except as otherwise provided in subsection (6) of this section, the name, address, county of residence of each petitioner and of each individual alleged to have committed abuse;
 - (b) the facts and circumstances concerning the alleged abuse, and a copy of any police reports concerning the alleged abuse shall be attached to the petition;
 - (c) the relationship between the petitioners and the individuals alleged to have committed the abuse; and
 - (d) a request for one or more protective orders.
- (2) If a petition requests a protective order for a spouse and alleges that the other spouse has committed abuse, the petition shall state whether or not a suit for divorce of the spouses or suit for custody is pending.
- (3) If the petitioner is a former spouse of an individual alleged to have committed abuse:
 - (a) a copy of the divorce decree shall be attached to the petition, or
 - (b) the petition shall state that the decree is currently unavailable to the petitioner and that a copy of the decree will be filed with the Ponca Tribe of Nebraska Tribal Court before the time for the hearing on the petition.
- (4) If a petition requests a protective order for a child who is subject to the continuing jurisdiction of another court or

alleges that a child who is subject to the continuing jurisdiction of another court has committed abuse.

- (5) If the petition requests the issuance of a temporary ex parte order, the petition shall:
 - (a) contain a general description of the facts and circumstances concerning the abuse and the need for immediate protective orders; and
 - (b) be signed by each petitioner under oath that the facts and circumstances contained in the petition are true and to the best knowledge and belief of each petitioner.
- (6) If the petition states that the disclosure of the petitioner's address would risk abuse of the petitioner or any member of the petitioner's family or household or would reveal the confidential address of a shelter for domestic violence victims, the petitioner's address may be omitted from the petition pursuant to this subsection and the address of the petitioner is necessary to determine jurisdiction or venue, the disclosure of such address shall be made only to the Ponca Tribe of Nebraska Tribal Court Administrator.

Section 4-7-3. Notice and Hearing: Temporary Orders.

- (1) Within thirty (30) days of filing a petition under provisions of this Code, the Ponca Tribe of Nebraska Tribal Court shall hold a hearing, at which time the petitioner must prove the allegation of abuse by a preponderance of the evidence. The defendant shall be given notice by service of process or as otherwise provided by law.
- (2) Upon good cause shown in the ex parte proceeding, the Ponca Tribe of Nebraska Tribal Court may enter such temporary order as it deems necessary to protect the abused petitioner, any minor children or any person alleged to be incompetent. Immediate and present danger of abuse to the petitioner, any minor children, or any person alleged to be incompetent shall constitute good cause for purposes of this subsection. A temporary order shall last as long as the court deems necessary or until the hearing date, in the discretion of the court.
- (3) If a hearing under subsection (1) of this section is continued, the Ponca Tribe of Nebraska Tribal Court may extend such temporary orders under subsection (2) of this

section as it deems necessary. A continuance under this subsection shall last no longer than thirty (30) days.

Section 4-7-4. Relief Authorized on Finding Abuse; Time Limitation.

The Ponca Tribe of Nebraska Tribal Court shall be empowered to grant any protective order or approve any consent agreement to bring about a cessation of abuse of the petitioner, any minor children or any person alleged to be incompetent, which relief may include:

- (1) directing the defendant to refrain from abusing the petitioner, any minor children or any person alleged to be incompetent;
- (2) granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner;
- (3) when the defendant has a duty to support the petitioner, any minor children or any person alleged to be incompetent living in the residence or household and the defendant is the sole owner or lessee, granting possession to the petitioner of the residence or household to the exclusion of the defendant by evicting the defendant and/or restoring possession to the petitioner, or by consent agreement allowing the defendant to provide suitable, alternate housing;
- (4) awarding temporary custody of and/or establishing temporary visitation rights with regard to any minor children or any person alleged to be incompetent;
- (5) if the defendant is legally obligated to support the petitioner, any minor children or any person alleged to be incompetent;
- (6) ordering the defendant to pay the abused person monetary compensation for losses suffered as a direct result of the abuse, including but not limited to medical expenses resulting from such abuse, loss of earnings or support, out-of-pocket losses for injuries sustained, moving expenses, reasonable attorney's fees and/or ordering counseling or professional medical treatment for the defendant and/or the abused person; and

- (7) prohibiting the transferring, encumbering or otherwise disposing of the property mutually owned or leased by the parties, except when in the ordinary course of business.

Section 4-7-5. Grant of Relief Not to Affect Property or Orders Availability; Orders Duration.

- (1) The granting of any relief authorized under this Chapter shall not preclude any other relief provided by law.
- (2) Any protective order or approved consent agreement shall be fixed for a period of time not to exceed one (1) year.
- (3) The Ponca Tribe of Nebraska Tribal Court may amend its order or agreement at any time upon subsequent petition filed by either party, notice to all parties, and hearing.
- (4) No order or agreement under this Chapter shall in any manner affect title to any real property.

Section 4-7-6. Departure of Petitioner From Household Not Waiving Right to Relief. A person's right to apply for relief under this section may not be affected by the departure of that person from the residence or household to avoid abuse.

Section 4-7-7. Modification of Order. Upon application, notice to all parties, and hearing, the Court may modify the terms of an existing order for protection.

Section 4-7-8. Spousal Privilege Does Not Apply

There shall be no restrictions concerning a spouse testifying against his or her spouse in any hearing under the provisions of this chapter.

Section 4-7-9. Delivery of Order to Law Enforcement Agencies. The petitioner may deliver an order for protection granted pursuant to this section within twenty-four (24) hours to the appropriate law enforcement agency having jurisdiction over the residence of the petitioner. Each appropriate law enforcement agency shall make available to other law enforcement officers information as to the existence and status of any order for protection issued pursuant to this section.

Section 4-7-10. Effect of Divorce or Other Civil Proceedings .

In any action involving domestic abuse, the Court may not: dismiss any charge or delay disposition of the domestic abuse action because of the pendency of a divorce or any other civil proceeding, unless agreed to by all parties, including the victim;

Section 4-7-11. Surrender of Weapon by Defendant. The Court may require the defendant to surrender any dangerous weapon in his possession to local law enforcement.

**CHAPTER 8
ADOPTION OF CHILDREN**

Section 4-8-1. Adoption of Illegitimate Child by Acknowledgement and Conduct of Father; Legitimation from Birth. The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such into his family, with the consent of his wife if he is married and otherwise treating it as if it were a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The other provisions of law relating to adoption shall not apply in such case.

Section 4-8-2. Father of Illegitimate Child Not Entitled to Notice Unless Acknowledged. Notwithstanding any other provision of law or court rule, the father of an illegitimate child shall, as a requirement of due process, have no rights to the service of process in adoption, dependency, delinquency, or termination of parental rights proceedings unless he is known and identified by the mother or unless he, prior to the entry of a final order, in any of the three (3) proceedings, shall have acknowledged the child as his own by affirmatively asserting paternity, within sixty (60) days after the birth of the child,

1. As outlined in Section 4-8-1; or
2. By causing his name to be affixed to the birth certificate; or
3. Otherwise by commencing a judicial proceedings claiming a parental right.

Section 4-8-3. Adoption of Minor Child Permitted. Any minor child within territorial jurisdiction of the Ponca Tribe may be adopted by any adult person in the cases and in the manner prescribed by law. The Tribal Court has jurisdiction to hear, try and determine all matters relative to the adoption of

children. The Tribal Court has original and exclusive jurisdiction in all matters of adoption involving children who are members of the Tribe.

The person adopting the child must be at least ten (10) years older than the person adopted.

Section 4-8-3(a). Preference. In any adoption preference shall be given, in absence of good cause to the contrary, to:

1. A member of the child's extended family, or the spouse of one of the child's natural parents, if such spouse is not a natural parent of the child;

2. Members of the Indian tribe of which the child is a member or eligible for membership, or if the child is not an Indian, a non-Indian; or

3. Other Indian families.

Section 4-8-4. Consent of Spouse Required for Adoption. A married man not lawfully separated from his wife cannot adopt a child without the consent of his wife, nor can a married woman, not thus separated from her husband, without his consent, provided the husband or wife not consenting is capable of giving such consent.

Section 4-8-5. Consent of Child's Parents Required for Adoption; Judicial Waiver of Consent. No child may be adopted without the consent of his parents. However, the judge may waive consent from a parent who:

1. Has been convicted of any crime punishable by imprisonment in the penitentiary for a period that, in the opinion of the judge, will deprive the child of a parent's companionship for a critical period of time;

2. Has abandoned his or her child for a period of one (1) year;

3. Has been adjudged by a court of competent jurisdiction to be a habitual drunkard or mentally incompetent; or

4. Has had his/her parental rights terminated by a court of competent jurisdiction, the child, if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired.

Section 4-8-6. Consent of Child Over Twelve Required. The consent of the child, if over the age of twelve (12) years, is necessary to its adoption.

Section 4-8-7. Joinder of Proceedings as to Two or More children-Separate Orders Required. The adoption of two (2) or more children by the same adopting parent or parents may be included in one proceeding, provided that a separate order of adoption shall be made and filed by the court as to each child adopted.

Section 4-8-8. Period of Residence in Home Required Before Petition is Granted. No petition for adoption shall be granted until the child shall have lived within the proposed adoptive home for a period of at least six (6) months.

Section 4-8-9. Home Study Report by Licensed Child Placement Agency, Department of Social Services or Certified Independent Social Worker Required; Violation as Misdemeanor. No child may be placed in a home for adoption until a home study has been completed by the Tribal Department of Social Services or by some other agency or individual qualified to perform a home study, and the report has been filed with the Court.

Section 4-8-10. Time of Hearing on Petition Fixed; Investigation Ordered by Court. Whenever a person, or a husband and wife jointly, petition the Tribal Court for leave to adopt a minor child, a judge of the Tribal Court shall fix a time for hearing not less than ten (10) days from the filing of such petition and may, in the case of a stepparent adopting a stepchild, and shall in all other cases, direct an officer of the Court or an agent of the Tribal Department of Social Services to make a careful and thorough investigation of the matter and report his findings in writing to the Court. A history of any previous child support obligations of each prospective adoptive parent shall be included in the investigative report.

Section 4-8-11. Notice to Department of Social Services; Investigations and Recommendations of Department; Appearance by Department. Upon the filing of a petition for the adoption of a minor child, the petitioner therein shall notify the Tribal Department of Social Services, by mailing to the Department a copy of the petition. The petitioner also shall notify the Department of the date fixed for hearing the petition, or mail to the Department a copy of the order fixing the date of the hearing. Upon review and investigation, the Department shall make a recommendation as to the desirability of the adoption. The Department may appear in any procedure the same as the party

in interest, and may request a postponement of hearing on the petition in event more time is needed for its investigation.

Section 4-8-12. Appearance at Hearing and Execution of Consent and Agreement by Parties; Appearance by Attorney, Guardian or Agent; Appearance by Department. Before the hearing on a petition for adoption, the person adopting a child, the child adopted, if required, and the other persons whose consent is necessary, shall execute their consent in writing, and the person adopting shall execute an agreement to the effect that the child adopted shall be treated in all respects as his own. The consent forms and the agreement of the person adopting shall be filed with the Court. At the time of the hearing on the petition, the person adopting a child and the child to be adopted shall appear in Court. All persons whose consent is necessary, except the child and the person adopting the child, may appear by another person through a power of attorney, or a legally appointed guardian may appear on behalf of the child. The Department of Social Services may appear in court and consent to the adoption of a child surrendered to it by any court of competent jurisdiction or, if the Department has custody of a child by written agreement of a parent or parents with power of attorney to consent to adoption, by the officer of the Department holding such power of attorney.

Section 4-8-13. Examination of Witnesses and Investigations by Court; Order of Adoption; Contents. The judge must examine all persons appearing separately and, if satisfied, from such examination and the report of the investigation that the child is suitable for adoption and the petitioning foster parent or parents financially able and morally fit to have the care and training of such child, that all requirements of the law have been met and that interests of the child will be promoted by the adoption, the judge shall make an order declaring that the child henceforth shall be the adopted child of the person adopting and shall be regarded and treated in all respects as the child of such person; and which order, among other things, shall contain the following:

1. The full adoptive name, date of birth, sex, color or race, and place of birth, of the adopted child; and

2. The full name, date of birth, citizenship, residence, color or race, birthplace, and occupation of both adoptive parents.

3. The adoptive parents maintain cultural ties with the Tribe and take those steps necessary to inform and/or affirm the

child's knowledge and understanding of Tribal culture and traditions.

Section 4-8-14. Restrictions on Access to Court Records in Adoption Proceedings; Court Order Required for Disclosure of Information; Notice of Hearing to Department or Adoption Agency; Disclosure Not Contested Nor Supported. Court files and records in adoption proceedings are not open to inspection or copy by persons other than the adoptive parents, and their attorneys, representatives of the Department of Social Services, and the child, when he reaches majority, except upon order of the Court expressly permitting inspection or copy. No person having charge of any adoption records may disclose the names of any parents, or parents by adoption, or any other matter, appearing in such records, except upon order of the Court except as otherwise provided by this section. The Court may not order disclosure of any matter appearing in adoption records unless the Department of Social Services or the licensed adoption agency has received notice of the petition for disclosure of such information and of the date fixed for hearing the petition. The Department of Social Services or the licensed adoption agency shall neither contest nor support the petition for disclosure during its hearing.

Section 4-8-15. Confidentiality of Records. All papers, records and information pertaining to an adoption whether part of the permanent file in the Department of Social Services or in a child placement agency are confidential and may be disclosed only in accordance with this Code.

Section 4-8-16. Non-Identifying Information; Release to Adoptive Parent or Adoptee. Non-identifying information, if known, shall be made available to the adoptive parent, or to the adoptee upon reaching the age of eighteen, upon written request and proper proof of identification. This information or any part thereof may be withheld only if it is of such a nature that it would tend to identify a biological relative of the adoptee. The following is non-identifying information:

1. The age of the natural parents at the time of the birth of the adoptee. However, this does not include the dates of birth of the parents;

2. The heritage of the natural parents, which includes nationality, ethnic background and race;

3. The education, which shall be number of years of school completed by the natural parents at the time of the birth of the adoptee;

4. The general physical appearance of the natural parents at the time of the birth of the adoptee in terms of height, weight, color hair, eyes, skin and other information of a similar nature;

5. The talents, hobbies, and special interests of the natural parents;

6. The existence of any other children born to either natural parent before the birth of the adoptee;

7. Whether it was a voluntary or involuntary termination of parental rights;

8. The religion of the natural parents;

9. The occupation of natural parents in general terms;

10. The health history of natural parents and blood relatives; and

11. The relationship between the natural parents.

Section 4-8-17. Change of Name by Adopted Child; Relationship with Adoptive Parents. A child, when adopted, may take the family name of the person adopting. After adoption, the two shall sustain towards each other the legal relations of parent and child and have all the rights and be subject to all the duties of that relation.

Section 4-8-18. Rights and Duties of Natural Parents Terminated on Adoption; Exception on Adoption of Stepchild. The natural parents of an adopted child are from the time of the adoption, relieved of all parental duties towards, and of all responsibility for the child so adopted, and have no right over it, except in cases where a natural parent consents to the adoption of his or her child by the child's stepfather or stepmother who is the present spouse of the natural parent.

Section 4-8-19. Finality of Adoption Order. Subject to the disposition of an appeal, upon the expiration of one (1) year after an adoption order is issued, the order cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to

give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a child, the petitioner has not taken custody of the child.

CHAPTER 9 GUARDIANSHIP

Section 4-9-1. Jurisdiction. The Ponca Tribe of Nebraska Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or estates, or for the purpose of actual or contemplated litigation of either minors or person incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

The Ponca Tribe of Nebraska Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Tribe or the child of a member of the Tribe, whether or not he lives on within the Tribe's territory.

The Tribal Court may, in its discretion, refer matters concerning the guardianship of a minor to the Tribal Juvenile Court.

Section 4-9-2. Appointment of Guardian in Connection with Probating an Estate.

1. The Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.

2. If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by any child over fourteen (14) years of age, or if the Court deems such to be in the minor's best interests, a separate guardianship hearing shall be held as provided herein.

Section 4-9-3. Petition.

1. Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or the persons on behalf of the minor or incompetent, or by a minor himself if over fourteen (14) years of age. The Court may initiate proceedings to appoint a

guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.

2. The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent; shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioners; shall list all property of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioners; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself or some other suitable person to act as guardian of the minor or incompetent.

Section 4-9-4. Notice; Hearing.

1. The petitioner, or the Tribal Court Administrator if a minor, or the Court itself initiates the proceedings, and shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five (5) days before scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Court.

2. Hearing for a Minor. At a hearing conducted to appoint a guardian for a minor, the Court shall: examine the petition; determine the need to have a guardian; determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and make an order appointing a guardian setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.

3. Hearing for Incompetent. At a hearing conducted to appoint a guardian for an incompetent, the Court shall: examine the petition; determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, orally, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed; determine which person, either the petitioner or some

other person, is most suitable to act as guardian and that person's willingness to act as such; and make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, and the duration of such appointment.

Section 4-9-5. Who May Serve as a Guardian. Any adult person twenty-one (21) years of age or older and subject to the jurisdiction of the Ponca Tribe of Nebraska Tribal Court, may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preference of the guardian shall be given to a person fourteen (14) years of age or older, but in all cases, the Court shall determine the best interests of the minor or incompetent in selecting a guardian.

Section 4-9-6. Security for Faithful Performance of Duties. The Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Ponca Tribe of Nebraska Tribal Court for the purposes of action against such security.

Section 4-9-7. Oath; Letters of Guardianship.

1. The guardian appointed by the Court shall be required to take an oath, the form of which to be prescribed by the Court, to the effect that he will faithfully perform his duties as guardian.

2. Upon taking the oath and filing with the Court such security, if any, as may have been required, the guardian shall be issued letters of Guardianship, issued by the Tribal Court Administrator under the seal of the Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the letters so issued.

Section 4-9-8. Inventory and Appraisement.

1. Within forty-five (45) days after the appointment of a general guardian or a guardian of property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisement of the estate.

2. The appraisal shall be made by three (3) disinterested persons who shall certify under oath to their appraisal and may receive reasonable compensation for their services.

3. No appraisal shall be required of items of obvious, readily ascertainable value; e.g. bank account assets, or where the value of the estate is reasonably believed by the guardian to be less than \$1,000.00. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

Section 4-9-9. Annual Accounting.

1. The guardian of every estate in value over \$1,000.00 shall submit an annual account of the estate to the Court for approval, on such notice as the Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.00.

2. Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and withdrawals from the estate, and shall be accompanied by supporting cancelled checks, vouchers, receipts, statements, etc.

Section 4-9-10. Guardian's Compensation.

1. No guardian shall receive any compensation for acting as such without the prior approval of the Court.

2. The guardian of an estate in excess of \$1,000.00 in value may receive annual compensation for acting as such in amount not less than \$25.00 nor greater than ten percent (10%) of the gross income of the estate.

3. The guardian of an estate less than \$1,000.00 in value shall receive no compensation unless specifically ordered by the Court for extraordinary service to the estate.

4. The right to receive compensation as guardian of an estate shall be deemed waived for all years in which such is not requested and received.

Section 4-9-11. Powers and Responsibilities of Guardian.

1. Except as otherwise specifically ordered or limited by the Court.

a. A general guardian or guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.

b. A general guardian or guardian of an estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.

c. A guardian ad litem shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated litigation and other proceedings of a legal nature (other than of a criminal nature and/or under the Juvenile Code), and to employ counsel, and settle or compromise suit or claims, subject to the approval of the court.

d. A guardian of any kind may petition the Court for authority to do any act about which he is uncertain, and the Court may grant such authority, after such notice and hearing, if any, as the Court may direct if such appears to be consistent with the best interests of the minor or incompetent.

e. A guardian of any kind shall be in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of his estate of his ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two years after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of majority.

Section 4-9-12. Discharge of Guardian.

1. Every guardian appointed as provided herein shall serve until discharged by the Court.

2. A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Court on or after the date the minor reaches the age of majority to have the guardian discharged and the estate turned over to the minor. The Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing with notice, shall be held to determine such fact.

3. A person, other than a minor, who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Court for a determination of his restoration to capacity and for the discharge of the guardian. The Court shall hold a hearing, after such notice to known interested parties as the Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

Section 4-9-13. Guardianship Records. The Tribal Court Administrator shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearing, etc. Any guardian duly appointed shall be entitled to receive, without charge, three (3) certified copies of the Letters of Guardianship. Certified copies of filed copies shall be otherwise available at a fee per copy to be established by the Tribal Court Administrator.

Section 4-9-14. Temporary Guardianship and Custody. The Court shall have the power to entertain and grant or deny petitions for temporary guardianship and custody when it determines it to be in the best interests of the child, incompetent or non-competent person involved; provided that full notice and opportunity to be heard be given to all parties within ten (10) days thereafter, and further provided that no guardian so appointed shall sell, dispose of, convey or otherwise alienate title to or interest in the ward's property during such temporary period.

CHAPTER 10 PATERNITY

Section 4-10-1. Presumption of Paternity.

1. A man is presumed to be the natural father of a child if:

a. he and the child's natural mother are or have been married to each other and the child is born during marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;

b. before the child's birth, he and the child's natural mother have attempted to marry each other by marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

1. if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination.

2. if the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation.

c. after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law and/or custom and tradition, although the attempted marriage is or could be declared invalid, and

1. he has acknowledged his paternity of the child in writing filed with the Juvenile Court,

2. with his consent, he is named as the child's father on the child's birth certificate, or

3. he is obligated to support the child under a written voluntary promise or by court order;

d. while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

e. he acknowledges his paternity of the child in a writing filed with the Juvenile Court, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Court. If another man is presumed under this section to be the child's

father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

2. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Section 4-10-2. Determination of Father-Child Relationship; Who May Bring Action; When Action May Be Brought.

1. A child, his natural mother, or a man presumed to be his father under Section 4-10-1 (a) (b) and (c), may bring an action:

a. at anytime during the minority of the child for the purpose of declaring the existence of the father-child relationship presumed under Section 4-10-1 (a) (b) or (c); or

b. for the purpose of declaring the non-existence of the father-child relationship presumed under Section 4-10-1 (a), (b), or (c), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than five (5) years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

1. Any interested party may bring an action at any time for the purpose of determining the existence or non-existence of the father-child relationship presumed under Section 4-10-1 (d) and (e).

2. An action to determine the existence of the father-child relationship with respect to a child who has no presumed father under Section 4-10-1 may be brought by the child, the mother or personal representative of the child, the appropriate social services agency, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or parent of the alleged father if the alleged father has died or is a minor.

3. Regardless of the terms, an agreement, other than an agreement approved by the Court in accordance with Section 12:09 (B), between an alleged or presumed father and the mother or child, does not bar an action under this Section.

4. If an action under this Section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

5. The mother's presumed subsequent marriage to a man other than the presumed or alleged father(s) shall not preclude any qualified person from bringing an action under this Chapter.

Section 4-10-3. Statute of Limitations. An action to determine the existence of the father-child relationship as to a child who has no presumed father under Section 4-10-1 may not be brought later than three (3) years after the birth of the child, or later than three (3) years after the effective date of this Code, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until three (3) years after the child reaches the age of majority.

Section 4-10-4. Jurisdiction; Joinder.

1. A person who has sexual intercourse within the territorial jurisdiction of the Tribe thereby submits to the jurisdiction of the Juvenile Court as to an action brought under this Code with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by personal service of summons outside the territorial jurisdiction of the Tribe or by registered mail with proof of actual receipt.

2. An action under this Chapter may be joined with an action for divorce, annulment, separate maintenance or support.

Section 4-10-5. Parties. The child shall be made a party to the action. He shall be represented by his general guardian or a guardian ad litem appointed by the Court.

Section 4-10-6. Pre-Trial Procedures.

1. As soon as practicable after an election to declare the existence or nonexistence of the father-child relationship has been brought, an informal, closed hearing shall be held. A

record of the proceeding or any portion thereof shall be kept if any party requests, or the Court orders.

2. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the Court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the Court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or part by testimony or evidence testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is in civil contempt of court.

3. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

Section 4-10-7. Clinical Test Evidence.

1. Court Ordered Testing for Paternity. In any action or proceeding under this Chapter, upon motion of the Court or of any of the interested parties for good cause shown, the Court shall order the mother, her child or children, and the alleged father(s) to submit to an examination of blood and tissue specimens for the purpose of testing any genetic systems that are generally accepted within the scientific community for the determination of paternity probability. The results of the tests, together with the opinions and conclusions of the testing laboratory, shall be filed with the Court.

2. Persons Authorized to Perform Test; Liability. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician or medical technologist, acting under court order, or at the request of both the mother and the alleged father of the child, may withdraw blood or tissue for the purpose of testing to determine parentage. Such persons, and any hospital or laboratory employing such persons, may not be held liable for damages to the party from whom the blood or tissue is withdrawn, if the withdrawal is administered with usual and ordinary care.

Section 4-10-8. Evidence Relating to Paternity. Evidence relating to paternity may include:

1. evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

2. an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

3. Laboratory test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

4. medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

5. all other evidence relevant to issue of paternity of the child.

Section 4-10-9. Pre-Trial Recommendations.

1. On the basis of the information produced at the pre-trial hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interests of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the Parties, which may include any of the following:

a. that the action be dismissed with or without prejudice;

b. that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge conducting the hearing shall consider the best interests of the child, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the Court may order that the alleged father's identity be

kept confidential. In that case, the Court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

c. that the alleged father voluntarily acknowledge his paternity of the child.

1. If the parties accept a recommendation made in accordance with subsection (A), judgment shall be entered accordingly.

2. If a party refuses to accept a recommendation made under subsection (A) and laboratory tests have not been taken, the Court shall require the parties to submit to laboratory tests, if practicable. Thereafter the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

3. The Guardian Ad Litem may accept or refuse to accept a recommendation under this Section.

4. The informal hearing may be terminated and the action set for trial if the judge conducting the hearing finds it unlikely that all parties would accept a recommendation he might make under Subsection (A) or (C).

Section 4-10-10. Civil Action; Jury.

1. An action under this Chapter is a civil action governed by the Rules of Civil Procedure of the Ponca Tribe of Nebraska, except to the extent such rules are inconsistent with this Chapter. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

2. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than a possible time of conception of the child is inadmissible in evidence, unless offered by the mother.

3. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual intercourse with the mother at or about a possible time of conception of the child is admissible in evidence only if he has undergone and made available to the Court laboratory tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the

jurisdiction of the Court shall be made a defendant in the action.

4. The trial shall be by the Juvenile Court without a jury.

Section 4-10-11. Judgment or Order.

1. The judgment or order of the Court determining the existence or nonexistence of the parent-child relationship is determinative for all purposes.

2. If the judgment or order of the Court is at variance with the child's birth certificate, the Court shall order that a new birth certificate be issued under Section 4-10-12.

3. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. Support orders shall conform to the specifications in Chapter 5.

Section 4-10-12. Birth Records.

1. Upon order of a Tribal Court or upon request of a foreign court, the registrar of births shall prepare a new certificate of birth consistent with the findings of the Court and shall substitute the new certificate for the original certificate of birth.

2. The fact that the father-child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

3. The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the Court and all interested persons, or in exceptional cases only upon an order of the Court for good cause shown.

Section 4-10-13. When Notice of Adoption Proceeding Required.

(1) If a mother relinquishes or proposes to relinquish for adoption of a child who has (1) a presumed father under

Section 4-10-1(1); (2) a father whose relationship to the child has been determined by a court; or (3) a father as to whom the child is a legitimate child under prior law of Ponca Tribe of Nebraska or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding and have the rights provided under this Code, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

Section 4-10-14. Proceeding to Terminate Parental Rights.

1. If a mother relinquishes or proposes to relinquish for adoption a child who does not have (1) a presumed father under Section 4-10-1, (2) a father whose relationship to the child has been determined by a court, or (3) a father as to whom the child is a legitimate child under prior law of the Ponca Tribe of Nebraska or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the Juvenile Court to terminate the parental rights of the father, pursuant to Title III, Section 3-5-16, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.

2. In an effort to identify the natural father, the Court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry shall include the following: whether the mother was married at the time of the conception of the child or at any time thereafter; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child.

3. If, after the inquiry, the natural father is identified to the satisfaction of the Court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with Section 4-10-13. If any of them fails to appear or, if appearing, fails to claim custodial rights, his parental rights with reference to the child shall be terminated. If the natural father or a man representing himself to be the natural father, claims custodial rights, the Court shall proceed to determine custodial rights.

4. If, after the inquiry, the Court is unable to identify the natural father or any possible natural father and no person has appeared claiming to be the natural father and claiming custodial rights, the Court shall enter an order terminating the unknown natural father's parental rights with reference to the child.

5. Notice of the proceeding shall be given to every person identified as the natural father or a possible natural father in accordance with this Chapter. Proof of giving the notice shall be filed with the Court before the petition is heard. If no person has been identified as the natural father or a possible father, the Court, on the basis of all information available shall determine whether publication or public posting or notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner it deems appropriate.

TITLE V
LANDLORD/TENANT AND HOUSING CODE

CHAPTER 1
GENERAL PROVISION

Section 5-1-1. Title. This enactment shall be known as the "Ponca Tribe of Nebraska Landlord/Tenant and Housing Code."

Section 5-1-2. Purposes. This Code shall be interpreted and construed to fulfill the following purposes:

- A. To simplify the law governing the occupation of dwelling units, and to protect the rights of landlords and tenants.
- B. To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe.
- C. To provide eviction procedures and to require landlords to follow such procedures when evicting tenants.
- D. To encourage landlords and tenants to maintain and improve dwellings in order to improve the quality of housing as a tribal resource.
- E. To provide the law governing the rights, obligations, and remedies of the owners, sellers, buyers, lessor, and lessees, of buildings.
- F. To establish laws and procedures which are necessary in order to obtain governmental funding for tribal housing programs or loan guarantees for private or tribal housing construction, purchase, or renovation.

Section 5-1-3. Definitions. Save for any differences in the context of this Code, the following definitions shall be used:

- 1. "Action, suit or lawsuit, claim, complaint or defense" includes any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling, or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.
- 2. "Building and housing codes" includes any law, ordinance or Ponca Tribe of Nebraska governmental

regulation concerning the fitness for habitation or the construction, maintenance, operation, occupancy, use or appearance of any premises or dwelling unit, that is erected on any property over which the Ponca Tribe of Nebraska maintains and exerts jurisdiction.

3. "CFR" means the Code of Federal Regulations.
4. "Deposit" includes any money or other property required by a landlord from a tenant as and for security and which is to be returned to the tenant upon termination of the rental agreement, law, rule, or regulation of the United States of America promulgated to effectuate the Mutual Help Homeownership Program, or U.S. Governmental housing program administered by the Housing Authority of the Ponca Tribe of Nebraska.
5. "Dwelling Unit" means a structure, or that part of a structure, which is used as a home, residence or sleeping place by one or more persons.
6. "Good Faith" means honesty in fact in the conduct of the transaction concerned.
7. "Home Buyer" means any person(s) who has executed a MHO Agreement with the NPHA or a MHO Agreement for another home in the project (as indicated by the context of the agreement), and who has not yet achieved homeownership.
8. "Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which it is a part, and it also means a manager of the premises who fails to comply with the disclosure provisions of this Code including the Ponca Tribe of Nebraska and the Northern Ponca Housing Authority.
9. "Indian" shall include any person that is an enrolled member of any federally recognized Tribe.
10. "Northern Ponca Housing Authority" or "NPHA" means the Northern Ponca Housing Authority, the tribally-designed housing entity of the Ponca Tribe of Nebraska.
11. "Lease" means an agreement, written or oral, as well as valid rules and regulations, regarding the tenants

and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement.

12. "Lessee" means a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program.
13. "Lessor" means the legal, beneficial, or equitable owner of property under a Lease. Lessor may also include the heir(s), successor(s), executor(s), administrator(s), or assign(s) of the lessor.
14. "MHO" means Mutual Help and Occupancy Agreement between the NPHA and the home buyer.
15. "Organization" includes a corporation or any governmental subdivision, any agency, business trust, estate, trust, common interest and any other legal or commercial entity.
16. "Owner" means one or more persons, jointly or severally, in whom is vested:
 - a. All or any part of the legal title to the property, or
 - b. All or part of the beneficial ownership and a right to present use and enjoyment of the property, and such term includes a mortgagee in possession.
17. "Person" includes both individuals and organizations.
18. "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas and facilities held out for the use of the tenant generally or use of which is promised to the tenant.
19. "Rent" means all payments, except deposits and damages, to be made to the landlord under the rental agreements including required monthly payments under a Mutual Help and Occupancy (MHO) Agreement.
20. "Rental Agreement" means all agreements, including a Mutual Help Occupancy Agreement, and valid rules and

regulations adopted under this Code, which establish, embody or modify dwelling unit and premises. All Mutual Help Occupancy Agreements executed between the NPHA and home buyers participating in the Mutual Help Homeownership Opportunity Program shall be considered rental agreements and not mortgages, not contracts for deed, and not as any other instrument purporting to confer homeownership rights either at law or in equity.

21. "Roomer" or "Boarder" is a tenant occupying a dwelling unit which lacks at least one major bedroom or kitchen facility, such as a toilet, refrigerator or stove, in a building:
 - a. Where one (1) or more of such major facilities are supplied to be used in common by the occupants of the roomer or boarder's dwelling unit and one (1) or more other dwelling units; and
 - b. In which the landlord resides.
22. "Single-family residence" means a structure used and maintained as a single dwelling unit. A dwelling unit, including those with common walls, shall be deemed a single-family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with any other dwelling unit.
23. "Tenant" means any person entitled under a rental agreement to occupy a dwelling unit.
24. "Tribe" means Ponca Tribe of Nebraska.
25. "Tribal Court" means the Ponca Tribe of Nebraska Tribal Court.

Section 5-1-4. Application.

- A. Except as otherwise provided in this Code, this Code applies to, regulates and determines rights, obligations and remedies under a rental agreement for a dwelling unit located within any area over which the Ponca Tribe of Nebraska exercises jurisdiction.

B. Any agreement, whether written or oral, shall be unenforceable insofar as that agreement, or any provision thereof, conflicts with any provision of this Code.

Section 5-1-5. Mitigation of Damages. An aggrieved party under the provision of this Code has a duty to mitigate damages.

Section 5-1-6. Settlement of Claim. A claim or right arising under this Code or rental agreement, if disputed in good faith, may be settled by agreement and requires no further consideration.

Section 5-1-7. Good Faith Performance or Enforcement. Every duty under this Code and every act which must be performed as a condition precedent to the exercise of a right or remedy under this Code imposes an obligation of good faith in its performance or enforcement.

Section 5-1-8. Beneficial Owner to Maintain Premises. Any agreement, assignment, conveyance, trust deed or security instrument which authorizes a person other than the beneficial owner to act as a landlord of a dwelling unit shall not relieve the beneficial owner of the duty to conform with this Code and any other law, code, ordinance or regulation concerning the maintenance and operation of the premises.

Section 5-1-9. Construction of Code. This Code shall be liberally construed and applied to promote and effectuate its underlying purposes and policies.

Section 5-1-10. Relation to Other Laws.

A. Applicable Law. Unless affected or displaced by this Code, principles of law and equity in the common law of the Tribe and tribal customs and traditions are applicable, and the general principles of law of any other Tribe or any other jurisdiction, although non-binding, may be used as a guide to supplement and interpret this Code.

B. Other Applicable Laws. Additional tribal and federal laws may apply with regard to tribal housing such as the ordinance establishing the NPHA, any NPHA regulations or policies, and governmental housing laws and regulations.

C. Conflicts With Other Laws:

1. Tribal Laws: To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Code if it has specific applicability and it is clearly in conflict with the provisions of this Code.
2. Federal Laws: Where a conflict may appear between this Code and any statute, regulation, or agreement of the United States, the federal law shall govern if it has specific applicability and if it is clearly in conflict with the provisions of this Code.
3. State Laws: State laws shall not govern the relations of the parties. Due to the federal nature of Indian housing, including the Indian Housing Act, the Native American Housing Assistance and Self Determination Act of 1996, and other federal statutes governing Indian housing, unless the laws of a state are expressly made applicable by the United States Congress, state laws are not applicable for purposes of this Code.

Section 5-1-11. Termination of Mutual Help Occupancy Agreement.

The procedure for the termination of the MHO shall be according to 24 CFR Section 905.446.

In the event that the home buyer disputes any item in the settlement following a termination of a MHO or the disposition of personal property abandoned by the home buyer, the home buyer shall first exhaust all administrative remedies available through the Grievance Procedure of the NPHA before the matter shall be within the jurisdiction of the Tribal Court of the Ponca Tribe of Nebraska.

Section 5-1-12. Rules of Evidence. The Federal Rules of Evidence, Public Law 93-595, 88 Stat. 1926, and its cumulative amendments shall apply to all proceedings of the Court.

Section 5-1-13. Jurisdiction.

A. For purposes of this Code, jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:

1. The Tribe's service area pursuant to P.L. 101-484;

2. Lands owned by, held in trust for, leased or used by the Tribe, its members, its housing authority, or any other entity of the Tribe; or
3. The Indian Country of the Tribe, as defined in 18 U.S.C. § 1151, and as may be defined from time to time by the laws of the Tribe or of the United States.

B. For purposes of this Code, tribal jurisdiction is extended over all persons or entities who sell, rent, lease, or allow persons to occupy housing, dwellings, or accommodations for the purpose of human dwelling, occupation, or residence, and all persons who buy, rent, lease, or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether they are Indian or non-Indian.

C. For purposes of this Code, jurisdiction is extended over:

1. All buildings which may lie upon lands owned by, held in trust for, leased or used by the Tribe, its members, the NPHA, or any other entity of the Tribe; and
2. All persons or entities within the jurisdiction of the Tribe who lease, mortgage, or otherwise secure an interest in a building.

D. For purposes of this Code, jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Code, and jurisdiction with respect to any person or entity acting or causing actions which arise under this Code shall be exercised by the Tribal Court.

CHAPTER 2

TENANCY, RENTS, TERMINATION AND DEPOSITS

Section 5-2-1. Rent.

1. In the absence of agreement, the occupants of a dwelling unit shall pay to the landlord as rent the fair rental value for the use and occupancy of the dwelling unit.
2. Rent shall be payable at the time and place agreed to by the parties. Unless otherwise agreed, the entire rent shall be payable at the dwelling unit at the beginning of any term of one (1) month or less, while

one (1) month's rent shall be payable at the beginning of each month of a longer term.

Section 5-2-2. Term of Tenancy. Unless the rental agreement fixes a definite term in writing, the tenancy is week-to-week in the case of a roomer or boarder who pays weekly rent, and in all other cases month-to-month.

Section 5-2-3. Termination of Tenancy.

1. Except as otherwise provided, when the tenancy is month-to-month or a tenancy at will, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives a written notice to the other at least thirty (30) days before the date upon which the termination is to become effective. The thirty (30) day period to terminate shall begin to run from the date notice to terminate is served as provided in this section.
2. Except as otherwise provided in the Residential Landlord/Tenant Act of the Ponca Tribe of Nebraska, when the tenancy is less than month-to-month, the landlord or tenant may terminate the tenancy provided the landlord or tenant gives to the other a written notice served as provided in this section at least seven (7) days before the date upon which the termination is to become effective.
3. Unless earlier terminated under the provisions of the Residential Landlord/Tenant Act of the Ponca Tribe of Nebraska, or unless otherwise agreed upon, a tenancy for a definite term expires on the ending date thereof without notice.
4. If the tenant remains in possession without the landlord's consent after the expiration of the term of the rental agreement or its termination under the Residential Landlord and Tenant Act of the Ponca Tribe of Nebraska, the landlord may immediately bring an action for possession and damages. If the tenant's hold over is willful and not in good faith, the landlord may also compute and pro rate the rent on a daily basis, for each month or portion thereof that said tenant remains in possession. If the landlord consents to the tenant's continued occupancy, a month-to-month tenancy is thus created, unless the parties otherwise agree.

5. The written notice, required by the Residential Landlord/Tenant Act of the Ponca Tribe of Nebraska, to terminate any tenancy shall be served on the tenant or landlord personally unless otherwise specified by law. If the tenant cannot be located, service shall be made by delivering the notice to any family member of such tenant over the age of twelve (12) years residing with the tenant. If service cannot be made on the tenant personally or on such family member, notice shall be posted at conspicuous place, on the dwelling unit of the tenant. If the notice is posted, a copy of such notice shall be mailed to the landlord by certified mail.

Section 5-2-4. Duties of Parties Upon Termination of Tenancy.

Except as otherwise provided in this Code, whenever either party to a rental agreement rightfully elects to terminate, the duties of each party under the rental agreement shall cease and be determined upon the effective date of said termination, and the parties shall thereupon discharge any remaining obligations under this Code as soon as practicable.

Section 5-2-5. Denial or Termination of Tenancy Because of Guide, Signal or Service Dog. A landlord shall not deny or terminate a tenancy to a blind, deaf, or physically handicapped person because of the guide, signal or service dog of such person, unless such dog is found to be vicious or willfully destroy the property.

Section 5-2-6. Rental Agreements.

1. A rental agreement may not provide that either party thereto:
 - a. Agrees to waive or forego rights or remedies under this Code;
 - b. Authorize any person to confess judgment on a claim arising out of the rental agreement;
 - c. Agree to pay the other party's attorney's fees;
 - d. Agree to the exculpation, limitation or indemnification of any liability arising under law for damages or injuries to persons or property caused by or resulting from the acts or omissions of either party, their agents, servants or employees in the operation or maintenance of

the dwelling unit or the premises of which it is a part; or

- e. Agrees to the establishment of a lien except as allowed by this Code in and to the property of the other party.
2. A provision prohibited by this section and included in a rental agreement is unenforceable.
3. Any prohibition provided by subsection 1 shall be superseded by MHO provisions mandated by federal law.

Section 5-2-7. Damage or Security Deposits.

1. Any damage or security deposit required by a landlord of a tenant must be kept in an escrow account for the tenant.
2. Upon termination of the tenancy, any security deposit held by the landlord may be applied to the payment of accrued rent and the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with this Code and the rental agreement, all as itemized by the landlord in a written statement to be delivered by mail with a return receipt requested and to be signed for by any person of statutory service age at such address or in person to the tenant if he can reasonably be found. If the landlord proposes to retain any portion of the security deposit for rent, damages or other legally allowable charges under the provisions of this Code or the rental agreement, the landlord shall return the balance of the security deposit without interest to the tenant within thirty (30) days after the termination of tenancy, delivery of possession and written demand by the tenant. If the tenant does not make such written demand of such deposit within six (6) months after termination of the tenancy, the deposit reverts to the landlord in consideration of the costs and burdens of maintaining the escrow account, and the interest of the tenant in that deposit terminates at that time.
3. Upon cessation of a landlord's interest in the dwelling unit including, but not limited to, termination of interest by sale, assignment, death, bankruptcy, appointment of receiver or otherwise, the

person in possession of the tenant's damage or security deposits at his option or pursuant to court order shall, within a reasonable time:

- a. Transfer said deposits to the landlord's successor in interest and notify the tenants in writing of such transfer and of the transferee's name and address; or
 - b. Return the deposits to the tenants.
4. Upon receipt of the transferred deposits under paragraph (a) of subsection (3) of this section, the transferee, in relation to such deposits, shall have all the rights and obligations of a landlord holding such deposits under this Code.
 5. If a landlord or manager fails to comply with this section or fails to return any prepaid rent required to be paid to a tenant under this Code, the tenant may recover the damage and security deposit and prepaid rent, if any.
 6. Except as otherwise provided by the rental agreement, a tenant shall not apply or deduct any portion of the security deposit from the last month's rent or use or apply such tenant's security deposit at any time in lieu of payment of rent.
 7. This section does not preclude the landlord or tenant from recovering other damages to which he may be entitled under this Code.
 8. Tenants under the MHO Agreement may bring an action for settlement or accounting of the disputed accounts and contributions only after the tenants have exhausted his or her administrative remedies provided by the NPHA.

Section 5-2-8. Person to Accept Service or Notice, Identity of Owner and Manager, Failure to Comply With Section.

1. As a part of any rental agreement, the lessor shall promptly and in writing identify what person at what address is entitled to accept service or notice under this Code. To accept service the individual must be fourteen (14) years of age. The landlord or any person authorized to enter into a rental agreement on

his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- a. The person or person authorized to manage the premises;
- b. The owner or owners of the premises; or
- c. The name and address of a person authorized to act for and on behalf of the owner for the purpose of receipt of service of process and receiving and receipting for notices.

The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor owner, landlord or manager.

2. A person who fails to comply with this section becomes a landlord for the purposes of this Code and an agent of each person who is otherwise a landlord for:
 - a. Receipt of service of process and receiving and receipting and under the rental agreement and expending and making available for the purpose all rents collected from the premises.

Section 5-2-9. Commencement of Tenancy, Delivery of Possession, Wrongful Possession. At the commencement of the term, a landlord shall deliver full possession of the premises to the tenant in compliance with the rental agreement. Except as otherwise provided in this Code, the landlord may bring an action for possession against any other person wrongfully in possession and may recover his damages.

CHAPTER 3 DUTIES OF THE LANDLORD/TENANT

Section 5-3-1.

1. A landlord shall at all times during the tenancy:
 - a. Except in the case of a single-family residence, keep all common areas of his building, grounds facilities and appurtenances in a clean, safe and sanitary condition;

- b. Make all repairs and do whatever is necessary to put and keep the tenant's dwelling unit and premises in a fit and habitable condition;
 - c. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
 - d. Except in the case of one or two-family residences or where provided by a governmental entity, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish and other waste incidental to the occupancy of the dwelling unit and arrange for the frequent removal of such wastes; and
 - e. Except in the case of a single-family residence or where the service is supplied by direct and independently metered utility connections to the dwelling unit, supply running water and reasonable amounts of hot water at all times and reasonable heat.
2. The landlord and tenant of a dwelling unit may agree by a conspicuous writing independent of the rental agreement, that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling.
 3. Conflicting terms of MHO Agreements approved by the NPHA shall supersede provisions of this section.

Section 5-3-2. Conveyance of Property; Attornment of Tenant.

1. A conveyance of real estate, or of any interest therein, by a landlord shall be valid without the attornment of the tenant, but the payment of rent by the tenant to the grantor at any time before written notice of the conveyance is given to the tenant shall be good against the grantee.
2. The attornment of a tenant to a stranger shall be void and shall not affect the possession of the landlord unless it is made with the consent of the landlord, or pursuant to a judgment at law, or the order or decree of a court.

3. Unless otherwise agreed, and except as otherwise provided in this Code, upon termination of the owner's interest in the dwelling unit including, but not limited to, terminations of interest by sale, assignment, death, bankruptcy, appointment of a receiver or otherwise, the owner is relieved of all liability under the rental agreement and of all obligations under this Code as to events occurring subsequent to written notice to the resident of the termination of the owner's interest. The successor in interest to the owner shall be liable for all obligations under the rental agreement or under this Code. Upon receipt by a resident of written notice of the termination of the owner's interest in the dwelling unit, a resident shall pay all future rental payments, when due, to the successor in interest to the owner.
4. Unless otherwise agreed, and except as otherwise provided in this Code, a manager of premises that includes a dwelling unit is relieved of liability under a rental agreement and this Code, as to events occurring after written notice to the tenant of the termination of his management.

Section 5-3-3. Failure of Landlord to Deliver Possession of Dwelling Unit to Tenant.

1. If the landlord fails to deliver possession of the dwelling unit to the tenant, rent abates until possession is delivered and the tenant may terminate the rental agreement by giving a written notice of such termination to the landlord, whereupon the landlord shall return all prepaid rent and deposit, or the tenant may, at his option, demand performance of the rental agreement by the landlord and maintain an action for possession of the dwelling unit against any person wrongfully in possession and recover the actual damages sustained by him.
2. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person an amount not more than twice the monthly rental as specified in the rental agreement, computed and prorated on a daily basis for each month, or portion thereof, that said person wrongfully remains in possession.

Section 5-3-4. Landlord's Breach of Rental Agreement, Deductions From Rent for Repairs, Failure to Supply Heat, Water or Other Essential Services, Habitability of Dwelling.

1. Except as otherwise provided in this Code, if there is a material non-compliance by the landlord of the terms of the rental agreement or a non-compliance with any of the provisions of Section 5-3-1(1) of this Code, which noncompliance materially affects health or safety, the tenant may deliver to the landlord a written notice specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice if the breach is not remedied within fourteen (14) days, and thereafter the rental agreement shall so terminate as provided in the notice unless the landlord adequately remedies the breach within the time specified.
2. Except as otherwise provided in this Code, if there is a material non-compliance by the landlord with any of the terms of the rental agreement which non-compliance materially affects cost of which is less than one hundred dollars (\$100.00), the tenant may notify the landlord in writing of his intention to correct the condition at the landlord's expense after the expiration of fourteen (14) days. If the landlord fails to comply within said fourteen (14) days, or as promptly as conditions require in the case of an emergency, the tenant may thereafter cause the work to be done in a workmanlike manner and, after submitting to the landlord an itemized statement, deduct from his rent the actual and reasonable cost or the fair and reasonable value of the work not exceeding the amount specified in this subsection, in which event the rental agreement shall not terminate by reason of that breach.
3. Except as otherwise provided in this Code, if, contrary to the rental agreement, the landlord willfully or negligently fails to supply heat, running water, hot water, electric, gas or other essential service, the tenant may give written notice to the landlord specifying the breach and thereafter may:
 - a. Upon written notice, immediately terminate the rental agreement; or

- b. Procure reasonable amounts of heat, water, running water, electric gas, or other essential service during the period of the landlord's non-compliance and deduct their actual and reasonable cost from the rent; or
 - c. Recover damages based on the diminution of the fair rental value of the dwelling unit; or
 - d. Upon written notice, procure reasonable substitute housing during the period of the landlord's non-compliance, in which case the tenant is excused from paying rent for the period of the landlord's non-compliance.
4. Except as otherwise provided in this Code, if there is a non-compliance by the landlord with the terms of the rental agreement, which non-compliance renders the dwelling unit uninhabitable or poses an imminent threat to the health and safety of any occupant of the dwelling unit and which non-compliance is not remedied as promptly as conditions require, the tenant may immediately terminate the rental agreement upon written notice to the landlord which notice specifies the non-compliance.
5. All rights of the tenant under this section do not arise until he has given written notice to the landlord or if the condition complained of was caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent.
6. Conflicting terms of a MHO Agreement approved by the NPHA shall supersede provisions of this section.

Section 5-3-5. Damage To or Destruction of Dwelling Unit; Rights and Duties of Tenant.

1. If the dwelling unit or premises are damaged or destroyed by fire or other casualty to an extent that enjoyment of the dwelling unit is substantially impaired, unless the impairment is caused by the deliberate or negligent act or omission of the tenant, a member of his family, his animal or pet or other person or animal on the premises with his consent, the tenant may:

- a. Immediately vacate the premises and notify the landlord in writing within one (1) week thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or
- b. If continued occupancy is possible, vacate part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair value of the dwelling unit.

Section 5-3-6. Wrongful Removal or Exclusion From Dwelling Unit.

If a landlord wrongfully removes or excludes a tenant from possession of a dwelling unit, the tenant may recover possession by a proceeding brought in the Ponca Tribal Court, or terminate the rental agreement after giving notice of such intention to the landlord, and in either case recover an amount not more than twice the average monthly rental, or twice his actual damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all deposits recoverable under Section 5-2-7 of this Code and all prepaid and unearned rent.

Section 5-3-7. Unlawful Entry or Lawful Entry in Unreasonable Manner; Harassment of Tenant; Damages.

If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or harasses the tenant by making repeated unreasonable demands for entry, the tenant may obtain injunctive relief to prevent the recurrence of the conduct or, upon written notice, terminate the rental agreement. In either case, the tenant may recover actual damages.

Section 5-3-8. Defective Condition of Premises; Report to Landlord.

Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is unknown to the landlord, shall be reported by the tenant to the landlord as soon as possible.

Section 5-3-9. Tenant's Use and Occupancy of Premises; Rules and Regulations.

A landlord, from time to time, may adopt a rule or regulation, however described, concerning the tenant's use and occupancy of the premises. Such a rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, peace, and safety or welfare of the tenants in the premises,

preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally; and

2. It is reasonably related to the purpose of which it is adopted; and
3. It applies to all tenants in the premises in a fair manner; and
4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct or fairly inform the tenant what such tenant must or must not do to comply; and
5. It is not for the purpose of evading the obligations of the landlord; and
6. The tenant has notice of evading the obligations of the landlord; and

If the rule or regulation is adopted after the tenant enters into the rental agreement and that rule or regulation works a substantial modification of such tenant's bargain, the rule or regulation so adopted is not valid and enforceable against the tenant unless he consents to it in writing.

CHAPTER 4 RIGHTS AND DUTIES OF TENANTS

Section 5-4-1. Duties of the Tenant. The tenant shall, at all times during the tenancy, comply with the following in such a manner as to protect the property interest of this landlord and any person who resides within 300 feet of the boundary of the tenant's dwelling unit:

1. Keep that part of the premises which such tenant occupies and uses as safe, clean and sanitary as the condition of the premises permits.
2. Dispose from such tenant's dwelling unit all ashes, garbage, rubbish and other waste in a safe, clean and sanitary manner.
3. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean and sanitary as their condition permits.

4. Use in a safe and non-destructive manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.
5. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person, animal or pet to do so.
6. Not engage in conduct or allow any person or animal or pet on the premises with the express or implied permission or consent of the tenant, to engage in conduct that will disturb the quiet and peaceful enjoyment of the premises by other tenants.
7. The Ponca Tribe of Nebraska or persons who reside within 300 feet of the offending tenant's dwelling unit and whose peaceful enjoyment or property is damaged by violation of subsection A may bring against the tenant or any third party a cause of action for abatement of the violation and/or damages.
8. Not commit any crimes under federal, state or tribal law.

Section 5-4-2. Consent of Tenant for Landlord to Enter Dwelling Unit; Emergency Entry; Abuse of Right of Entry; Notice; Abandoned Premises; Refusal of Consent. A tenant shall not unreasonably withhold consent to the landlord, his agents and employees, to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgages, tenants, workmen or contractors.

A landlord, his agents and employees may enter the dwelling unit without consent of the tenant in case of emergency.

A landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least one (1) day's notice of his intent to enter and may enter only at reasonable time.

Unless the tenant has abandoned or surrendered the premises, a landlord has no other right of access during a tenancy except as is provided in this Code or pursuant to a court order.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access or he may terminate the rental agreement.

Section 5-4-3. Tenant's Breach of Rental Agreement; Wrongful Abandonment. Unless otherwise agreed, use by the tenant of the dwelling unit for any purpose other than his place of abode shall constitute a breach of the rental agreement and shall be grounds for terminating the rental agreement.

If the tenant wrongfully quits and abandons the dwelling unit during the term of the tenancy, the landlord shall make reasonable efforts to make the dwelling unit available for rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, said new tenant shall sign a rental agreement notwithstanding the prior rental agreement. If the landlord fails to use reasonable efforts to make the dwelling unit available for rental or if the landlord accepts the abandonment as a surrender, the rental agreement is deemed to be terminated by the landlord as of the date the landlord has notice of the abandonment. If, after making reasonable effort to make the dwelling unit available for rental after abandonment, the landlord fails to re-rent the premises for a fair rent or the difference in rental, whichever may be appropriate, for the remainder of the term. If the tenancy is from month-to-month or week-to-week, the term of the rental agreement for this purpose is deemed to be a month or a week, as the case may be.

Section 5-4-4. Abandoning, Surrendering or Eviction From Possession of Dwelling Unit, Disposition of Personal Property. If the tenant abandons or surrenders possession of the dwelling unit or has been lawfully removed from the premises through eviction proceedings and leaves household goods, furnishings, fixtures, or any other personal property in the dwelling unit, the landlord may take possession of the property and if, in the judgment of the landlord, the property has no ascertainable or apparent value, the landlord may dispose of the property without any duty of accounting or any liability to any party. Any property left with the landlord for a period of three (3) months or longer shall be conclusively determined to be abandoned and, as such, the landlord may dispose of said property in any manner which he deems reasonable and proper without liability to the tenant or any other interested party.

Section 5-4-5. Delinquent Rent. If rent is unpaid when due, the landlord may bring an action for recovery of the rent at any time thereafter.

A landlord may terminate a rental agreement for failure to pay rent when due, if the tenant fails to pay the rent after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

Section 5-4-6. Lien on Tenant's Property. A landlord shall have a lien upon that part of the property belonging to the tenant which has a reasonable relationship, as nearly as practicable, to the amount of the debt owed, which may be in a rental unit used by him at the time notice is given, for the proper charges owed by the tenant, and for the cost of enforcing the lien, with the right to possession of the property until the debt obligation is paid to the landlord. Provided, however, that such lien shall be secondary to the claim of any prior bona fide holder of chattel mortgage or to the rights of the conditional seller of such property, other than the tenant.

For purposes of this section, property shall mean any baggage or other property belonging to the tenant which may be in the rental unit used by the tenant but which shall not include all tools, musical instruments or books used by the tenant in any trade or profession, all family portraits and pictures, all wearing apparel, any type of prosthetic or orthopedic appliance, hearing devices, soap, tissues, washing machines, vaporizers, refrigerators, food, cooking and eating utensils, all other appliances personally used by the tenant for the protection of his health, or any baby bed or any other item used for the personal care of babies.

Section 5-4-7. Procedure for Enforcement of Lien. The lien provided for by Section 5-4-6 may be foreclosed by a sale of such personal property upon the notice and in the manner following. The notice shall contain:

1. The names of the owner and any other party or parties who may claim any interest in said property.
2. A description of the property to be sold.
3. The value of the rent provided and unpaid and the dates thereof.
4. The time and place of the sale.
5. The name of the party, agent or attorney foreclosing such lien.

Such notice shall be posted on the front door of the tenant's dwelling unit at least ten (10) days before the time therein specified for such sale, and a copy of said notice shall be mailed to the owner and any other party or parties claiming any interest in said property if known, at their last known post office address by certified mail on the day of posting. Party or parties who claim any interest in said property shall include owners of chattel mortgages and conditional sales contracts as shown by the records in the office of the county clerk in the county where the lien is foreclosed.

The liener or any other person may in good faith become a purchaser of the property sold.

Proceedings for foreclosure under this Code shall not be commenced until thirty (30) days after said lien has accrued.

CHAPTER 5 GROUNDS FOR EVICTION AND NOTICE TO PRE-EVICTION

Section 5-5-1. Grounds for Eviction.

A person may be evicted for:

- A. Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.
- B. Any agreement in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.
- C. Nuisance, intentional or reckless damage, destruction, or injury to the property of the landlord or other tenants, or disturbing another tenant's right to quiet enjoyment of a dwelling unit.
- D. Repeated violations of the rental agreement, any reasonable rules or regulations adopted in accordance with this Code, or any applicable building or housing codes.
- E. Occupation of any premises without permission or agreement, following any reasonable demand by a person in authority over the premises to leave.

- F. Under other terms in the rental agreement which do not conflict with the provisions of this Code.

Section 5-5-2. Notice to Quit Requirements.

- A. When Notice to Quit is Required. When a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit, the landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this chapter.
- B. Purpose of Notice to Quit. The purpose of the notice to quit is to provide advance notice to the tenant of a specific problem which needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.
- C. Statement of Grounds for Eviction Required. The notice to quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reason(s) for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.
- D. Form of Notice. The notice shall be in writing substantially in the following form:

"I (or we) hereby give you notice that you are to quit possession or occupancy of the dwelling unit now occupied by you at (here insert the address or other reasonable description of the location of the dwelling unit), on or before the (here insert the date) for the following reason (here insert the legally cognizable reason or reasons for the notice to quit possession using the statutory language or words of similar import). Signed, (here insert the signature, name and address of the landlord, as well as the date and place of signing,)."

- E. Time Requirements for Notice. The notice must be delivered within the following periods of time:
 - 1. No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
 - 2. No less than three (3) calendar days prior to the date to quit specified in the notice for nuisance, serious injury to property, or injury to persons. In situations in

which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.

3. No less than fourteen (14) calendar days in all other situations.

Section 5-5-3. Serving the Notice to Quit. Any notice to quit must be in writing, and must be delivered to the tenant in the following manner:

- A. Delivery must be made by an adult person.
- B. Delivery will be effective when it is:
 - 1. Personally delivered to a tenant with a copy delivered by mail, or
 - 2. Personally delivered to an adult living in the premises with a copy delivered by mail, or
 - 3. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- C. If the notice cannot be given by means of personal delivery, or tenant cannot be found, the notice may be delivered by means of:
 - 1. Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 - 2. Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.
- D. The person giving notice must keep a copy of the notice and proof of service in accordance with this section, by affidavit or other manner recognized by law.

Section 5-5-4. Pre-Eviction Options; Housing Appeals Board.

- A. Negotiated Settlement. After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in

discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

- B. Appeal to Executive Director. The tenant may appeal to the Authority Executive Director regarding the grounds relating to a Notice to Quit within fourteen (14) days of receiving the Notice to Quit, and the Executive Director shall meet with the tenant and render a decision on the matter. In the event the tenant is not satisfied with the decision of the Executive Director may appeal the decision to the Appeals Board within fourteen (14) days of the Executive Director's decision.
- C. Housing Appeals Board. A Housing Appeals Board is hereby created to resolve disputes between the landlord and tenant. The Appeals Board shall consist of three (3) individuals appointed by the Tribal Council. The Board Members shall serve a term of three (3) years. No member of the Tribe is eligible to serve on the Housing Appeals Board. All Housing Appeals Board members may have sufficient experience with the laws and regulations regarding Indian Housing, or the ability to come up to speed as determined by qualifications further established by the Tribal Council. No tenants subject to the provisions of this Title shall be eligible to serve on the Housing Appeals Board.
- D. Process and Decisions of the Housing Appeals Board. The Housing Appeals Board shall establish rules and procedures, as approved by the Tribal Council, governing the administrative hearings conducted. The tenant shall have the right to be represented by counsel, at the tenants own expense, and shall have the right to appear at the hearing. The Housing Appeals Board shall render a decision within thirty (30) days of the appeal.
- E. Appeals to Ponca Tribal Court. Upon the final decision or action of the Housing Appeals Board, such decision or action may be appealed to the Ponca Tribal Court within fourteen (14) days of the Hearing Appeals Board, provided, however, that any review of the Housing Appeals Board by the Ponca Tribal Court shall be limited to a review of the hearing record. Decisions and actions of the Housing Appeals Board may not be overturned by the Ponca Tribal

Court unless the decisions are determined to be arbitrary and capricious.

- F. Stay of Proceedings. Where the parties mutually agree in good faith to proceed with such discussions, and Judicial Eviction procedures have been initiated, the Court will stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.
- G. Settlement Options. In reaching an agreement, the parties may consider, but are not limited to the following options:
 - 1. The parties may employ the use of advocates or attorneys;
 - 2. The parties may employ the use of a mediator or conciliator;
 - 3. The parties may agree to arbitrate the issues in binding arbitration;
 - 4. The parties may agree to any other barter for services and goods, or to any other means of securing a fair exchange of value for the use of the dwelling;
 - 5. The parties may agree to dismiss the matter in exchange for any agreement reached;
 - 6. The parties may agree to stipulate to a judgment to be entered by the Court.

CHAPTER 6 JUDICIAL EVICTION PROCEDURES

Section 5-6-1. Summons and Complaint. If, after the date set forth in the notice to quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the Tribal Court for eviction and such other relief as the Court may deem just and proper. The complaint shall state:

- A. The names of the adult tenant(s) against whom the suit is brought;
- B. A description of the rental agreement, if any;
- C. The address or reasonable description of the location of the premises;

- D. The grounds for eviction;
- E. A statement showing that the notice to quit and any required termination notices have been served in accordance with this code or other applicable law; and
- F. A statement of the relief demanded, including any claim(s) for possession of the dwelling unit, damages, fees, costs, or other special relief.
- G. If the landlord is the NPHA, a statement that the NPHA has complied with all required regulatory processes prior to filing the eviction action.

Section 5-6-2. Action Upon Filing Complaint.

When a complaint is filed in the Tribal Court, it shall be immediately presented to a Tribal Court Judge. This shall be on the date of filing, or, if no judge is present, on the first regular Court day after filing or when a judge may first be found. The judge shall review the complaint and shall, if it appears to be in compliance with this Code and properly served as set forth in this Code, issue an order of the Court requiring the defendant named in the complaint to appear before the Court on a certain date to contest the complaint. The date for appearance for answering the complaint shall be at the next scheduled Tribal Court day. Upon setting of the date for appearance, the plaintiff shall have defendant served with the complaint and a summons to appear for the court date.

Section 5-6-3. Commencement of Proceedings.

- A. If the tenant appears before the Court in person or in writing to contest the complaint, the Court shall set a hearing date. Any written response shall state any defenses or factual disputes and where any defendant appears in person, a written response shall be served upon the plaintiff within five (5) calendar days of any hearing, excluding weekends and holidays.
- B. The Court shall set a hearing date which is no more than fifteen (15) calendar days following the date for appearance, except when the hearing date would fall on a weekend or holiday, and in such a situation on the first regular Court day following that date.
- C. A defendant may, for good cause shown, and upon the payment of a reasonable sum for the fair rental value of the

premises between the date on which the complaint was filed and the date of hearing, obtain an extension of time, beyond the fifteen (15) day period. The Court may refuse to extend the date of hearing where the complaint is based upon a nuisance but shall not extend the date of hearing where the complaint is based upon conduct which is alleged to constitute a serious danger to public health, safety, or peace.

- D. The Court may in its discretion on motion from the landlord order the tenant to pay into the Court rents for the use and occupancy during the pendency of the eviction case.

Section 5-6-4. Defenses. The Court shall grant the remedies allowed in this Code, unless it appears by the evidence that:

- A. The premises are untenable, uninhabitable, or constitute a situation where there is a constructive eviction of the tenant, in that the premises are in such a condition, due to the fault of the landlord, that they constitute a real and serious hazard to human health and safety and not a mere inconvenience.
- B. The landlord has failed or refused to make repairs which are his responsibility after a reasonable demand by a tenant to do so, without good cause, and the repairs are necessary for the reasonable enjoyment of the premises.
- C. There are monies due and owing to the tenant because he has been required to make repairs which are the obligation of the landlord and the landlord has failed or refused to make them after a reasonable notice. Such sums may be a complete or partial defense to a complaint for eviction, but only to the extent that such sums set off monies owed for occupancy. A tenant may be evicted after such a period if he fails or refuses to pay the reasonable rental value of the premises.
- D. That due to the conduct of the landlord, there is injury to the tenant in such a way that justice requires that relief be modified or denied. This shall include the equitable defenses of estoppel, laches, fraud, misrepresentation, and breaches of serious and material obligations for public health, safety, and peace standards.
- E. That there are such serious and material breaches of applicable housing law on the part of the landlord that it would be unjust to grant him a remedy.

- F. The landlord is evicting the tenant because of his/her race, sex, sexual orientation, religion, age, marital status, family status, or because the tenant is disabled.
- G. The landlord terminated the tenancy in retaliation for the tenant's attempt to secure his rights under this Code or to force the landlord to comply with his duties under this Code.
- H. Any other material or relevant fact the tenant might present that may explain why his eviction is unjust and unfair.

Section 5-6-5. Discovery and Prehearing Proceedings. Extensive, prolonged, or time consuming discovery and prehearing proceedings will not be permitted, except in the interests of justice and for good cause shown by the moving party. Discovery shall be informal, and reasonably provided on demand of a party, and it shall be completed within five (5) calendar days of the date of hearing. Requests for discovery shall be made no later than three (3) calendar days following the setting of a hearing date. The court may enter reasonable orders requiring discovery or protecting the rights of the parties upon reasonable notice.

Section 5-6-6. Evidence. Evidence in proceedings under this Code shall be governed by the Federal Rules of Evidence.

Section 5-6-7. Burden of Proof. The burden of proof in all proceedings under this Code shall be preponderance of the evidence.

Section 5-6-8. Judgment.

- A. Within five (5) calendar days of the date of the hearing, the Court shall grant and enter judgment and the judgment shall grant all relief that the parties are entitled to as of the date of the judgment. The judgment may:
 - 1. Order the immediate eviction of a tenant and delivery of the premises to the landlord;
 - 2. Grant actual damages as provided in the agreement of the parties or this Code, including interest;
 - 3. Order the parties to carry out an obligation required by law;
 - 4. Establish a payment plan for the tenant;

5. Order rent payments out of per capita payment or through garnishment;
 6. Establish a Power of Attorney in another person/agency to fulfill rights or obligations of either landlord or tenant;
 7. Remediate the action in part or in whole through appropriate recalculation of rent;
 8. Order the tenant to perform work for the landlord or the owner to pay off back rent due and/or damages;
 9. Order the payment of attorneys' fees and, where allowed by law or agreement, costs and expenses of litigation; or
 10. Grant any relief provided in this Code or allowed in law or equity.
- B. If a tenant fails to appear in person or in writing on or before the date of appearance, the Court shall enter judgment on behalf of the plaintiff following a hearing to determine whether relief should be granted and the kind of relief that should be granted.

Section 5-6-9. Form of Judgment. The judgment shall state the relief granted by the Court to any party, but need not state findings of fact or conclusions of law in support of the judgment. The judgment may state brief reasons for it. If a trial is held, the judge should, whenever possible, render his decision immediately after both parties have rested their case and award costs and restitution as appropriate.

Section 5-6-10. Execution of Judgment. An eviction order may be executed by a duly authorized law enforcement officer or officer of the Court, appointed by the Court for such a purpose. To execute the order, the officer shall;

- A. remove all the evicted persons from the dwelling and verbally order them not to re-enter;
- B. provide a copy of the order of eviction to all adult tenants;
- C. post copies of the order of eviction on the doors of the premises if there is not any adult tenant present at the time of execution; and

- D. supervise the removal of the possessions of the evicted persons.

Any law enforcement officer shall, upon receipt of an order of the Court, execute the judgment or order made by it within five (5) calendar days of the date of the judgment or order and make a report to the Court on what was done to enforce it. Any law enforcement officer to whom a judgment or order is given for enforcement who fails, in the absence of good faith, or refuses to execute it shall be subject to the payment of reasonable damages, costs, and expenses to a party for failure to execute the judgment and/or suspension from employment. This Section shall also apply to any judgment on behalf of a tenant obtained under the general tribal civil procedure code and/or tribal small claims procedure code. All other portions of the judgment shall be subject to execution in the manner otherwise provided under tribal law.

Section 5-6-11. Stay of Execution. If judgment for possession of the dwelling unit enters in favor of the landlord, the tenant may apply for a stay of execution of the judgment or order if within five (5) days of the judgment being rendered, the following is established:

- A. Good and reasonable grounds affecting the well being of the party are stated; or
- B. There would be no substantial prejudice or injury to the prevailing party during the period of the stay; or
- C. Execution of the judgment could result in extreme hardship for the tenant(s); or
- D. A bond is posted or monies are paid to the Court, to satisfy the judgment or payment for the reasonable use and occupancy of the premises during the period of time following the judgment. No stay may exceed three months in the aggregate. The clerk shall distribute such arrearages to the landlord in accordance to any order of the court.

Section 5-6-12. Appeals. Appeals under this Chapter shall be according to the general tribal appellate provisions.

Section 5-6-13. Notice to Leave the Premises. Any notice to leave a premises, shall be by written order of the court, and shall be delivered to the tenant in the following manner:

- A. Delivery shall be made by:

1. A law enforcement officer of the Tribe or an agency of the United States Government, or
 2. Any person authorized by the Tribal Court.
- B. Delivery will be effective when it is:
1. Personally delivered to a tenant with a copy delivered by mail, or
 2. Personally delivered to an adult living in the premises with a copy delivered by mail, or
 3. Personally delivered to an adult agent or employee of the tenant with a copy delivered by mail.
- C. If the notice cannot be given by means of personal delivery, or the tenant cannot be found, the notice may be delivered by means of:
1. Certified mail, return receipt requested, at the last known address of the landlord or tenant, or
 2. Securely taping a copy of the notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the notice in some public place near the premises, including a tribal office, public store, or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises.

Section 5-6-14. Forcible Eviction.

- A. Where the Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date of that Order, the defendant or other occupants may be forcibly removed from the premises by a tribal law enforcement officer or law enforcement officer authorized by the Court. At the hearing where the eviction is ordered, the Court shall inform the defendant that if he does not vacate the premises voluntarily by the effective date, he and the other occupants will be subject to forcible eviction, and their property will be subject to storage, sale and disposal as set forth in subsection (C) below.
- B. Following eviction, the Court may allow the landlord, the NPHA or the United States Government access to any property

leased by either of them for purposes of preserving and securing it.

- C. Following forcible eviction of the defendant and/or other occupants, the former occupant's personal property shall be stored by the owner of the premises for at least thirty (30) days, either on the premises or at another suitable location. In order to reclaim their property, the former occupants shall pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty (30) days, the owner is authorized to sell the property in order to recover these costs. The landlord shall not condition return of the former occupant's personal property on the payment of any costs or fees other than those of removal and storage of those personal possessions. Should the landlord attempt to condition return of personal possessions on payment of any other cost or fee, the landlord shall forfeit his right to the costs of removal and storage. Upon request by the former occupants, the landlord shall provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs shall be remitted to the former occupants. Nothing in this section shall be construed to prevent the former occupants from reclaiming property remaining after the sale if they can arrange to do in a manner satisfactory to the owner. If the abandoned property is of cultural, religious, or ceremonial significance, the landlord shall have an affirmative duty to locate next of kin and/or contact the Tribe in order to return these items.

Section 5-6-15. No Self-Help Eviction. No landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace. All landlords shall give a notice to quit and obtain a court order as provided in this Code.

TRIBAL COUNCIL AMENDED 4/25/10

TITLE VI
JUDICIAL REMEDIES

CHAPTER 1
GENERAL PROVISIONS

Section 6-1-1. Purpose. The purpose of this title is to provide rules and procedures for certain forms of relief, including injunctions, declaratory judgments, mandamus and prohibition. This title shall not be construed as limiting other forms of judicial remedies and relief as are necessary for adjudication of individual rights.

Section 6-1-2. General Remedies. In any civil action, the Court may provide equitable or legal relief. The Court may adopt common law remedies, unless the measure of damages are specifically provided by contract or elsewhere in this Code.

CHAPTER 2
INJUNCTIONS

Section 6-2-1. Injunctive Relief. There exists an action known as an action for injunctive relief.

Section 6-2-2. Kinds of Injunctive Relief. Relief by injunction is either temporary or permanent. Temporary injunctions may be referred to as interlocutory injunctions, and are either temporary restraining orders or preliminary injunctions. Permanent injunctions may be referred to as final injunctions.

Section 6-2-3. Purposes for Which Injunctions Are Specifically Prohibited.

1. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded;
2. To prevent the execution of a tribal law by officers of the law, for public benefit;
3. To prevent the breach of contract, the performance of which would not be specifically enforced;
4. To prevent the exercise of a tribal office in a lawful manner, by the person in possession;
5. To prevent a legislative act by Tribal government.

Section 6-2-4. Permanent Injunction By Judgment or Decree in Civil Action. A permanent injunction is obtained by a judgment

or decree in a civil action under the procedures applicable to civil actions, and subject to the limitations of this Chapter.

Section 6-2-5. Preliminary Injunctions-Temporary Restraining Orders-Notice-Hearing-Duration-Security.

No preliminary injunction shall be issued without notice to the adverse party.

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall: (1) be endorsed with the date and hour of issuance; (2) be filed forthwith in the Tribal Court Administrator's office and entered of record; (3) define the injury and state why it is irreparable and why the order has been granted without notice; and (4) expire by its terms within such time after entry, not to exceed fifteen (15) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, a motion for a preliminary injunction or show cause hearing must be set down for hearing at the earliest possible time, taking precedence over all other matters except older matters of the same character; and when the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On two (2) days notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move for its dissolution or modification, and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

Except as otherwise provided by law, no restraining order or preliminary injunction shall be issued, except upon the giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the Ponca Tribe of Nebraska, or of an officer or

agency thereof, nor shall it be required of a married person in a suit against the other party to the marriage contract.

A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the Court and irrevocably appoints the Tribal Court Administrator as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the Court prescribes may be served on the Tribal Court Administrator who shall forthwith mail copies to the person giving the security if their addresses are known.

Section 6-2-6. Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall: (1) be specific in terms; (2) describe in reasonable detail, and not be reference to the complaint or other document, the act or acts sought to be restrained; and (3) is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Section 6-2-7. Grounds for Injunction. An injunction may be granted:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

2. When it appears during the litigation that either party is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;

3. In all other cases where an injunction would be proper in equity.

CHAPTER 3 DECLARATORY RELIEF

Section 6-3-1. Power of Court to Provide Declaratory Relief Form and Effect of Declarations. The Tribal Court shall have power to declare rights, status, and other legal relations whether or

not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect and such declaration shall have the force and effect of a final judgment and decree. An action for declaratory relief shall involve a controversy of justiciable character between parties having adverse interests. The party seeking relief must have a legally protectable interest.

Section 6-3-2. Construction and Determination of Validity of Written Instruments and Legislative Acts. Any person interested under a deed, will, written contract, or other writing constituting a contract, or whose rights, status, or other legal relations are affected by a tribal law, ordinance or contract, may have determined any question of construction or validity arising under the instrument, law, ordinance or contract and obtain a declaration of rights, status, or other legal relations thereunder.

Section 6-3-3. Procedure. Actions for declaratory relief shall be brought by petition in accordance with the tribal rules of civil procedures.

Section 6-3-4. Parties to be Joined in Action for Declaratory Relief. When declaratory relief is sought, all persons shall be made parties who have or claim any interest that would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

Section 6-3-5. Tribe Joined in Proceeding Involving Tribal Law Or Ordinance. In any proceeding that involves the validity of a tribal law, ordinance, policy or regulation, the Tribe shall be made a party and shall be entitled to be heard.

Section 6-3-6. Trial of Issues of Fact. When a proceeding under this Chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions.

Section 6-3-7. Judgment Refused Where Controversy Would Not Be Terminated. The Court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Section 6-3-8. Chapter Declared Remedial. This Chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights,

status, and other legal relations; it is to be liberally construed and administered.

CHAPTER 4 WRIT OF MANDAMUS

Section 6-4-1. Power to Issue Writ/Purposes For Issuances. The writ of mandamus may be issued by the Tribal Court or the Tribal Appellate Court to the Tribe, or any of its subdivisions, including individuals who are officials of the Tribe and any of its subdivisions, to compel the performance of an act which federal or tribal law, ordinance, policy or procedure specifically enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded from.

Section 6-4-2. Writ Issued When Ordinary Remedy Inadequate. The writ of mandamus shall be issued in all cases where there is no plain, speedy, and adequate remedy, in the ordinary course of law. It shall be issued upon petition and affidavit of the party beneficially interested.

Section 6-4-3. Grant of Writ on Default Prohibited. The writ of mandamus shall not be granted by default. The case must be heard by the Court whether the adverse party appears or not.

Section 6-4-4. Service of Writ-Service on Majority of Board. The writ of mandamus must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court. Service upon a majority of the members of any board or body is service upon the board or body, whether at the time of the service the board was in session or not.

Section 6-4-5. Alternative and Peremptory Writs-Terms of Writ. The writ of mandamus may be either alternative or peremptory. The alternative writ must state generally the allegation against the party to whom it is directed, and command such party, immediately upon the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the Court, at a specified time and place, why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done the command, must be omitted, and a return day inserted.

Section 6-4-6. Alternative Writ Issued Without Notice-Minimum Notice Required for Peremptory Writ. When the application for writ of mandamus to the Court is made without notice to the adverse party, and the writ be allowed, the alternative writ must be first issued; but if the application be upon due notice, and the writ be allowed, the peremptory writ may be issued in the first instance. The notice of the application, when given, must be at least ten (10) days.

Section 6-4-7. Answer to Show Cause Against Writ. On the return of the alternative writ of mandamus, or the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

Section 6-4-8. Hearing By Court When No Answer Made or No Questions Of Fact Raised. If no answer is made, the case must be heard on the papers of the applicant. If the answer raises only questions of law, or puts in issue only immaterial statements, not affecting the substantial rights of the parties, the Court must proceed to hear, or fix a day for hearing the case.

Section 6-4-9. Objections and Proof Countervailing Answer Introduced By Applicant At Trial. On the trial the applicant is not precluded by the answer from any valid objection to its sufficiency and may countervail it by proof, either in direct denial or by way of avoidance.

Section 6-4-10. Discretionary Jury Trial And Postponement-Statement of Question to Be Tried-Assessment of Damages. If an answer be made which raises a question as to a matter of fact essential to the determination of the motion, and affecting the substantial rights of the parties, and upon the supposed truth of which allegation the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury, and postpone the hearing until such trial can be had and the verdict certified to the court. The question to be tried must be distinctly stated in the order for trial.

Section 6-4-11. Verdict Transmitted to Court-Hearing on Application. If no notice of a motion for a new trial be given or, if given, the motion be denied, the Tribal Court Administrator, within five (5) days after rendition of the verdict or denial of the motion, must transmit to the Court a certified copy of the verdict attached to the order of trial,

after which either party may bring on the hearing on the application, upon reasonable notice to the adverse party.

Section 6-4-12. Elements Included in Judgment. If judgment be given for the applicant, he may recover the damages which he has sustained, as found by the jury or as may be determined by the Court, together with costs; and for such damages and costs execution may issue; and a peremptory mandamus must also be awarded without delay. If judgment shall be for the defendant, costs in his favor shall be taxed as a part thereof.

Section 6-4-13. Fine For Disobedience of Peremptory Writ-Imprisonment On Persistent Disobedience. When a peremptory mandamus has been issued and directed to any inferior tribunal, board, or person, if it appears to the Court that any member of such tribunal, board, or any person upon whom the writ has been personally served, has, without just excuse, refused or neglected to obey the same, the Court may, upon motion, impose a fine not exceeding one thousand dollars (\$1,000.00)

CHAPTER 5 WRIT OF PROHIBITION

Section 6-5-1. Writ of Prohibition-Purpose for Which Writ Issued. The writ of prohibition is the counterpart of the writ of mandamus. It arrests the proceedings, administrative or judicial, of any tribal tribunal, board, council, or person, when such proceedings are without or in excess of the jurisdiction of such tribal tribunal, board, council, or person, or are without or in excess of powers of authority conferred by federal or tribal law upon such tribal tribunal, board, council, or person.

Section 6-5-2. Power To Issue. The writ of prohibition may be issued by the tribal court or tribal appellate court to an inferior tribunal, or to a tribal board, council or person, in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law.

Section 6-5-3. Affidavit and Application For Writ. The writ of prohibition may be issued upon affidavit or application of the person beneficially interested.

Section 6-5-4. Alternative And Peremptory Writs-Terms. The writ of prohibition must be alternative or peremptory. The alternative writ shall state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or

matter specified therein, until further order of the court, and to show cause before the court, at a specified time and place, why the party should not be absolutely restrained from any further proceedings in such action or matter. The peremptory writ shall be in a similar form, except that the words requiring the party to show cause why he should not be absolutely restrained must be omitted and a return day inserted.

Section 6-5-5. Proceedings Same As For Mandamus. The provisions for proceedings in mandamus shall apply to this chapter, except where inconsistent therewith.

TITLE VII
PONCA TRIBE OF NEBRASKA
TRIBAL OCCUPATIONAL INJURY ORDINANCE

Section 7-1-1. Forward.

There shall be a Tribal Occupational Injury Ordinance for all covered employees and workers of the Ponca Tribe of Nebraska. The Ponca Tribe of Nebraska, exercising its inherent sovereign authority, adopts this system, establishing a Tribal Occupational Injury Ordinance.

Section 7-1-2. Acknowledgment of Program and Notice To Employees.

1. All covered employees, workers and persons asserting a claim shall be conclusively presumed to have elected to take occupational injury benefits in accordance with the tenets, conditions and provisions of this program (including the schedule of benefits) by virtue of employment with the Ponca Tribe of Nebraska, exclusive of any other claims the employee may have with regards to the injury. All covered employees and/or persons asserting a claim for occupational injury benefits acknowledge that the Ponca Tribe of Nebraska is, in fact, a federally recognized Indian Tribe and for the purposes of occupational injury benefits, is exercising its inherent sovereign authority. This Tribal Occupational Injury Ordinance applies regardless of locations of injury.
2. The Ponca Tribe of Nebraska shall be responsible for posting a notice of this program in a conspicuous location (See Supplement I).
3. A copy of this program will be made available to the employee or the employee's representative upon request.

Section 7-1-3. Administration of Program.

1. To establish a systematic and uniform procedure for administration of Occupational Injury Benefits to employees of the Ponca Tribe of Nebraska.
2. To provide medical treatment for injured workers and fair income benefits to injured workers and their dependents.

3. To create a process whereby disputes over compensation can be resolved in a fair and unbiased manner; and
4. To restore the injured worker physically and economically to a self-sufficient status in an expeditious manner and to the greatest extent practicable.

Section 7-1-4. Definitions.

In this program, unless the context otherwise requires:

1. "ADMINISTRATOR" means the insurance company (Sovereign Nation Workers' Compensation and Employers' Liability Policy) providing coverage or its designee, including any third party administrator.
2. "ADOPTION" means persons adopted by decree of a recognized Court of law.
3. "AVERAGE WEEKLY WAGE" means the average of the employee's wages earned during the twenty-six (26) calendar weeks preceding the date of injury, not including unreported tips and/or bonuses. Overtime is not to be considered in computing wages unless it is regular and frequent throughout the year. The twenty-six weeks prior to the date of injury are presumed representative, regardless of the wages earned. In the event that an employee is employed for less than twenty-six (26) consecutive calendar weeks immediately preceding the date of injury, the average weekly wage shall be determined using the actual number of weeks the employee worked divided by the gross wages earned during those weeks. If the employee's work week is fewer than five (5) days per week or if there is an irregular number of days worked per week, the total number of days that an employee actually performed any of the duties of employment in the last twenty-six (26) weeks is to be divided by the number of weeks in which the employee actually performed such duties, multiplied by the employee's daily wage.
4. "BENEFIT" means the findings or decision of the *Administrator* or designee regarding the amount of medical and lost time benefits due to an injured employee or the dependent of a deceased employee under the rules of the Tribal Occupational Injury Ordinance.

5. "CHILD" includes dependent biological child(ren) and dependent legally adopted child(ren), but does not include married child(ren). Children must also be under eighteen (18) years of age or under twenty-five (25) years of age and enrolled as a full-time student in an accredited educational institution or be physically or mentally incapable of self support and wholly dependent on the deceased employee until age twenty-five (25).
6. "CLAIM" means a written request for worker's compensation benefits under this ordinance.
7. "CLAIMANT" means the injured covered employee, or in the event of death of the covered employee, dependents of the deceased.
8. "COURSE OF EMPLOYMENT" means the Ponca Tribe of Nebraska employment of the covered employee at the time the injury occurred. An injury must be directly related to their employment by the Ponca Tribe of Nebraska in order that a claim be payable. Claim for injuries that occur during social or recreational activities are not payable, unless the employee was paid for their attendance at the activity by the Ponca Tribe of Nebraska.
9. "COMPENSATION" means lost time wages due to inability to work due to a work related injury. This also includes if the employer is unable to accommodate modified duty work within physical restrictions assigned by the treating physician.
10. "COVERED EMPLOYEE" AND "WORKER" means:
 - a) Every person in the employment of the Ponca Tribe of Nebraska, but does not include volunteers or independent contractors.
 - b) Excluded as not in the employment of the Ponca Tribe of Nebraska are consultants, independent contractors and all other persons not considered under "employees" by the Ponca Tribe of Nebraska unless a written contractual agreement between the Ponca Tribe of Nebraska and the entity provides for occupational benefits. In the event of such a contract, the contract shall be specific as to whom, when, where, and why this

coverage is provided by the Ponca Tribe of Nebraska , and all third parties and/or covered employees shall agree to all terms, conditions, and provisions of this program.

11. "DEPENDENT" shall be defined as those individuals residing in the same household, prior to the date of loss or onset of disease, and that are economically dependent upon earnings of the employee at the time of the compensable injury which caused the employee's death as determined by the Administrator.
13. "Domestic Partner" means a partner of the same sex or opposite sex relationships as defined in the criteria listed on the Domestic Partnership Affidavit. An Affidavit must be on file in the HRM Office in order to claim this relationship.
12. "EMPLOYER" under this ordinance refers to the Ponca Tribe of Nebraska administration, a federally recognized Indian Tribe acting at all times pursuant to its Constitution and Bylaws in a governmental capacity.
13. "INJURY" means an injury directly related to their employment and includes occupational disease and death. In addition to, damage to or destruction of artificial member, dental appliances, teeth, hearing aids and eyeglasses/contacts, when a covered injury is sustained, if no physical injury is sustained the damaged appliance will not be covered. Injury is defined in two categories: 1) Traumatic, 2) Cumulative. "Traumatic" is defined as a sudden, specific incident. "Cumulative" is defined as a repetitive motion injury occurring over a period of time. Where this plan contains conflicting references to injury and occupational disease, the references to occupational disease shall prevail.
14. "MAXIMUM MEDICAL IMPROVEMENT" means the date after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability.
15. "NON-SCHEDULED INJURIES" mean injuries that result in permanent partial disability or permanent total

disability which are not defined as scheduled member injuries.

16. "OCCUPATIONAL DISEASE" means a disease, which is directly related to the employment. A disease is not directly related to the employee's employment if an employee would have been equally exposed to such a hazard outside of the employment.
17. "OCCUPATIONAL INJURY BENEFITS" include weekly benefits and medical benefits further defined as follows:
 - a) "MEDICAL" means medical expense and other expenses associated with medical treatment reasonably related to the work injury. Medical mileage expense will be paid at the current federal rate.
 - b) "WEEKLY BENEFIT" means 66 2/3 percent of the employee's Average Weekly wage. In the case of temporary partial disability, the weekly benefit amount is 66 2/3 percent of the difference between the employee's average gross weekly earnings at the time of the injury and the employee's earnings while temporarily working at the lesser paying job. The maximum weekly benefit payable is \$750.00.
 - c) "TEMPORARY TOTAL DISABILITY BENEFITS" (TTD benefits) means the weekly benefit paid when an injury results in three (3) or more calendar days of disability with a two (2) week retroactive period.
 - d) "TEMPORARY PARTIAL DISABILITY BENEFITS" (TPD benefits) means the weekly benefits paid if the employee returns to work at a lesser paying job, because of the injury but before the employee reaches maximum medical improvement.
 - e) "PERMANENT PARTIAL DISABILITY BENEFITS" (PPD benefits) means the weekly benefits paid for the partial loss of a scheduled member or a non-scheduled member.
 - f) "PERMANENT TOTAL DISABILITY BENEFITS" (PTD benefits) means the weekly benefits paid for a non-scheduled injury when the job-related injury

leaves an employee totally and permanently incapacitated. This means that the employee's physical disability causes the employee to be unable to secure anything more than sporadic employment resulting in an income of less than 90% of their average weekly wage at the time of injury.

g) "DEATH BENEFITS" means the weekly benefits paid to dependents as a result of any fatality of the employee as a direct result of their employment.

18. "SCHEDULED MEMBER INJURIES" mean injuries that result in permanent partial impairment to the shoulder, arm, hand, thumb, finger, hip, leg, foot, toes, eyes, or ears as defined in Section 7-1-22.

19. "SPOUSE" means person to whom you are legally married or domestic partner.

Section 7-1-5. Right to Occupational Injury Benefits.

1. Every covered employee, or the employee's dependents in case of death, who sustains an injury directly related to their employment shall be entitled to receive benefits under this program.

2. Except in the case of acute medical emergencies, the Ponca Tribe of Nebraska has the right to select the employee's health care provider. The "authorization to treat" form (Form O) is required for ALL medical appointments. This form must be obtained prior to the appointment and returned to the employer prior to the start of the next scheduled shift.

3. The Administrator shall pay usual and customary expenses for necessary medical emergencies and/or authorized medical treatment reasonably related to the compensable injury.

Section 7-1-6. Exclusions From Coverage.

The following shall be excluded from coverage under this program:

1. No benefit of any nature shall be payable for injury and/or death resulting from self-inflicted injury or willful injury of another. If the injury follows

repeated documented violations of work rules, it may be regarded as a self-inflicted injury. If the injury resulted from a documented violation of safety policies, determined after a thorough investigation by the Safety Committee, it may be regarded as a self-inflicted injury and therefore not compensable.

2. No benefit shall be payable for the death or permanent disability of an employee if the employee's death or permanent disability is caused by, aggravated, or continued by, an unreasonable refusal or neglect to submit to or follow any competent or reasonable surgical treatment or medical aid or advice by a qualified health care provider.
3. No benefit shall be payable for injury where refusal or failure of the injured employee to obey written or verbal instructions by the employer, or failure or refusal to use a safety device or appliance furnished by the employer, which if obeyed or used, would have reasonably prevented or significantly reduced the likelihood of injury or death.
4. No benefit of any nature shall be payable for injury and/or death caused or contributed to by the employee's use of any illegal substance, including but not limited to narcotics and hallucinogens, or any gas or fumes taken or inhaled voluntarily, or by voluntary poisoning, or willful intoxication or abuse of any prescription medication.
5. No benefit shall be payable for any covered employee injured or killed while intoxicated regardless of whether or not the intoxicated condition was the proximate cause of the injury or death. Therefore, it is necessary only to prove that the covered employee was intoxicated at the time of the injury to deny benefits under this Tribal Ordinance, but the burden to prove intoxication shall at all times rest with the employer.
6. No benefit shall be payable for psychological or mental injuries.
7. Off-work but on premise. An employee shall not be a covered employee if the employee suffers an injury at his place of employment outside his beginning and

ending work time in which he/she receives wages, unless it falls under course of Employment.

8. An injury occurring to an employee while on the way to or from work is not within the course of employment except when such travel is directly connected with the employee's work. This exception will not apply if the employee deviates from a reasonably direct route of travel, or is not acting in the interest of the employer at the time of injury.
9. For traumatic injury: The claim shall be denied if there is no specific incident which caused the injury, and if the employee is not performing employment related duties. The claims shall also be denied if not reported within 48 hours from the time the injury occurred.
10. For cumulative injury: The claim shall be denied if the employee fails to report a claim within 30 days from the initial onset of pain or injury. The claim shall also be reduced for cumulative injury based on the employee's length of employment.
11. Compensation shall not be paid for any period during which the employee is incarcerated, regardless of the nature of the penal institution in which the employee is incarcerated, and regardless of the reasons for or period of such incarceration. Such incarceration shall not begin the running of any time period during which an employee is eligible for benefits.
12. Compensation shall not be paid for any period during which the employee:
 - a. does not have authorization from the company's physician / provider to be off work (the employee is responsible for providing evidence to prove their claim);
 - b. is terminated for misconduct, declines or quits work offered by the employer within the employee's physical restrictions;
 - c. fails to cooperate with reasonable medical or vocational rehabilitation; and or fails to make a diligent effort to find employment;

- d. fails to report any other employment or wages.
- 13. Non-Compliance: If the Administrator determines that there is an issue of non-compliance by the employee with authorized medical treatment, the Administrator will notify the employee in writing they have 7 days to contact them to resolve the non-compliant issue or the Occupational Injury Benefits will be denied from the date of the letter forward.
- 14. Documented evidence that the employee has failed to follow physician's restrictions on two or more occasions, while either at work or outside the work place will result in a denial of future Occupational Injury Benefits.
- 15. Any employee who leaves the employment of a covered employer and who later seeks employment with the same employer or another covered employer shall declare in writing whether the employee is claiming any injury under this section from the prior employment. Failure to declare a claim of prior injury shall be deemed a claim of no injury and any subsequent injury under this section shall be determined.
- 16. Claims due to tobacco use or second-hand smoke in the workplace shall not be compensable.
- 17. Claims due to injuries caused by mold in the workplace shall not be compensable.

This section shall not be construed to require the employee to undergo unreasonably invasive medical procedures, nor to require the employer to provide vocational rehabilitation.

Section 7-1-7. Aggravation of Pre-Existing Injury.

For the purpose of settlement for permanent partial or permanent total disability, the amount of the benefit for that disability as set forth in the schedule of benefits may be reduced or denied in its entirety by the Administrator for pre-existing disability, whether work related or not. Apportionment for prior, medically documented disability ratings may be used in calculating any permanent partial or permanent total disability.

Section 7-1-8. Disclosure of Pre-Existing Disabilities.

1. If requested, all employees of the Ponca Tribe of Nebraska shall disclose any pre-existing physical or mental disorder or disability known to the employee that would prevent them from performing in a reasonable and safe manner the activities involved in the position applied for or in which they work. Following such request, failure by the employee to disclose, prior to commencement of employment, a physical condition which prevented the employee from safely performing the work for which the employee was hired and which was a substantial contributing factor to the injury shall exclude the employee from coverage under the provisions of this Ordinance.
2. Any claim resulting from an employment related aggravation of a pre-existing condition which was not disclosed as required under this worker benefit program may be declined by the Administrator under this program if the claimant had knowledge of the pre-existing condition and failed to disclose the pre-existing condition as required by subsection (1).

Section 7-1-9. Benefits as an Exclusive Remedy.

The right to receive benefits pursuant to the provisions of this program for injuries sustained by a covered injured employee regardless where the injury occurred shall be the exclusive remedy against the Ponca Tribe of Nebraska, its agents, officials and employees.

Section 7-1-10. Choice of Remedy as Waiver of Alternate Remedy.

1. An employee or the employee's dependents or legal representative, who accepts occupational injury benefits, waives the right to exercise any other legal remedy.
2. An employee or the employees' dependents or legal representative, who exercises any other legal remedy against an employee, agent, or official of the Ponca Tribe of Nebraska, waives any right to occupational injury benefits.

Section 7-1-11. Access to Medical Record and Medical Reports.

1. An employee, by filing a claim under this program, waives any claim to doctor/patient privilege. The Authorization to Release Medical Records form (Form B)

must accompany the First Report of Occupational Injury form (Form A).

2. The Ponca Tribe of Nebraska or the Administrator shall have the right to present specific questions required to evaluate the claim, and to request a full and complete report from the employee's physician or surgeon or other medical worker at any time and in the form and detail as deemed necessary.
3. The employee shall provide the Ponca Tribe of Nebraska or the Administrator with Form B to obtain any medical information. Failure to execute a waiver or release for such medical information will result in an automatic denial of all benefits.

Section 7-1-12. Report of Injury.

1. No compensation shall be due under this Ordinance unless the employer has clear reason to know of the injury or the employee provides the Human Resource Department with notice of the injury within 48 hours for traumatic injuries and within 30 days after the onset of a cumulative injury. A traumatic or cumulative injury or occupational disease is deemed to have occurred when the employee knows or has reason to know that the injury or disease is related to the employee's work activities, or when the injury or disease causes the employee to be unable to work, whichever occurs first.
2. All incidents resulting in death must be reported by our Human Resource Department to the Administrator within seventy-two (72) hours of the time of occurrence or knowledge of the alleged occurrence by the Ponca Tribe of Nebraska.
3. When an injury or occupational disease occurs, the employee or claimant must also file their claim with the Human Resource Department to be forwarded to the Administrator within the same time specified by Section 7-1-13.
4. Time limits shall be calculated using calendar days.

Section 7-1-13. Time Limit for Filing of Claim.

1. Traumatic and Cumulative injuries. No compensation benefits shall be paid or awarded under this Ordinance unless the written claim for benefits is made within thirty (30) calendar days from the date of the claimed injury or onset of symptoms in the case of cumulative injury. Within thirty (30) calendar days of the date of the written notice of claim, the employee must seek treatment, or no *benefits* will be payable hereunder.
2. A claim for benefits will be precluded from being processed where more than one (1) year has elapsed from the date of last medical treatment for a covered injury or where more than one (1) year has elapsed from the date after the employee has reached maximum medical improvements, and the employee has not prosecuted the claim.
3. In the case of occupational disease, no compensation benefits shall be paid or awarded under this Ordinance unless the employee or the employee's dependents or representative file a claim within ninety (90) days from the date of discovery of the disease and its probable relationship to the employment, but in no event longer than ninety (90) days from the date employee terminates employment with the Ponca Tribe of Nebraska or ninety (90) days after the date of death, whichever occurs first.

Section 7-1-14. False Statement or Representation to Obtain Benefits and Forfeiture.

Any person who willfully makes a false statement or representation in order to obtain any benefits under this program shall forfeit all rights to such benefits.

1. The employee shall repay such compensation that the employee is not entitled to and is received because of clerical error, mistaken identity, innocent misrepresentation mistakenly acted upon, or any other circumstance of a similar nature and not induced by fraud.
 - a. Recoupment may be made from any future payments due the employee on any workers benefit claim. Or if no future payments are due to the employee a payment plan shall be arranged between the Administrator and employee.

- b. The Administrator or employer must make a claim for such repayment or recoupment within one year of when the compensation is paid or the repayment shall be barred.
 - c. The Ponca Tribal Court may waive, at its discretion and in whole or in part, the amount of such timely claim where the recovery would be against equity and good conscience.
 2. Whenever the payment of compensation to a worker has been induced by proven fraud, the recipient shall repay any such compensation together with a penalty of fifty percent (50%) of the total of any such payments.
 - a. Recoupment may be made from any future payments due the worker on any worker benefit claim. Or if no future payments are due to the employee a payment plan shall be arranged between the Administrator and employee.
 3. The Administrator or employer shall make a claim for repayment or recoupment within one (1) year of discovery of the fraud.

Section 7-1-15. Medical Examination of Employee; Periodic Independent Medical Examinations; Effect of Refusal or Obstruction of Examination or Treatment.

1. An employee shall have only one treating health care provider at a time coordinating the employee's medical care. All medical appointments must be approved and authorized by the employer, except in acute emergency situations. Any change in a health care provider must be approved by the Administrator prior to engagement of a new health care provider, except in emergency situations. Services rendered by a health care provider prior to such approval shall not be the responsibility of the employer and shall not be paid.
2. The Administrator may reduce or suspend the benefits of an employee whose actions interfere with or prolong the employee's recovery, including where the employee fails to timely seek appropriate medical attention, or reports ongoing treatment by a treating physician when in fact such treatment is not occurring, or who fails or refuses to seek treatment with the employer's approved medical providers. If an employee misses

two (2) consecutive scheduled appointments without authorization from the Administrator it could result in a suspension of all benefits.

3. An employee entitled to benefits shall submit to independent medical examinations at a place reasonably convenient for the employee, if and when requested by the Administrator.
4. The request for medical examination shall fix a time and place for such examination, having regard to the convenience of the employee, the employee's physical condition and ability to attend. The employee may have a health care provider present at the examination if procured and paid for by the employee.
5. If the employee refuses to submit to the medical examination or obstructs the examination, the employee's right to benefits shall be suspended until the examination has been made, and no benefits shall be payable during or for such period of refusal.

Section 7-1-16. Waiting Period.

No weekly benefits shall be allowed under the provisions of this program for any injury or occupational disease injury, which results in a disability lasting less than three (3) consecutive days. If the worker's disability lasts for more than fourteen (14) days following the date of the injury, weekly benefits shall be allowed from the date of disability. The date of injury is not considered as a "date of disability" to count towards the waiting period. An employee may not recover weekly benefits for the period of time that they are compensated by annual or sick leave, at the employee's option. Annual or sick leave time taken shall apply against the waiting period of weekly benefits. If the employee files for and receives short term or long term disability benefits through their employer for a Worker Benefit Claim, the employee has waived their rights to recover compensation under the Ordinance.

Section 7-1-17. Temporary Total Disability (TTD).

1. Temporary Total Disability (TTD) benefits are payable until an injured employee returns to work, is medically capable of returning to employment substantially similar to employment in which the employee was engaged at the time of injury or until the date the employee reaches maximum medical

improvement, as defined in Section 7-1-21 whichever occurs first. If the employer offers work within the employee's restrictions and the employee refuses to accept the work, the employee shall not be paid TTD benefits during the period of refusal. TTD benefits will end on the date the physician releases an employee to full duty work, or in the case of modified duty work, the date the employer notifies the employee of work availability.

2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.
3. If an employee is terminated for a specific cause and the employer has documentation that they have light duty work available within the employee's physical restrictions, the employee is not entitled to compensation under the Occupational Injury Benefits.

Section 7-1-18. Temporary Partial Disability (TPD).

1. Temporary Partial Disability (TPD) benefits are payable when the employee returns to work at a lesser paying job, because of the injury. TPD benefits are payable pursuant to the following:
 - a) If the employer offers the employee work within the employee's restrictions, the employee shall accept the work and be paid temporary partial benefits based strictly on wage loss. If the employee refuses to accept the work, the employee shall not be paid TPD benefits during the period of the refusal.
 - b) If work is not offered by the Ponca Tribe of Nebraska and the employee elects to perform work with a different employer, the employee shall be paid TPD benefits.
2. As long as the employer allows the employee to make up any missed time for medical appointments, TPD benefits will not be paid for any missed time for those medical appointments.

3. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

Section 7-1-19. Permanent Partial Disability (PPD).

1. When an injury results in a permanent disability, the employee may be entitled to Permanent Partial Disability (PPD) benefits based upon the degree of permanent disability. Benefits begin at the termination of TTD or TPD benefits. If all of the weeks have accrued at the time of the payment, a lump sum payment will be issued. If the weeks have not accrued, the benefits will be paid out weekly until all weeks owed are exhausted. There are two types of permanent partial disability benefits:
 - a) Scheduled member disabilities - An employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The schedule shown in Section 7-1-22 represents the number of weeks of benefits payable for 100% loss, or loss of use, of the body member. If the PPD rating is less than 100%, the percentage rating is multiplied by the number of weeks shown in the schedule of benefits to determine the PPD benefits payable.
 - b) Non-scheduled member disabilities - An employee's entitlement to PPD benefits when a scheduled member is involved is based on functional impairment as assigned by a health care provider. The number of weeks for a body as a whole are 400.
2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.

Section 7-1-20. Permanent Total Disability (PTD).

1. Permanent Total Disability (PTD) must be demonstrated by objective medical evidence. PTD applies only to

unscheduled injuries and the factors set forth in (Section 7-1-19) are used to determine if an employee is entitled to PTD benefits.

2. Where an employee is entitled to benefits under this section and death ensues from any cause unrelated to the injury for which benefits were paid, all unaccrued benefits shall cease and all liability of the Ponca Tribe of Nebraska shall terminate.
3. PTD benefits could cease or be reduced once the employee is eligible for and receiving Social Security Income (SSI).

Section 7-1-21. Maximum Medical Improvement and Rating; Termination of Benefits.

When an injured or disabled employee's physical condition reaches the point after which no significant recovery from or significant lasting improvement to a personal injury can reasonably be anticipated, based upon reasonable medical probability, the following procedures will be applicable:

1. The employee is considered to have reached maximum medical improvement and the employee's condition shall then be considered stationary and ratable.
2. On claims where compensation has been paid, the employee shall be notified in writing by the Administrator that the employee's condition is stationary and ratable. If the physician assigns a permanent partial disability rating as a result of the injury, the notice shall also include whether a functional impairment rating has been assigned to the injury and the amount that the Administrator determines is due under Section 7-1-22. This notice is referred to as the notice of Maximum Medical Improvement.
3. The Administrator shall make the initial permanent partial disability payment within thirty (30) days of service of notice of **maximum medical improvement unless the Administrator disputes the rating. If such a dispute exists, the Administrator shall notify the employee in writing regarding this.**

4. The employee may request an appeal of a notice of maximum medical improvement under the procedure for disputed claims in Section 7-1-24.

Section 7-1-22. Schedule of Benefits.

1. Scheduled Member Injuries:

| | | |
|-----|--|------------|
| 1. | SHOULDER | 250 weeks |
| 2. | ARM | 250 weeks |
| | a) 2/3 of arm between shoulder & elbow | |
| 3. | HAND Total | 190 weeks |
| 4. | THUMB | |
| | a) Total | 60 weeks |
| | b) More than one phalange | 60 weeks |
| | c) At distal phalange | 30 weeks |
| 5. | INDEX FINGER | |
| | a) Including metacarpal | 35 weeks |
| | b) More than one phalange | 35 weeks |
| | c) At distal phalange | 17.5 weeks |
| 6. | SECOND FINGER | |
| | a) Including metacarpal | 30 weeks |
| | b) More than one phalange | 30 weeks |
| | c) At distal phalange | 15 weeks |
| 7. | THIRD FINGER | |
| | a) Including metacarpal | 25 weeks |
| | b) More than one phalange | 25 weeks |
| | c) At distal phalange | 12.5 weeks |
| 8. | FOURTH FINGER | |
| | a) Including metacarpal | 20 weeks |
| | b) More than one phalange | 20 weeks |
| | c) At distal phalange | 10 weeks |
| 9. | HIP | 220 weeks |
| 10. | LEG | |
| | a) 2/3 of leg between hip & knee | 220 weeks |
| 11. | FOOT | |

| | | |
|--------|--|-----------|
| | a) At ankle | 150 weeks |
| 12. | GREAT TOE | |
| | a) Including metatarsal | 40 weeks |
| | b) Loss of more than one phalange | 40 weeks |
| | c) Loss of one phalange | 20 weeks |
| 13. | OTHER TOES | |
| | c) Including metatarsal | 15 weeks |
| | b) Loss of more than one phalange | 15 weeks |
| | c) Loss of one phalange | 7.5 weeks |
| 14. | ONE EYE | |
| | a) Total Blindness | 140 weeks |
| | b) With other eye lost prior to | 200 weeks |
| injury | | |
| 15. | EARS | |
| | a) Total deafness, one ear | 50 weeks |
| | b) Total deafness, both ears | 175 weeks |
| 16. | FOR LOSS OF BOTH SHOULDERS, OR BOTH ARMS, OR BOTH HANDS, OR BOTH FEET, OR BOTH LEGS, OR BOTH HIPS, OR BOTH EYES, OR ANY TWO THEREOF, CAUSED BY A SINGLE INJURY | 400 weeks |

If any portion of the PPD rating is attributable to a preexisting condition, whether previously rated or not, the employee shall receive PPD benefits only for that portion of the permanent injury attributable solely to the work injury.

2. Non-Scheduled Injuries/Industrial Disability shall be paid on the basis of 400 weeks. Permanent total disability benefits for non-scheduled injuries are payable as long as the employee remains permanently totally disabled or until age 65 whichever occurs first.
3. Permanent partial disability ratings are to be secured from a qualified health care provider in accordance with the AMA guidelines or other nationally recognized rating method.
4. Once the Administrator has obtained a permanent partial disability rating the employee may obtain a

permanent partial disability rating from a qualified health care provider of the employee's choice at the Tribe's expense, subject only to the approval of the fee by the Administrator. This opinion must be scheduled within thirty (30) days from the employee's notice of maximum medical improvement. Once the rating is received from the employee's physician of choice, if there is a difference between the two ratings, then the rating average will be taken. This will be the final rating.

Section 7-1-23. Compensation for Death.

If an injury sustained by a worker results in the worker's death within two (2) years following the injury, benefits shall be paid in the amount and to the dependents (as defined in Section 7-1-23.2a,2b). (Death resulting from occupational disease shall be brought within the time limit of Section 7-1-13 (3)):

1. If there are no eligible dependents, benefits shall be limited to the burial expenses, not to exceed \$5,000, and the expenses provided for medical and hospital services for the deceased, together with any accrued benefits up to the time of death, and shall be payable to the estate of the deceased.
2. If there are eligible dependents, death benefits are payable on a monthly basis as follows:
 - a) The surviving spouse or domestic partner if living with the deceased employee at the time of deceased employee's death will receive 50% of the benefits, until remarriage or until age 65, whichever occurs first. If there is no surviving spouse then 100% of the benefits will go to the children.
 - b) Any unmarried child under 18 years of age; or any unmarried child under 25 years of age who is wholly dependent on the deceased employee and is enrolled as a full-time student in an accredited educational institution; or any unmarried child who is physically or mentally incapable of self support and wholly dependent on the deceased employee until age 25, will split the remaining 50% of benefits equally.

- c) If no surviving spouse, domestic partner or children then 100% of the benefits would be equally divided between surviving dependents as defined on page 3.

3. Death Benefit:

- a) Death benefits are limited to the amount covered under the Tribe's current insurance plan and are based off of the deceased employees wage at the time of injury/death.
- b) Burial Expense shall not exceed the amount covered under the Tribe's current insurance plan.
- c) If the number of eligible dependents changes, benefits will be redistributed equally to the remaining eligible dependents.

Section 7-1-24. Procedures For Disputed Claims.

- 1. In the event of any dispute over payment, denial or termination of benefits payable under this program, the claimant shall have the right to appeal the disputed claim as follows:
 - a) Claimant must request reconsideration by the Administrator. The reconsideration request must be made in writing, specifying what action is in dispute, why the claimant disagrees with the Administrator's action and the desired result. Any additional supporting documentation or evidence to be considered must be submitted by the claimant with the reconsideration request unless an extension of time to submit such evidence is specifically requested in the reconsideration request. The request for reconsideration must be filed within thirty (30) calendar days of the date of the Administrator's adverse action or decision. A reconsideration request is deemed filed upon mailing by regular or certified mail. Failure to request reconsideration within that time period is deemed a waiver of any further rights of appeal herein.
 - b) Upon denial of the reconsideration request or an adverse decision of the reconsideration request, the claimant may request a hearing before the

Ponca Tribal Court. The hearing request must be made in writing and shall contain a plain, concise statement of the disputed action of the Administrator, the date of the action and the claimant's reasons for appeal. Any issues not raised in the request for hearing application by either party are deemed waived. Any new supporting documentation or evidence to be considered must be submitted by the claimant with the hearing request unless an extension of time to do so is specifically requested in the hearing request. A request for hearing must be filed by mail or hand-delivered within fourteen (14) calendar days of the date of the Administrator's adverse decision to the Ponca Tribal Court. A hearing request is deemed filed upon mailing by certified mail. Failure to request a hearing within the above time period shall be deemed a waiver of any further right of appeal herein.

2. The burden of proof, throughout the above appeal process, rests on the covered worker to prove that the worker sustained an injury which is directly related to the employment and that the employee is entitled to the benefits claimed under this program.
3. A claimant may be represented in an appeal by any person. Attorney fees shall be limited to twenty-five (25%) of the first \$2,000 of increased benefit and twenty (20) percent of the remaining increased benefit obtained by a claimant or the maximum fee of \$4,500. "Increased benefit" means any benefits above those provided by the original decision of the Administrator. It is the claimant's responsibility to pay the representative.
4. Hearing procedures before the Ponca Tribal Court:
 - a) Upon filing of a request for hearing before the Ponca Tribal Court, a copy of the hearing request and all supporting evidence submitted by the employee shall be sent by the Ponca Tribal Court to the Administrator within fourteen (14) calendar days of receipt of the hearing request. The Administrator, as the adverse party in this proceeding, shall have fourteen (14) calendar days to file a written response with the Ponca Tribal Court, with a copy to the employee. Any

issues not raised at the time of hearing by either party are deemed waived.

- b) A claimant or the claimant's representative shall have the right, in all matters presented before the Ponca Tribal Court, to cross-examine all witnesses and to review all evidence of any nature, as may relate to the matter under consideration. However, attorney fees are limited as provided in Section 7-1-24(3).
 - c) The Ponca Tribal Court, the Ponca Tribe of Nebraska, the Administrator and the claimant shall have the right to cross-examine all witnesses and to perform such discovery activity as may be deemed necessary to fully explore all aspects surrounding the occurrence and injury.
 - d) The Ponca Tribal Court shall not be bound by the rules of evidence or by technical or formal rules of procedure and may conduct investigations in such a manner that is best calculated to ascertain the substantial rights of the parties and to carry out the spirit of the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance. Either party may request development of further medical evidence. The Administrator has the right to designate an examining medical expert at the Administrator's expense. Failure of the employee to comply with any reasonable request for examination will result in dismissal of employee's appeal with prejudice.
5. A full and complete record shall be kept of all proceedings held before the Ponca Tribal Court for investigation, appeals, or the taking of testimony by an electronic recording means. A party may request the proceeding be reported by a certified stenographer at the requesting party's expense.
6. Hearings will be held at the next Tribal Court after receipt of a written hearing request, unless a request for extension of time has been filed by a party. In no event will an employee be deprived of a hearing.
- 7 All parties shall have the right to request a continuance of the hearing after it has first convened for the purpose of further developing evidence.

8. The Ponca Tribe of Nebraska may utilize Tribally approved attorneys as legal counsel during this hearing. A written decision will be issued by the Ponca Tribal Court within ninety (90) days of the hearing, which will become final and binding on the parties.
9. During the pendency of the appeal, claimant shall continue to receive all benefits approved by the Administrator in its original written decision, but shall not receive any new benefits claimed in the appeal. Payments made to claimant during the pendency of an appeal shall not be recouped or recovered by the Administrator or the Ponca Tribe of Nebraska.
10. Any award agreed to by the claimant for benefits under this program shall constitute a full and final settlement and all benefits shall cease upon settlement, except where the award provides for other than a lump sum settlement. If other than a lump sum settlement, the terms of the award agreement shall apply.

Section 7-1-25. Experts .

1. The employee may engage the services of medical or vocational experts for purposes of a disputed claim, at the employee's cost, which is not reimbursable regardless of the ultimate outcome of the dispute. The opinions of such experts will be considered in a disputed case, notwithstanding the lack of authorization under this system.

Section 7-1-26. Liability Of Third Person To Injured Employee; Subrogation Powers.

1. If a covered employee entitled to benefits under this system is injured or killed by the negligence or wrongful actions of another person(s) not in the employ of the Ponca Tribe of Nebraska, such injured employee, or dependents in the event of death, may pursue a remedy against such other person while receiving benefits under this system. If the employee entitled to benefits under this system or dependents do not pursue a remedy against such other person by instituting an action within one year after the cause of action accrues, the claim against such other person shall be deemed assigned to the Tribal Ordinance. Such a claim so assigned may be prosecuted or

compromised by the Administrator for benefits paid. **Acceptance of benefits under this ordinance constitutes an assignment of the employee's rights to the employer to the extent of benefits paid or payable.**

2. If employee or dependents proceed against such other person, occupational injury benefits shall be paid as provided in this program and the Tribal Occupational Injury Ordinance shall have a lien on the amount recovered from such other person to the extent occupational injury benefits were owed or paid. Compromise of any claim by the covered employee or the employee's dependents at an amount less than the weekly benefits owed or paid shall be made only with written approval of the Administrator of the Tribal Occupational Injury Ordinance.
3. The Administrator of the Tribal Occupational Injury Ordinance shall have the right of subrogation for the amount of occupational injury benefits paid under this program, upon the resolution of a claim or completion of a settlement with the claimant.

Section 7-1-27. Schedule of Benefits Payable for Cumulative or Repetitive Arm Injury, Including Carpal Tunnel Syndrome.

Benefits for cumulative or repetitive arm injury, including carpal tunnel syndrome will be reduced if the worker has been employed (based on date of hire) for a limited time as follows:

1. Workers are not eligible for compensation when employed full time for a period up to 4 mos.
2. Workers receive 25% of eligible compensation for a claim made while employed full time for a period of 4-8 mos.
3. Workers receive 50% of eligible compensation for a claim made while employed full time for a period of 8-12 mos.
4. Workers receive 75% of eligible compensation for a claim made while employed full time for a period of 12-18 mos.
5. Workers are eligible for full compensation for a claim after being employed full time more than 18 mos.

6. The time frames, which are provided above should be pro rated for workers who are employed on a part time basis.

SUPPLEMENT I (See Section 7-1-3)

NOTICE TO EMPLOYEES

YOUR EMPLOYER IS INSURED UNDER THE Ponca Tribe of Nebraska TRIBAL OCCUPATIONAL INJURY ORDINANCE

If you have an injury or occupational disease arising out of and in the course of your employment with the Tribe, you may be entitled to benefits as provided by the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance.

NOTIFY YOUR SUPERVISOR IMMEDIATELY OF ANY INJURIES, NO MATTER HOW SLIGHT.

If you fail to do so, you may lose your benefits under the Tribal Occupational Injury Ordinance. In no event shall benefits be paid to an employee who failed to notify their employer within thirty (30) days after sustaining such work related injury.

Your exclusive remedy for any such work connected injury or disease is through the Ponca Tribe of Nebraska Tribal Occupational Injury Ordinance. The State Workman's Comp Commissioner will not accept a claim from you as you are employed by a sovereign Indian Nation which has exclusive jurisdiction over its own Tribal Occupational Injury Ordinance.

NOTICE TO EMPLOYERS

You are required to display this poster conspicuously in a manner that will be of greatest benefit to employees.

It is your responsibility to file a claim on behalf of your employee.

You are required to report any injuries or notification of occupational disease as soon as possible, and in no event, more than ten (10) days after you have knowledge thereof.

It is your responsibility to obtain any necessary forms from the following:

Sovereign Nation Workers' Compensation and Employers' Liability Policy

17 State Street, 29th Floor
New York, NY 10004

TITLE VIII
PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL CONDUCT AND ETHICS ORDINANCE

Section 8-1-1. Authority.

Authority for this Ordinance is found in the Constitution of the Ponca Tribe of Nebraska Articles IV, V, and X.

Section 8-1-2. Officers of the Tribal Council, Duties.

A. Chair: The Chair is the chief spokesperson for the Tribe, represents the Tribe, and corresponds with other governments and entities on behalf of the Tribe, performing the following duties:

Preside at all meetings of the Ponca Tribal Council and Executive Committee in accordance with the Constitution and resolutions of the Tribe and this Ordinance;

Vote in Council only to break a tie;

Provide notice of all General Membership meetings, regular and special meetings of the Tribal Council, and Executive Committee meetings to all Tribal Council members and members of the Tribe;

Act on behalf of the Ponca Tribal Council and the Tribe in accordance with the Constitution, resolutions, laws and ordinances of the Tribe; and

Present all actions taken without Council direction to the next regular meeting of the Tribal Council for ratification. The Chair shall immediately rescind any acts not so ratified. [Note: "Council direction" would include motions, resolutions, ordinances calling on the Chair to act.]

B. Vice-Chair: The Vice-Chair acts in the Chair's stead in all matters pertaining to the office of the Chair, performing the following duties:

Preside at all meetings of the Tribal Council in the absence of the Chair; and Act for the Chair when the Chair's seat is vacant, the Chair has authorized an action because of illness or absence, or the Chair is unavailable and failure to act is likely to harm an interest of the Tribe.

C. Secretary: The Secretary is the official historian of the Tribal Council, performing the following duties:

Keep an accurate record of all proceedings of the Ponca Tribal Council;

Attend to the keeping of the official records of the Tribal Council;

Ensure the prompt and efficient handling of all correspondence pertaining to the business of the Tribal Council and the Tribe;

Keep all official records open to inspection by members of the Tribe at all times during regular office hours of the Tribe;

Ensure that protocols are in place for preservation of official records;

Receive and determine the validity of all referendum and recall petitions;

Review all Tribal Council minutes and ensures accuracy prior to presentation for Tribal Council approval; and

Certify the content and accuracy of Resolutions and Ordinances.

D. Treasurer: The Treasurer is the custodian of all funds in possession of the Tribe from any sources, performing the following duties:

Keep an accurate record of all funds and disburse same in accordance with the vote of the Tribal Council and as designated by the Constitution;

Advise the Tribal Council on prudent reserves and when spending decisions could threaten these reserves;

Keep the books containing the financial status of the Tribe open to audit and examination by the Secretary of the Interior or her designee at all times during regular office hours of the Tribe; and

Ensure that all financial records are open to inspection by members of the Tribe.

Section 8-1-3. Removal.

A. Grounds:

1. Grounds for removal of a Tribal Council Member are the following:

Failure to attend three (3) consecutive Tribal Council meetings without just cause; and

Final finding of guilt by the Tribal Court or a state court or a federal court of a felony or a misdemeanor involving dishonesty, moral turpitude, or of accepting a bribe.

2. Grounds for removal of a Tribal Council Officer, with exception of the Tribal Chair, are failure to carry out the duties of the office for a breach of her/his duty to the Tribe, including ethical violations. Removal of the Vice-Chair, Secretary and Treasurer is only removal from her/his particular office and is not removal from the Tribal Council. If the Chair is removed, he/she will be removed from the Tribal Council as well.

3. A Special Election will be held to elect a new Chair in the event of removal. The Vice-Chair shall assume the responsibilities of the Chair until a new Chair is elected.

B. Procedure: Upon adoption of a motion to consider removal of a Member or Officer from the Tribal Council for a ground stated above, the Tribal Council shall provide that Member with cause for removal and two (2) weeks to answer the charges. The Member shall be given personal notice of the motion to consider removal if they are in attendance of the meeting, or notice by certified mail if he/she is not in attendance when the motion for removal is passed. The Member shall have a full and fair opportunity to answer the charges at the next available regular Council meeting following the deadline for answering. The Member shall only be removed upon a two-thirds vote of the full Council other than the Member subject to removal. In the case of removal of an Officer, s/he shall only be removed upon a two-thirds vote of a full quorum being present. If the absences or crime are related to alcohol/drug abuse and the member is in treatment or counseling, the Council shall consider the Member's treatment or counseling in deciding upon removal.

Section 8-1-4. Duties and Comportment of Tribal Council Members.

All Council Members are to:

Always place the interests of the Tribe first in deliberations, decisions and actions. Show courtesy and respect to each other, to other members of the Tribe, and to those coming before the Tribal Council.

Uphold the Constitution of the Ponca Tribe.

Attend all Council and General Membership meetings except when excused from them.

Stay sober and free from illegal or incapacitating drugs while at Tribal meetings and conducting Tribal business.

Provide input on all matters before the Council, state beliefs, and carefully consider proposals and alternatives.

Keep current on any financial obligations to the Tribe and tribal entities.

Carry out assignments on behalf of the Council in a timely manner.

Serve on tribal committees as designated by the Council.

Follow tribal and federal law at all times.

Follow applicable state law when within state jurisdiction so long as it does not conflict with tribal law and duties as a Council Member.

Keep discussions and information revealed in executive session confidential.

Keep confidentiality under all applicable laws.

Avoid directing employees and others except as authorized by the Council.

Avoid personal involvement in employee matters.

Be an example for the next generations and the community.

Section 8-1-5. Conduct of Tribal Council Meetings.

A. Procedures: Robert's Rules of Order shall serve as guidelines for agenda items. Discussion of items not on the

agenda must wait until "Other Business". The Chairperson will resolve all questions of procedure.

B. Addressing the Tribal Council:

The Council welcomes the words of tribal members, staff, and guests. All are allowed to speak if they request the floor.

Persons speaking are not to be interrupted except for clarification.

Persons are to speak in a civil manner, refraining from personal or malicious attacks. If such attacks are made against a Council Member or staff, the Chair may recess or adjourn the meeting.

Section 8-1-6. Ethics.

A. Conflict of Interest: A conflict of interest occurs when a Member acts against the interest of the Tribe or involves her or himself in an activity in which s/he has or may develop a personal or financial interest adverse to the Tribe. To prevent such conflicts from harming the Tribe, the Members shall:

Not vote or make any decisions on matters in which they, their immediate family, or business associates are negotiating with the Council or seeking the support or action of the Council to their financial benefit. "Immediate family" shall be defined as the following family members that are related by blood: mother, father, grandparent, child, grandchild, brother, sister, or spouse.

Declare the conflict or potential conflict, and may debate the matter after full disclosure;

Avoid apparent conflicts of interest by declaring conflict when in doubt.

B. Independent Action: To ensure that Members exercise their independent judgment in the best interest of the Tribe, the Members shall not:

Solicit or accept, directly or indirectly, any bribes and kickbacks as defined by criminal statutes;

Accept gifts of more than nominal value from any person or group interested in doing business with the Tribe or in influencing a decision or action of the Member. This does

not include ceremonial and traditional gifts, such as those given at giveaways, Christmas and birthdays, by family and friends, or to dignitaries. Tribal Council members who receive gifts while acting in their official capacity, shall report the gift to the Executive Committee.

C. Misuse of Power: To ensure that Members always set the highest example for the people living and of the next generations, the Members shall not:

Knowingly destroy, damage, or hide records and documents of the Tribe;

Falsely represent the Tribe or commit the Tribe's resources;

Threaten, coerce, or intimidate a person or group;

Misappropriate or misuse funds or credit of the Tribe;

Make personal use of tribal property, that is not available to all tribal members, employees, or contractors with the Tribe;

Use title for personal gain or in personal business.

D. Consequences for Breach of Duty, Ethical Violations

The Council may reprimand or suspend a Council Member for breaching her/his duty to the Tribe, including ethical violations. Reprimand or suspension requires a majority vote of the Council with at least two-thirds of the full Council present.

E. Procedure for Imposing Consequences

Upon adoption of a motion to consider consequences to a Member for breach of duty, the Tribal Council shall provide that Member with cause for the proposed consequences in writing and one (1) week to answer the charges in writing. If the Council is satisfied with the answer, they shall rescind the motion. If not, the Member shall have a full and fair opportunity to answer the charges at the next regular Council meeting following the deadline for answering. Failure to appear at the meeting, after proper notice is given, shall result in a default decision against the Member for the alleged breach of duty. If any breach is related to alcohol/drug abuse and the member is in

treatment or counseling, the Council shall consider the Member's treatment or counseling.

Section 8-1-7. Indemnification.

A. The Tribe shall indemnify and defend a Member and/or an Officer who is made a party to a proceeding because of conduct when s/he was a Tribal Council Member against liability for reasonable expenses of litigation, including costs, any judgment, and other costs of defense, incurred if s/he:

1. Conducted her or himself in good faith; and
2. Acted within the scope of their office as a Member or Officer of the Tribal Council

B. The Tribe will not indemnify nor reimburse a Member or Officer in defending against a motion to consider removal from office.

Section 8-1-8. Severability

If any provision of this Ordinance is found to be invalid by a court of competent jurisdiction, that provision shall be severed from this Ordinance and the rest of the Ordinance shall continue in full force and effect.

Section 8-1-9. Sovereign Immunity

A. Nothing in this Ordinance shall be deemed to waive the sovereign immunity of the Ponca Tribe of Nebraska, its officials and staff.

B. Only the Tribal Council may waive sovereign immunity or grant the authority to do so. Any such grant must be adopted by resolution at a Tribal Council meeting in open session prior to the waiver or attempted waiver. This Ordinance does not limit the authority of the Tribal Council to discuss possible consequences of a waiver in executive session.

TITLE IX

CHAPTER 1
GENERAL PROVISIONS

Section 9-1-1. AUTHORITY:

This Ordinance is hereby established in accordance with Article VII, Section 1, Article VIII, Section 2, and Article V, Section 1(k) of the Constitution of the Ponca Tribe of Nebraska.

Section 9-1-2. PURPOSE:

The purpose of this Ordinance is to establish procedures for efficient, fair and honest elections and to ensure the secrecy and sanctity of the ballot. The regulations and procedures provided herein shall be administered in such a way as to accomplish this purpose and intent.

Section 9-1-3. APPLICABILITY & CONSTRUCTION:

(A) This Ordinance applies to all elections, including but not limited to, Tribal Council elections; filling Tribal Council vacancies; recall petitions and elections, referendum, and initiative.

(B) In case of dispute as to compliance with these regulations, substantial, rather than complete compliance shall be deemed adequate.

Section 9-1-4. DEFINITIONS:

(A) "ACCUSED OFFICIAL" means an elected or appointed member of the Ponca Tribal Council who has been accused of misconduct, as defined in Section 9-8-2 of this ordinance, and whose removal from the Tribal Council is being sought by recall.

(B) "BALLOT" includes a mail-in ballot.

(C) "CANDIDATE" means a person whose name is on the ballot to be voted upon for nomination/election at any election.

(D) "CONSECUTIVE TERM" means a term of office which follows in order without interruption and is successive. A person may serve two (2) consecutive terms, sit out until the next scheduled general election and may run again.

(E) "CONSTITUTION" means the Constitution of the Ponca Tribe of Nebraska.

(F) "DISTRICT BOARD" means the entity appointed by the Election Board for each District to assist it in executing the duties of conducting elections.

(G) "ELECTION" means any election whatsoever held under the laws of the Ponca Tribe of Nebraska."

(H) "ELECTION BOARD" means the entity provided for under the Constitution to supervise all elections, verify petitions, and perform other election related duties set forth herein and the Constitution.

(I) "ELIGIBLE VOTER" means a Ponca tribal member who has reached age eighteen (18) or older on or before Election Day and is not incapacitated.

(J) "ENROLLMENT SPECIALIST" means the tribal official whose duty it is to verify enrollment with the Ponca Tribe of Nebraska.

(K) "ENROLLMENT DEPARTMENT" means the tribal division whose duty it is to oversee enrollment in the Ponca Tribe of Nebraska.

(L) "GENERAL ELECTION" means the election which shall be held on the first Tuesday of November in even-numbered years, as outlined in Article VII of the Constitution.

(M) "IMMEDIATE FAMILY" means mother, father, child, or spouse.

(N) "INCAPACITATED" means an individual eighteen (18) years of age or over who is incapable of managing his or her own legal, financial, and personal affairs as determined by a physician or a court of law, or by their own grant of a durable power of attorney that has taken effect.

(O) "INVALID BALLOT" means a ballot which is forged, fraudulent, fraudulently obtained, cast by an ineligible voter, or otherwise legally invalid.

(P) "MAIL-IN BALLOT" means the official ballot of a Ponca Tribal election mailed to registered voters by First Class, Non-Forwardable mail and which may be returned to the Election Board through the U.S. Postal Service, Federal Express, United Parcel Service, or other acceptable mailing service prior to the closing of the polls.

(Q) "MAJORITY" means one more than one half of the votes cast for a particular office, measure, or election.

(R) "MALFEASANCE" means the commission of some act which is illegal or unlawful or an act which is wholly wrongful.

(S) "MISFEASANCE" means the improper performance of some act which a person may lawfully do.

(T) "OBSERVERS" means those individuals who desire to observe the election process pursuant to Section 9-5-5.

(U) "POLL BOOK" means the book provided by the Election Board pursuant to Section 9-5-4.

(V) "REGISTRAR" means the Enrollment Specialist unless otherwise specified by the Election Board in accordance with this Ordinance.

(W) "SPECIAL ELECTION" means a duly called and authorized election other than a general election, including but not limited to elections held pursuant to Article VIII and Article IX of the Constitution.

(X) "REGISTERED VOTER" means one who is qualified to vote by reason of meeting all the requirements of this Ordinance.

(Y) "SPOILED BALLOT" means a ballot that (1) has not been marked; (2) has been marked with more than one choice where only one choice is allowable; (3) is otherwise illegible; or (4) where voter choice is not clear.

(Z) "VOTER REGISTRATION LIST" means the list of registered voters qualified to vote in tribal elections.

CHAPTER 2 ELECTION BOARD

Section 9-2-1. ESTABLISHMENT AND PURPOSE.

(A) In accordance with Article VII, Section 4 of the Constitution, an Election Board is hereby established to conduct elections in compliance with the procedures described in this Ordinance and in particular:

- 1) To see that the name of each person offering to vote is on the official voter registration list.
- 2) To ensure notice requirements are met.

- 3) To verify petitions.
- 4) To keep the ballot boxes locked at all times except when ballots are being counted.
- 5) To ensure that the requirements and procedures under this Ordinance are carried out and enforced.
- 6) To certify and post election results.
- 7) To work with the Ponca Tribe Enrollment Department to accomplish the tasks listed.

(B) To carry out the purpose described in Section 9-1-2 of this Ordinance to ensure efficient, fair and honest elections and to ensure the secrecy and sanctity of the ballot, the Ponca Tribal Council may retain the services of an independent, outside entity to assist the Election Board with the duties described in this Section, provided, however, that the Election Board's decision with respect to any said duties shall be final.

Section 9-2-2. COMPOSITION.

(A) The Election Board shall consist of one (1) chairperson and at least two (2) representatives from the general members of the Ponca Tribe of Nebraska. If possible, the representatives may consist of one (1) member from each Ponca Tribe voting district if each district has a member willing to serve. If not, the Tribal Council may appoint two (2) members from a single voting district. In no event will the Election Board have less than three (3) members. The Election Board shall be appointed by a majority vote of the Ponca Tribal Council in January following the General Election.

(B) Individuals interested in serving on the Election Board must submit a letter of interest with a release of information for felony background checks to the Tribal Council. The Tribal Council shall publish notice in the "Ponca Tribe Newsletter" and/or Tribal Web site, concerning vacancies on the Election Board and how tribal members can apply to fill said vacancies, including the deadline for application.

Section 9-2-2.1 QUALIFICATIONS.

To be qualified to be appointed to the Election Board, a person

- 1) Shall be an enrolled member of the Ponca Tribe.
- 2) Shall be a resident of the district from which they are appointed.
- 3) Shall be eligible to vote in the election for which they will serve as an Election Board member.
- 4) If convicted of a felony, shall have completed their sentence requirements, including any parole, and two (2) years shall have passed since that completion.
- 5) Shall not have been convicted in any court of any jurisdiction of a crime involving the theft of Ponca tribal funds or property irrespective of any pardon or restoration of civil rights for said offense.
- 6) In accordance with Article VII, Section 4 of the Constitution, shall not be a Ponca Tribal Council member, candidate for office, or any member of their immediate family.

Section 9-2-2.2 ELECTION BOARD RECORDS.

Members of the Election Board shall elect a Secretary to ensure that records are kept of all activities and that all notice requirements are met.

Section 9-2-2.3 QUORUM.

Three (3) members of the Election Board shall constitute a quorum for conducting business.

Section 9-2-3. TERM OF OFFICE.

The term of office for members of the Election Board shall be for four (4) years and shall expire on February 1. Each member of the Election Board shall hold office until his or her successor has been appointed and has qualified.

Section 9-2-4. DISTRICT BOARDS.

(A) The Election Board may establish District Boards for each voting district to assist in conducting elections. District Boards shall consist of at least two (2) members from that district. The District Boards shall be established after candidates for office have been certified by the Election Board and in no case may a member of a District Board be a candidate for office or a member of the immediate family of a candidate

for office in that district. District Boards shall serve their term only during the term of the election for which they are appointed to assist.

(B) It shall be the duty of the Election Board to conduct an orientation for all District Board members prior to the date of the election.

Section 9-2-5. REMOVAL.

A member of the Election Board or of any District Board shall be removed from office by majority vote of the Tribal Council only for the following reasons: (1) Violating or permitting violation of this Ordinance; (2) Neglect of duty; (3) Malfeasance in the handling of election procedures; (4) Acceptance or solicitation of bribes; (5) Unexcused absence from three (3) or more board meetings; (6) Any crime committed against the Ponca Tribe which results in a conviction or admission of guilt, (7) When an immediate family member is placed on the ballot or, (8) Upon the happening of any event which would have made the board member ineligible for appointment if the event had occurred prior to appointment. A Board Member shall automatically tender their resignation as a Board Member upon submitting a petition to run for Tribal Council.

Section 9-2-6. VACANCIES.

Any vacancy on the Election Board shall be filled by majority vote of the Tribal Council at the next regularly scheduled meeting of the Tribal Council. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy. Vacancies on a District Board shall be filled by the Election Board. The term of a board member appointed to fill a vacancy shall expire at the end of the original term of the board member whose position was filled.

Section 9-2-7. ELECTION RECORDS.

The Election Board shall be responsible for the maintenance of the records of all elections, petitions for recall, petitions for initiative and referendum and any other records related to the Election Board's responsibilities under this Ordinance. Records shall be kept at the Ponca Tribal Headquarters in a locked cabinet. The following records shall be kept for all notices:

- 1) Names and addresses of persons to whom notices are mailed;
- 2) Date of Mailing; and
- 3) A copy of each return registration request.

Section 9-2-8. COMPENSATION.

Members of the Election Board and District Boards shall be compensated. Compensation shall be set by the Ponca Tribal Council. Election Board members shall be paid for mileage for every Election Board meeting attended.

**CHAPTER 3
ELIGIBILITY TO VOTE**

Section 9-3-1. ELIGIBILITY.

All Ponca Tribal members who have reached the age of eighteen (18) years of age or older by the Election Day and are not incapacitated shall be eligible to register to vote in any election.

Section 9-3-2. REGISTRATION.

No member of the Ponca Tribe shall be eligible to vote in any Ponca Tribal election unless the member has registered to vote in accordance with the rules prescribed in Chapter 4 of this Ordinance.

Section 9-3-3. TRIBAL COUNCIL ELECTIONS.

All registered voters shall be entitled to vote for the position of Chairperson. For district council members, only those registered to vote in that district shall be entitled to vote for candidates of that district.

Section 9-3-4. ELIGIBILITY TO VOTE IF TEMPORARILY ABSENT.

If an eligible voter is temporarily absent from his or her district due to college attendance, military service, physical or mental disability, or incarcerated for a misdemeanor, the eligible voter shall vote within the district for which he or she was a resident prior to the temporary absence but only during the period of temporary absence. Those registered voters currently serving out of the country in the military may be allowed to vote by fax to a dedicated machine to be secured in the Registrar's Office

**CHAPTER 4
VOTER REGISTRATION**

Section 9-4-1. REGISTRATION REQUIRED.

Only registered voters will be entitled to vote in tribal elections.

Section 9-4-2. DESIGNATION OF REGISTRAR.

The Enrollment Specialist shall be designated as the official Registrar, located at a Tribal Office in Niobrara, Nebraska to receive voter registration forms. Should the Enrollment Specialist position be vacant, is a candidate for office, or has an immediate family member as a candidate for office, the Election Board may designate an alternate Registrar. The Registrar shall be responsible for receiving all registration forms and verifying their validity. The Registrar shall prepare a voter registration list according to the registration books in accordance with this Chapter. The Election Board shall check the voter registration lists according to districts with the registration books before the election process begins and again before balloting begins to ensure their accuracy.

Section 9-4-3. REGISTRATION PROCEDURE.

- (A) There shall be open registration at all times.
- (B) The Registrar will be responsible for:
 - 1) Mailing registration forms to those members who are eligible to register to vote under Chapter 3, Section 1, of this Ordinance, those members who have not previously registered, and all newly enrolled members of the Ponca Tribe who are now eligible to vote.
 - 2) Receiving all registration forms and verifying the validity of each with the assistance of the Enrollment Department.
 - 3) Marking each registration form received to indicate the date received.
 - 4) Compiling a voter registration list after passage of the deadline date for returning and receiving registration forms, in alphabetical order by

enrolled last name and arranged by voting districts, certifying the accuracy and eligibility of the names placed thereon.

(C) The Election Board shall:

- 1) Check the voter registration lists according to districts with the registration books before the election process begins and again before balloting begins to ensure their accuracy.
- 2) Review and approve or disapprove all voter registration lists in accordance with this Chapter.

Section 9-4-3.1 VOTER REGISTRATION MAILING.

(A) The voter registration mailing shall include notification of the forthcoming election, the requirement of registration to vote and the deadline for submitting registration forms during General Election years, along with a return envelope addressed to the Registrar.

(B) Registration Forms shall be returned by mail or by personal delivery to the Registrar no later than the first Saturday in September before the election. Failure to comply with this provision shall result in ineligibility to vote.

Section 9-4-4. VOTER REGISTRATION FORM.

All voter registration forms shall be embossed with the Ponca Tribe of Nebraska Seal and shall be in substantially the following form:

ENROLLMENT NUMBER _____
NAME: _____
ADDRESS: _____

DATE OF BIRTH: _____
VOTING DISTRICT: _____

I, _____, hereby
Certify that I am a member of the
Ponca Tribe of Nebraska, and that
I am at least 18 years of age or
will be 18 years of age on the
date of the election.

Signature

Date

Completion of and return of this Registration form is necessary if you desire you become qualified to vote in the forthcoming election. This form must be received no later than the first Saturday in May of each General Election year. This form, upon completion and return to the Election Board Registrar, shall be the basis for determining whether you qualify to have your name placed upon the list of registered voters and to receive a ballot.

Completion of this form is voluntary.

Section 9-4-5. VOTER REGISTRATION LIST.

Upon receipt of all registration forms and passage of the deadline date for returning and receiving registration forms, the Registrar, shall verify the eligibility of every registration form received, and shall compile a voter registration list in alphabetical order and arranged by voting districts. The Registrar shall certify the accuracy and eligibility of the names placed thereon and submit the voter registration list to the Election Board for review and approval or disapproval of individual names. Disapproval shall be based only upon documented proof that a name placed thereon is not eligible in accordance with the Constitution and this Ordinance. If a name shall be disapproved by the Election Board on such proof, the name(s) shall be stricken from the voter registration list and a new voter registration list shall be established. A copy of the approved voter registration list shall be supplied to any District Board and shall be posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs, the tribal headquarters, and at various other public places designated by the Election Board upon mailing of ballots prior to the election. Upon request, a candidate or voter will be provided a copy of the voter registration list.

Section 9-4-6. ELIGIBILITY DISPUTED.

The Election Board shall determine the eligibility of any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list. The Election Board's decision shall be made within ten (10) days following the registration deadline. The Election Board decision shall be final.

Section 9-4-7. DURATION OF REGISTRATION.

Upon certification as a registered voter, the certification shall remain in effect unless the voter changes addresses, relinquishes his/her membership, dies, or otherwise becomes ineligible to vote. If a registered voter changes districts, name or re-enrolls, they must re-register. If a registered voter moves within their district, the voter is responsible for submitting a change of address form before the ballots are sent out, but does not need to re-register.

Section 9-4-8. REGISTRATION UPDATES.

By September 30 of each General Election year the Election Board and the Registrar shall post the approved voter registration list by voting district and determine whether there are any Ponca Tribal members who were not previously eligible to register because of age or non-enrollment or who have moved or who are otherwise now eligible to vote. The Enrollment Department shall notify the Election Board of such individuals. The Enrollment Specialist shall notify the individuals of their right to vote and supply them with a registration form.

**CHAPTER 5
ELECTION PROCEDURES**

Section 9-5-1. NOTICE.

The Election Board shall be responsible for providing notices as required by and in accordance with this Ordinance to all Ponca Tribal members entitled to receive notice under this Ordinance.

Section 9-5-2. BALLOTS REQUIRED.

All determinations of the sufficiency of the number of ballots cast shall be based upon the number of registered voters.

Section 9-5-3. MANNER OF VOTING.

All voting under this Ordinance, including Tribal Council elections, recall elections, special elections, and elections for referendum and initiative, shall be by mail-in ballots as defined in Section 9-1-4.

Section 9-5-4. POLL BOOK.

A Poll Book, a simple ledger with bound and numbered pages, for each election shall be created. Information regarding all aspects of the particular election will be noted, including dates, times, and any untoward circumstances. The Election Committee Members will sign in and out, as will any observers or visitors. Anyone may write personal comments in the Poll Book. The Poll Book shall be part of the official record for the election and secured in the same manner as the counted valid ballots.

Section 9-5-5. OBSERVERS.

The Election Board shall encourage observers throughout the election process. A code of conduct for all observers shall be prepared and posted. An observation area shall be set aside to allow adequate viewing of the process, but not compromise the security of the ballots or any sensitive election related materials. Observer questions regarding the process can be directed to the Election Board Chairperson.

Section 9-5-6. BALLOTS.

(A) The Election Board shall prepare and be responsible for all Tribal Council election ballots throughout the election process.

(B) The Ballots Shall:

- 1) Be prepared clearly and simply so it is easy for the voters to indicate a choice between candidates.
- 2) Consist of a separate ballot for each vacant position which shall declare the position and the district (if applicable) and the names of each individual certified as a candidate for that office.
- 3) Be printed on different color of paper for each district and a different color of paper for Chairperson, with black ink.

- 4) Be stamped in red ink on its face and in the same place "Official Ballot."

(C) If a printed ballot is defaced or ruined prior to the mailing, it shall be marked invalid by crossing through with an X, its number and the type of ballot recorded and secured in an envelope marked invalid printed ballots.

(D) After printing, the master copies of the ballot forms shall be marked through to render invalid and secured with other voter sensitive materials.

(E) The ballots and other election sensitive materials, including the official ballot stamp and red ink, invalid printed ballots, master ballot forms, shall be secured in a locked box at all times in the process when the Election Board is not present. The Election Board Chairperson shall have custody of the key to the ballot box.

(F) Ballots for recall elections and elections for referendum and initiative shall comply with the rules set out in Chapters 8, 9, and 10 of this Ordinance.

Section 9-5-7. MAILING OUT BALLOTS.

(A) The Election Board or its designee shall send out all ballot packets to all registered voters from the voter registration lists. All registered voters are to be in receipt of their ballots a minimum of thirty (30) days prior to the election.

(B) The Election Board shall make a record of all ballots mailed, to whom mailed, the date of the mailing, and the address on the envelope.

Section 9-5-8. BALLOT INSTRUCTIONS AND CERTIFICATION.

(A) The following shall accompany each ballot(s) mailed out:

- 1) An inner envelope bearing on the outside the words "Official Ballot;"
- 2) Instructions for completion of the ballot;
- 3) Notice concerning the deadline for returning and receiving ballots; and

- 4) A certificate form containing the following language:

I, (name of voter), hereby certify that I am a Member of the Ponca Tribe of Nebraska; that I have registered to vote in this election as required by the Ponca Election Ordinance and am entitled to vote in the election to be held (date of election); and I further certify that I marked the enclosed ballot in secret. Signed: _____ (voter's signature)

- 5) A return identification outer envelope in which the ballot in the sealed "OFFICIAL BALLOT" envelope and the certificate shall be inserted. The district number of the voter will be marked on the outside on this envelope. This envelope will be pre-addressed to the Ponca Tribe Office in care of a designated Post Office Box in Niobrara, NE.

(B) The time and date that the ballots were placed in the post office shall be recorded.

Section 9-5-9. REPLACEMENT BALLOT.

If a ballot is destroyed, defaced, lost or not received by the registered voter, the registered voter may obtain a replacement ballot from the Election Board by signing a statement verified on oath or affirmation on a form prescribed by the Election Board that the ballot was destroyed, defaced, lost or not received. The statement must be received by the Election Board at least five (5) working days prior to the election. After the Election Board receives a statement meeting the requirements of this Section, they shall mail a replacement ballot to the registered voter at the address shown on the statement by express mail or other rapid delivery to ensure receipt and return of the replacement ballot for the election. The Election Board shall keep a record of all replacement ballots.

Section 9-5-10. RECEIVING BALLOTS.

(A) The Tribal Council shall authorize that the Election Board open a post office box at Niobrara, Nebraska, for the receipt of voters' ballots.

(B) The Election Board shall accept sealed ballot packets from Federal Express, United Parcel Service, or other accepted mailing services at the Ponca Tribal Office Headquarters. Ballot packets will be secured until the close of the polls. Opened packets or those indicating tampering will not be accepted by the Election Board. Records shall be kept of all such ballots received, from whom, and the postmark. The official ballot must be returned in the return identification envelope.

Section 9-5-11. POLL CLOSING.

The election polls shall officially be closed upon the day of the election by the closing of business hours of the Niobrara, Nebraska Post Office. General Elections shall be held on the first Tuesday in the month of November on even numbered years in accordance with the Constitution.

Section 9-5-12. COUNTING BALLOTS.

(A) Upon the poll closing, the Election Board shall count the ballots and place the results thereof on previously prepared tally sheets. The Election Board may delegate the authority to the District Board(s) to count the ballots for their district(s) and the Election Board shall verify and certify the results accordingly. The Election Board shall count the ballots for Tribal Chairperson and may delegate the authority to the District Board members to verify and certify the results.

(B) The process for counting ballots shall include procedures that promote efficiency yet ensure honest and fair counting of the election results. The Election Board may establish additional procedures provided that each additional procedure shall be supplementary and in addition to the requirements of this Ordinance.

(C) The Election Board Shall:

1) Gather the ballots from the post office into secure, locked ballot boxes and transport to location where ballots shall be counted.

2) Unlock the ballot box, count the return identification envelopes received and sort by districts.

3) Throughout the counting process, keep envelopes, ballots and other election related materials in a secure area accessible to the Election Board only.

4) By districts, open envelopes.

5) Verify the names on the certificates of those who returned ballots against those on the voter registration list.

6) Create a record of all returned ballots, from whom received, and the postmark.

7) If a voter's name and registration is valid, place sealed, official ballots in marked separate containers, one for each district and one single container for the Chairperson.

8) If a voter's name is not on the voter registration list, if the information on the certificate is not readable, or if the return identification envelope is missing either/or the ballot or the certificate, set the ballot and certificate aside in its return identification envelope so it is not counted in the official tally.

9) If the valid official ballot envelope contains only one ballot when one or more ballots may be allowable, the number of missing ballots should be noted to justify the counting process of valid ballots and the return identification envelopes.

10) Count and record the number of valid returned ballots and the number of invalid returned ballots for each district. Tally all districts together. This number should equal the total return identification envelopes received.

(D) The Election Board shall conduct separate tallies of the valid ballots for each District Election and for the Chairperson. If so delegated, the District Boards may assist the Election Board.

1) The Chairperson or designee of the Election Board shall read aloud the name of the candidate selected on each ballot. Two (2) members of the Election Board or its designee shall record the votes cast on separate, previously prepared tally sheets for each District Election and for the Chairperson. The tally numbers from each recorder must match and if they do not, the ballots will be recounted.

2) The Election Board will tally and verify total number of votes cast for each District Election. The number of votes cast, plus the number of spoiled ballots, must equal the number of valid returned ballots for each district.

3) The Election Board, unless the authority has been delegated to the District Board, will tally and verify the total number of votes cast for the Chairperson election. The number of votes cast, plus the number of spoiled ballots, must equal the number of valid returned ballots for the Chairperson election and if they do not, the ballots will be recounted.

4) Any spoiled ballot shall be counted only for the purpose of determining whether the required number of voters have cast their votes. Any spoiled ballots will be counted only as a spoiled ballot.

(E) The Election Board will prepare official information sheets to record all data as required in Sections 9-5-6, 9-5-7, and 9-5-9, to ensure the security of the ballots, and in Sections 9-5-12 to ensure that the number of ballots cast is equal to the number of ballots returned minus those invalid in the return identification envelopes and those cast but spoiled.

Section 9-5-13. CERTIFICATION.

The Election Board or its designee shall prepare election results sheets prior to the counting of the ballots. For Tribal Council elections, there shall be a separate sheet for each position and the names of each candidate for that position shall appear thereon. The number of votes for each candidate shall be placed on the sheet and the winner of that position shall be noted on the top of that sheet. There shall also be a line for spoiled ballots. The members of the Election Board shall certify the results by their signature and date at the bottom of each form.

Section 9-5-14. POSTING RESULTS.

The results of all elections shall be released and posted in the most timely manner in all Ponca Tribal Offices by hand delivery, fax, or sent through the world wide web. Notices of the election results shall also be mailed to all registered voters within ten (10) working days of the date of the election.

Section 9-5-15. RECORDS.

The Election Board shall ensure that the records of the results of each election and all ballots returned are properly secured and safeguarded. Records of elections shall be maintained at the Ponca Tribal headquarters for a period of at least four (4) years.

Section 9-5-16. CHALLENGES TO ELECTION RESULTS.

(A) Any eligible voter, within three (3) working days of posting the election results, may challenge the election results by filing with the Election Board grounds for the challenge, together with substantiating evidence.

(B) The Election Board may hold a hearing to give the challenger an opportunity to present their grievances. The hearing, if scheduled, shall be held within five (5) working days of the filing of the challenge. The Election Board may summarily deny the challenge without a hearing if upon the filing of grievance, there is insufficient evidence to support the grievance.

(C) If, in the opinion of the Election Board, the objections are valid and warrant a recount or new election, the Election Board shall order a recount or new election.

(D) In the case of a new election, the Election Board shall notify the affected candidate(s) that a new election shall be held within forty-five (45) working days after the Election Board issues the order for a new election or recount.

(E) With the exception of the time frame in which the new election shall be held, all other election procedures prescribed herein shall apply to the new election.

(F) In the case of a recount, the Election Board shall notify the affected candidate(s) that a recount shall be held in five (5) working days.

(G) The results of the recount or new election shall be the final order of the Election Board.

(H) The final order of the Election Board may be appealed to the Ponca Tribal Court within three (3) working days of the issuance of the Election Board's final order.

**CHAPTER 6
TRIBAL COUNCIL ELECTIONS**

Section 9-6-1. GENERAL ELECTION DATE:

There shall be a general election held on the first Tuesday in the month of November of even numbered years.

Section 9-6-2. QUALIFICATION FOR OFFICE.

(A) As provided in the Constitution, Article VII, Section 3, to be eligible as a candidate for office of the Ponca Tribal Council, a person must be an enrolled member of the Ponca Tribe and be at least twenty-five (25) years of age. No person shall be eligible as a candidate for office if that person has been convicted of a felony in any federal, tribal or state court unless that person shall have been pardoned and had all of his or her civil rights restored prior to the election by the individual qualified to pardon that person and restore his or her civil rights for that felony conviction. Any person that has been convicted in any court of any jurisdiction of a crime involving the theft of Ponca Tribal funds or property shall not be eligible as a candidate for office irrespective of any pardon or restoration of civil rights for said offense involving Ponca Tribal funds or property.

(B) All candidates shall sign a release of information form to allow the Election Board to perform felony criminal background checks. The Election Board shall perform said criminal background checks prior to certifying a candidate as eligible to run for Ponca Tribal Office. The information obtained from the criminal background check shall be kept strictly confidential to the Election Board and shall be kept for two (2) years. A hard copy of each background or criminal history shall be kept on file by the Election Board.

Section 9-6-3. NOMINATING PROCEDURES.

(A) To be nominated for office and appear on an election ballot as a candidate for office, an individual must:

1) Notify the Election Board in writing of his/her intent to run for office identifying the position and district from which he/she intends to run and requesting a nominating petition.

2) Pay a fifty dollar (\$50.00) filing fee, said fee is non-refundable, payment remitted in the form of a money order payable to the Ponca Tribe of Nebraska.

3) Submit the nominating petition to the Election Board prior to the deadline set for submitting petitions.

(B) Candidates for chairperson must file a petition signed by at least fifty (50) enrolled Tribal members who are either eligible to vote or eligible to register to vote. Candidates for district council members must file a petition signed by at least twenty-five (25) enrolled Tribal members who are either

eligible to vote or eligible to register to vote for the candidate from that district. The signing of one nominating petition does not prohibit the signing of a subsequent nominating petition for another individual who is seeking office from that district.

Section 9-6-4. DEADLINE FOR SUBMISSION OF NOMINATING PETITION/NOTICE.

Beginning May 1st of each General Election year, the Election Board will begin receiving nominations for any position of the Tribal Council. Nominating petitions must be received by the Election Board by June 30. Failure to meet this deadline shall result in ineligibility for office. The Election Board shall provide notice by March 1st of each General Election year to all tribal members the deadline for submitting nominating petitions. Candidates may be notified by any of the following: First Class Mail, Tribal Newsletter, Tribal Web-Site, or email.

Section 9-6-5. CERTIFICATION PROCEDURE FOR REVIEW AND DETERMINATION OF CANDIDACY QUALIFICATION.

The Election Board shall review the background of every candidate submitting a nomination petition to ensure that the candidate meets the qualifications set out in Section 9-6-2 of this Chapter. If the Election Board determines that the candidate meets the qualifications for office, the Election Board shall certify the candidate as a candidate for office. If the Election Board finds that the person does not meet the qualifications, the Election Board shall not certify the candidate and so notify the candidate in writing by certified mail of the reasons therefore and of the right to appeal such decision.

Section 9-6-6. APPEAL OF NON-CERTIFICATION FOR OFFICE.

Upon notice that a candidate is not qualified for office, such candidate may appeal such decision with documented proof to the Election Board. Appeals must be made within five (5) working days of receipt of such notice. The Election Board shall immediately review the appeal and make its decision based on the evidence provided. The decision of the Election Board shall be their final order.

Section 9-6-7. POSTING OF CANDIDATES.

The Election Board shall ensure that the candidate(s) for each office are properly posted at each Tribal Office in

Niobrara, Omaha, Lincoln, and Norfolk in Nebraska, Sioux City and Carter Lake in Iowa. Eligible voters will be notified prior to the election date and distribution of ballots of who the candidates for office are by the Tribal Newsletter and/or the World Wide Web.

Section 9-6-8. RUNOFF ELECTION TO BREAK TIES.

(A) If a tie shall occur among three (3) or more candidates for the top vote getter for any position, the tie shall be broken by runoff election held within 30 days following the election. Only the voters registered for the election shall be allowed to vote in the runoff election. The individual winning the runoff election shall succeed to the position. Should another tie occur, then this tie will be broken by a flip of the coin.

(B) If a tie shall occur between two (2) people for the top vote getter for any position, the tie shall be broken by a flip of the coin.

Section 9-6-9. INSTALLATION OF CANDIDATES.

Successful candidates for office shall be sworn in and installed in office on the third Saturday in January at the Niobrara Headquarters which shall be administered by the Chairperson of the Election Board.

Section 9-6-10. RESIDENCY REQUIREMENTS.

(A) In accordance with Article IV, Sections 7 and 8 of the Constitution, any person elected to the Tribal Council must meet the residency requirements of this Section. The elected Chairperson shall be required to reside within 100 miles of the headquarters of the Tribe or within any service area of the Tribe established by an act of the United States Congress. Any person elected as Chairperson who resides outside the 100-mile distance of the headquarters or who does not reside within a service area shall have ninety (90) days from the date of election to establish a residence as required herein.

(B) All Ponca Tribal Council members elected to the Tribal Council must, within ninety (90) days of the election, have or establish residency in their district as follows:

District 1: Within a 100 mile distance from the borders of Boyd, Knox, or Holt Counties in Nebraska, Woodbury County in Iowa, or Charles Mix County in South Dakota.

District 2: Within a 100 miles distance from the borders of Douglas, Sarpy, or Burt Counties in Nebraska, or Pottawattamie County in Iowa.

District 3: Within a 100 mile distance from the borders of Lancaster County, Nebraska or Hall County, Nebraska.

District 4: Within a 100 mile distance from the borders of Madison, Platte, Stanton or Wayne Counties in Nebraska.

(C) Failure to meet the residence requirements as set forth in this Section shall constitute forfeiture of offices and that person in said election who had the next highest vote total shall succeed to the offices after compliance with the requirement of residency.

Section 9-6-10.1 REDISTRICTING.

(A) The Election Board, with the assistance of the Enrollment Department, shall be responsible for redistricting, if the need arises, with the final approval of the Ponca Tribal Council. Redistricting shall be done only in the event that the districts become substantially uneven in the number of eligible voters.

(B) The Enrollment Department shall notify the Election Board whenever it determines that unevenness exists between any voting district. The Election Board shall redistrict the voting district(s) within 180 days of the Enrollment Department's notification of unevenness if said district(s), provided, however, that no redistricting shall be undertaken once an election process has begun.

(C) Ponca Tribal members shall be given notice of the Election Board's intent to redistrict and allowed input into the same.

Section 9-6-11. TERM LIMITS.

No member of the Ponca Tribe may serve on the Ponca Tribal Council for more than two (2) consecutive terms.

**CHAPTER 7
FILLING VACANCIES ON THE TRIBAL COUNCIL**

Section 9-7-1. APPLICABILITY.

This Section applies to all vacancies on the Tribal Council, including but not limited to the following: (1) vacancies

created by the death, resignation or removal by recall of a council member; (2) vacancies created by removal for failing to attend three (3) consecutive Council meetings without just cause; and (3) vacancies created by conviction of a felony or misdemeanor involving dishonesty, moral turpitude or accepting bribes in any court of competent jurisdiction.

Section 9-7-2. FILLING VACANCIES ON THE TRIBAL COUNCIL.

When a vacancy on the Tribal Council occurs for any of the reasons described in Section 1 of this Chapter, or for any other reason, it shall be the responsibility of the Tribal Council to declare the position vacant in accordance with the Constitution.

Section 9-7-2.1 . PROCEDURES FOR FILLING UNEXPIRED TERMS.

(A) A vacancy in the office of Chairperson or a District Council Member shall be filled by appointment by a majority vote of the full Tribal Council at the next regularly scheduled meeting called for that purpose pursuant to Article XI, Section 1 of the Constitution.

(B) A tribal member(s) interested in serving out the unexpired term shall notify the Ponca Tribal Secretary of said interest, provided, however, that said tribal member(s) meets all of the qualifications for office found in this Ordinance and in the Constitution.

Section 9-7-2.2 . RESIDENCY REQUIREMENTS.

(A) Any individual appointed to fill the unexpired term for Chairperson shall have resided within 100 miles of the headquarters of the Tribe or within any service area of the Tribe for a period of at least ninety (90) days.

(B) An individual appointed to fill an unexpired term of a council member shall have resided within the district for which he/she is appointed to serve for a period of at least ninety (90) days.

Section 9-7-3. TERM OF OFFICE FOR APPOINTED CHAIRPERSON OR COUNCIL MEMBERS.

Any individual appointed to fill a vacant seat on the Tribal Council or as Chairperson shall serve only for the balance of the unexpired term.

If the person is appointed for more than two (2) years of a term to which some other person was elected, this shall constitute as serving a term in accordance with the two-year term limit defined in the Constitution.

CHAPTER 8 RECALL

Section 9-8-1. REMOVAL FROM TRIBAL COUNCIL OFFICE BY RECALL.

In accordance with Article VIII, Section 1 of the Constitution, any elected or appointed person shall be subject to removal from office by recall for cause only as defined in Section 9-8-2 of this Chapter.

Section 9-8-2. GOOD CAUSE DEFINED.

A Tribal Council member may be removed from office upon recall for good cause only. Good cause is defined as gross misconduct, gross neglect of duty, misfeasance or malfeasance in office.

Section 9-8-3. EVIDENCE REQUIRED.

Recall for good cause must be substantiated by documented evidence showing that the accused has committed some act(s) which amounts to good cause as defined by Section 9-8-2 of this Chapter. Evidence shall not be based on hearsay evidence. Documented evidence must be presented with the petition to the Ponca Tribal Secretary and the Election Board.

Section 9-8-4. RECALL PROCEDURE.

Removal from office by recall shall be by petition signed by at least thirty percent (30%) of the voters who were registered to vote in the election in which the official sought to be removed was elected to office. Petitions shall comply with the rules set out in Section 9-8-6 of this Chapter and in Chapter 10 of this Ordinance.

Section 9-8-5. SUBMISSION TO SECRETARY OF PONCA TRIBAL COUNCIL.

(A) All petitions for recall shall be submitted to the Secretary of the Ponca Tribal Council Executive Committee who shall receive and determine, in writing, within forty-five (45) days of its submission, whether the recall petition is valid in accordance with Section 9-8-8 of this Chapter. If the Secretary fails to issue a written determination on the validity of the

recall petition within forty-five (45) days of its submission, the recall petition shall automatically be deemed valid and recall balloting shall be conducted.

(B) If the Secretary of the Tribal Council is the subject of the recall petition, the Election Board shall receive and determine, in writing, within forty-five (45) days of its submission, the validity of the recall petition in accordance with Section 9-8-8 of this Chapter. If the Election Board fails to issue a written determination on the validity of a recall petition within forty-five (45) days of its submission, the recall petition shall automatically be deemed valid and recall balloting shall be conducted.

Section 9-8-6. PETITIONS.

Recall petitions shall conform to the rules prescribed in Chapter 10 of this Ordinance. Only those voters registered to vote for an official at the time he or she was elected to office shall be entitled to sign a petition for recall against that official. The petition shall state the name and official title of the Tribal Council member whose removal is sought and the charges and specific allegations of misconduct against the official which amount to good cause for removal. If the removal of more than one official is sought, a separate petition containing the information and signatures required by this Section shall be submitted for each official sought to be removed.

Section 9-8-7. NOTICE TO THE ACCUSED OFFICIAL.

Upon receipt of a recall petition, the Ponca Tribal Secretary, or the Election Board if the accused official is the Secretary, shall immediately notify, in writing, the accused official of the petition. Said notification shall contain the following:

1. The specific reason(s) stated for removing the official.
2. That the accused official shall have the right to be represented by counsel at his/her own expense, during all stages of the proceedings.
3. That the accused official shall have the opportunity to confront the witness against him/her, to call witnesses on his/her own behalf, and to defend

him/herself against the charge(s) at all stages of the proceedings.

4. The date, time, and place of the hearing on the petition for recall.

Section 9-8-8. SUBSTANTIATED/UNSUBSTANTIATED PETITIONS.

(A) The Ponca Tribal Secretary or the Election Board, as the case may be, shall determine whether a recall petition complies with the requirements of this Chapter and Chapter 10 of this Ordinance and determine whether evidence has been presented to substantiate the reasons stated for removing the accused official. If a recall petition is determined by the Secretary or the Election Board, as the case may be, to be valid in accordance with the rules set out in this Ordinance, the Election Board shall call and set a date for the recall election. The recall election shall be conducted in accordance with this Ordinance.

(B) If the Ponca Tribal Secretary or the Election Board, as the case may be, determines that a recall petition is invalid, the petition shall be dismissed and a letter stating the grounds for dismissal sent to the petitioners. The decision of the Secretary or the Election Board, as the case may be, shall be final.

Section 9-8-9. BALLOTS.

Upon the calling of a recall election in accordance with Section 9-8-8 of this Chapter, the Election Board shall prepare ballots that shall provide a choice of yes or no to recall the accused official. Ballots shall be mailed out and counted in accordance with the rules prescribed in Chapter 5 of this Ordinance.

Section 9-8-10. NOTICE TO REGISTERED VOTERS.

Prior to mailing ballots to registered voters, the Election Board shall send out notices to the registered voters which shall advise the voters of the following: (1) the date of the recall election; (2) that the ballots will be mailed and must be returned by the deadline set; (3) the name of the accused official; and (4) the specific reason(s) stated for removing the accused official.

Section 9-8-11. NUMBER OF VOTERS REQUIRED TO VOTE IN A RECALL ELECTION.

A person shall be recalled if he/she fails to receive a majority of ballots to retain him/her in office on any recall vote.

CHAPTER 9 INITIATIVE AND REFERENDUM

Section 9-9-1. REFERENDUM.

In accordance with Article IX, Section 1 of the Constitution, the exercise of enumerated powers vested in the Ponca Tribal Council may be referred to a vote of the eligible voters of the Tribe upon a written petition signed by not less than forty-five percent (45%) of the total number of voters eligible to vote in the last election. The petition shall clearly state the previous action of the Tribal Council that is the subject of the referendum. The referendum petition shall be filed with the Tribal Chairperson.

Section 9-9-2. INITIATIVE.

In accordance with Article IX, Section 2 of the Constitution, a matter of concern to the Tribe not previously considered or acted on by the Ponca Tribal Council may be presented for ballot vote upon a written petition signed by not less than forty-five percent (45%) of the total number of voters eligible to vote in the last election. The petition shall clearly state the matter of concern to be voted on. Petitions for initiative shall be filed with the Tribal Chairperson.

Section 9-9-3. SUBMISSION TO THE ELECTION BOARD.

Upon receipt of a referendum petition or petition for initiative and referendum, the Tribal Chairperson shall submit the petition to the Election Board which shall determine the validity of the signatures on the petition and compliance with the rules prescribed in the Constitution and this Ordinance. Upon receipt, the Election Board shall make its determination of validity within fifteen (15) working days. If the petition is determined to be valid, the Election Board shall call and set a date for a Special Election which shall be conducted in accordance with Chapter 5 of this Ordinance and held within sixty (60) days of the Election Board's determination of validity.

Section 9-9-4. BALLOTS.

Upon the calling of a Special Election, the Election Board shall prepare ballots which clearly and simply state the ballot issue and which allow the voter to indicate a choice between no more than two alternatives. Each ballot shall be stamped in red ink on its face in the same place "Official Ballot."

Section 9-9-5. NUMBER OF VOTERS REQUIRED TO VOTE IN A SPECIAL ELECTION.

(A) At least thirty percent (30%) of the eligible voters must cast a vote in a Special Election for initiative or referendum or, the Special Election for referendum or initiative shall be deemed invalid by the Election Board.

(B) Majority vote shall prevail on any initiative or referendum vote.

**CHAPTER 10
PETITIONS**

Section 9-10-1. APPLICABILITY.

The rules set out in this Chapter apply to petitions for recall, referenda, initiatives, and to petitions for nominations of candidates for office of Tribal Council and Tribal Chairperson and must be followed accordingly. Failure to follow these rules shall result in the declaring of the petition to be invalid.

Section 9-10-2. SPONSOR.

(A) A sponsor is a candidate and/or a person who obtains signatures on behalf of a candidate.

(B) Each petition must have at least one sponsor, with whom all correspondence and communication with the Election Board shall take place.

(C) The sponsor shall be a tribal member eligible to vote, and his or her name must appear on each petition signature page along with the sponsor's mailing address and phone number.

(D) The sponsor(s) shall be responsible for ensuring that the rules provided in this Chapter are followed.

(E) The sponsor(s) shall certify petitions in accordance with this ordinance.

Section 9-10-3. SIGNATURES.

(A) Every signature appearing on the petition must be signed by the individual personally and witnessed by the sponsor(s), except for those signatures obtained by mail in accordance with Section 9-10-6. A person shall be mentally competent to sign a petition. The name of each signer shall be printed first and then signed and dated. The signatures shall be in ink. No person shall sign the name of another regardless of any permission given or competency of the person whose signature is sought to be signed by another. Any false signature shall be stricken from the petition.

Section 9-10-4. CERTIFICATION.

The Election Board shall prescribe a form for an oath or affirmation that the sponsor(s) witnessed each of the petition signatures, except those obtained by mail in accordance with Section 9-10-6, and that each signature is that of the individual whose name appears thereon. Such oath or affirmation shall be duly notarized. Every person who shall sponsor, circulate, and secure signatures to a petition shall, before filing said petition with the Election Board, attach to the petition the oath or affirmation.

Section 9-10-5. CIRCULATION OF PETITIONS.

Petitions may be circulated only by Tribal members who are eligible to vote in Tribal elections. Persons must sign the entire petition and must be advised that they must be an eligible voter in order to sign.

Section 9-10-6. SIGNATURES OBTAINED BY MAIL.

A sponsor of a petition may obtain the signatures of an eligible voter who lives out of the service area by mail, provided that the signature obtained by mail is duly notarized and such notarization is attached to the petition. The Election Board shall prescribe the proper form for petition signatures obtained by mail.

**CHAPTER 11
AMENDMENTS AND RATIFICATION**

Section 9-11-1. AMENDMENTS.

(A) Amendments to this Ordinance shall only be made by majority vote of the Ponca Tribal Council. Any proposed amendment(s) to this Ordinance shall be approved by the Tribal Council before the end of February of election year to ensure

that the provisions contained herein shall be adhered to during the election process.

(B) The Election Board may recommend amendments to this Ordinance, but is not vested with the power to amend it.

Section 9-11-2. SEVERABILITY.

All previous resolutions, legislation, laws and acts taken by the Ponca Tribal Council which deal with any matter covered under this Ordinance and which are inconsistent with this Ordinance are void and of no further force and effect. If a court of competent jurisdiction should hold any part of this Ordinance to be invalid, the remainder of the Ordinance shall remain in full force and effect.

Section 9-11-3. RATIFICATION.

This Ordinance shall be ratified and become effective upon its adoption by the Ponca Tribal Council.

TITLE X

CHAPTER 1
GENERAL PROVISIONS

Section 10-1-1. Authority. This Ordinance is enacted by the Tribal Council of the Ponca Tribe of Nebraska in accordance with Article II, Section 2 of the Constitution of the Ponca Tribe of Nebraska.

Section 10-1-2. Purpose. The purpose of this Ordinance is to provide rules, regulations, and procedures governing the enrollment of eligible individuals into the membership of the Ponca Tribe of Nebraska.

Section 10-1-3. Definitions. The following definitions apply to this Ordinance:

- (1) "Applicant" means the individual named on a submitted application for enrollment.
- (2) "Application" means an application for enrollment approved by the Ponca Tribe of Nebraska Enrollment Committee.
- (3) "Birth Certificate" means a state certified birth certificate (with raised or stamped seal), signed and certified by the authority issuing it, which is not in any way altered or otherwise illegible.
- (4) "Chain of Custody" means documentation of a record of individuals who have had physical possession of the evidence and the process used to maintain and document the chronological history of the evidence. (Documents can include, but are not limited to, name or initials of the individual collecting the evidence; each person or entity subsequently having physical possession of it; dates the items were collected or transferred; from where the item(s) were collected; agency and case number; and a brief description of the item.)
- (5) "Committee" means the Ponca Tribe of Nebraska Enrollment Committee established in accordance to the terms of this Ordinance.
- (6) "Constitution" means the Constitution of the Ponca Tribe of Nebraska.

- (7) "Death Certificate" means a state certified death certificate, signed and certified by the authority issuing it, which is not in any way altered or otherwise illegible.
- (8) "DNA" is the acronym for Deoxyribo Nucleic Acid, which is the nucleic acid that carries the genetic information in the cell and is capable of self-replication and synthesis of ribonucleic acid "RNA" and which may be used to determine parentage or kinship for purposes of this Ordinance.
- (9) "Enrollment" means official action taken under the terms of this Ordinance making an individual a member of the Ponca Tribe of Nebraska.
- (10) "Incompetent" means an individual eighteen (18) years of age or over who is incapable of managing his or her own legal, financial, and personal affairs as determined by a physician or a court of law.
- (11) "Member" means an individual who is enrolled with the Ponca Tribe of Nebraska in accordance with the terms of this Ordinance.
- (12) "Minor" means an individual under eighteen (18) years of age.
- (13) "Sponsor" means a parent, legal guardian, next of kin, or Tribal Official filing an application for enrollment on behalf of a minor or incompetent.
- (14) "Tribal Council" means the governing body of the Ponca Tribe of Nebraska in accordance with Article IV of the Constitution of the Ponca Tribe of Nebraska.
- (15) "Tribe" means the Ponca Tribe of Nebraska.

Section 10-1-4. Confidentiality. All records/knowledge related to enrollment and individual membership in the Tribe shall remain confidential. Information contained in any record that is protected by confidentiality may be released only upon a signed release of information from the individual whose record is sought to be reviewed. The Enrollment Office may release information to the departments defined as routine users stated in Section 10-1-5 of this chapter. The Enrollment Office and Committee shall have access to such records only as is necessary to fulfilling duties under this Ordinance. Records related to individual enrollment or membership shall not be removed from

the enrollment office. Any tribal member or applicant may request information pertaining to his/her enrollment or the enrollment of his/her minor child or incompetent.

Section 10-1-5. Routine Users. The enrollment office may release names, addresses, dates of birth, social security numbers, enrollment numbers, and blood degrees of any enrolled member to the following departments within the Tribe only if the information is necessary for them to carry out their duties:

- (1) Tribal Health Department;
- (2) Cultural Affairs Department;
- (3) Tribal Social Services Department; and
- (4) Education Department.

No other departments or parties may obtain enrollment information unless in accordance with Section 10-1-4 of this Chapter.

Section 10-1-6. Enrollment Records. For purposes of maintaining a record of tribal actions on applications, relinquishments, acknowledgments of paternity, deaths, etc., the Committee and Enrollment Office shall use and maintain a "membership index card" file. Family trees will be developed and placed into each members file as completed. The membership roll as established and maintained by the Committee shall be the official record of membership in the Tribe and shall be utilized for all tribal purposes.

Section 10-1-7. Corrections to Records. The Enrollment Office shall make any corrections of typographical or other types of errors and new information as required to maintain the membership roll, some corrections/updates include but are not limited to the following:

- (1) Date of Birth;
- (2) Name change;
- (3) Family relationships;
- (4) Revisions of degree of blood;
- (5) Removal from membership roll due to death; or
- (6) Relinquishment from the Tribe.

All corrections/updates made shall have documentation to support the changes being made.

CHAPTER 2

Enrollment Committee

Section 10-2-1. Enrollment Committee. There is hereby established an Enrollment Committee whose duties shall be described in Section 10-2-2 of this Chapter. The Committee may consist of up to six (6) members who shall be appointed by the Tribal Council. The Tribal Council shall delegate a Chairperson to preside over all committee meetings. The Committee shall elect from among its members a Secretary. Members of the Committee must follow the Ponca Tribe of Nebraska Administrative Policy and Procedures entitled "Tribal Council Committees".

Section 10-2-2. Committee Duties. The duties of the Committee shall be as follows:

- (1) To review applications, submitted by the Enrollment Office, at a duly called committee meeting for determination of eligibility in accordance with this Ordinance and the Constitution;
- (2) To approve or deny applications in accordance with this Ordinance and the Constitution;
- (3) To approve or deny Honorary applications in accordance with this Ordinance and the Constitution;
- (4) To sign off on all relinquishments from the Tribe;
- (5) To approve all forms created by the Enrollment Office;
- (6) To make recommendations to the Tribal Council concerning amendments to this Ordinance.;
- (7) To approve all amendments to the Enrollment Department Policies and Procedures;
- (8) Shall keep a current roll of members of the Tribe;
- (9) Shall conduct a census of the members of the Tribe once every year in the month of April;
- (10) To ensure that the requirements of this Ordinance and the Constitution are carried and enforced; and

- (11) Any other duties as may be delegated by the Tribal Council or required to carry out the duties of the Committee.

Section 10-2-3. Meetings. The Committee shall hold monthly meetings and other meetings as is necessary. If it appears that the Committee has no official business to act on, the monthly meeting may be canceled by the Chairperson of the Committee. The Committee Secretary shall keep minutes of all meetings. All minutes of Committee meetings shall be kept in the Enrollment Office and a copy shall be submitted to the Tribal Council Secretary.

CHAPTER 3 Eligibility for Enrollment

Section 10-3-1. Eligibility for Membership in the Tribe. In accordance with Article II of the Constitution, eligibility for membership in the Tribe shall consist of all individuals who meet either of the following provisions:

- (1) All persons listed and their lineal descendants of the tribal rolls of April 1, 1934, January 1, 1935, or June 18, 1965, as compiled by the Bureau of Indian Affairs;
- (2) All persons entitled to be listed on the membership roll of June 18, 1965, who were not listed on the roll, notwithstanding the application or appeal deadline dates of P.L. 87-629.

Section 10-3-2. Individuals Not Eligible for Enrollment. The following individuals shall not be eligible for enrollment into the Tribe:

- (1) Children of Native American blood of another Indian Tribe or non-Indian children who have been legally adopted by members of the Tribe;
- (2) Individuals who at the time of their application for enrollment are currently enrolled with another federally recognized Tribe, Band, or group unless an application for relinquishment is made with the other Tribe contingent upon his/her enrollment with the Ponca Tribe of Nebraska; or
- (3) Any individual who does not meet the requirements as set forth in Section 10-3-1 of this Chapter.

CHAPTER 4
Enrollment Office

Section 10-4-1. Enrollment Office. There is hereby established an Office of Tribal Enrollment. The duties of the Office of Tribal Enrollment shall include but not be limited to the following:

- (1) To respond to and keep a record of all application requests;
- (2) To receive all applications;
- (3) To review all applications for contents and completeness;
- (4) To notify applicants of missing information needed to complete enrollment;
- (5) To research records to obtain adequate documentation for enrollment actions;
- (6) To ensure that all applications and documentation are complete before submitting to the Committee;
- (7) To meet with the Committee, at a duly called Committee meeting, a minimum of one time per month, unless there is no official business to act on;
- (8) To record all actions taken on specific enrollment actions;
- (9) To maintain accurate and current enrollment files on each applicant;
- (10) To protect the privacy of all applicants and Tribal Members;
- (11) To establish policies and procedures in accordance with the Constitution and this Ordinance for its internal operations; and
- (12) To perform any other duties which are necessary for fulfilling the purposes of this Ordinance or which may be assigned by the Committee or Tribal Council.

CHAPTER 5
Enrollment Procedures

Section 10-5-1. Applications/Documentation. Any individual who wishes to be considered for enrollment with the Tribe shall file an application with the enrollment office. Each application shall be accompanied by the following documents which shall include but not be limited to:

- (1) A birth certificate (or baptismal record if no birth certificate was filed) for the applicant listing the parent with Ponca ancestry;
- (2) If the Ponca parent is not listed on the birth certificate, a chain of custody DNA test must be done and the results of the test must be submitted directly to the Enrollment Office from the testing lab; the cost of the DNA test is the sole responsibility of the applicant or sponsor of the applicant;
- (3) If father is Ponca and not listed on birth certificate, an Order recognizing paternity from the Ponca Tribal Court and/or any court of competent jurisdiction;
- (4) Birth certificate(s) and/or death certificate(s) and/or baptismal record(s) to prove the claim of lineal descent;
- (5) If the applicants name has been changed due to marriage, the marriage license(s) showing the name change;
- (6) If the applicants name has been changed due to adoption, the court order showing the name change and the biological parents if necessary.

Section 10-5-2. Receipt of Application. Upon receipt of an application with the required documentation, the enrollment office shall review the application to ensure that it is complete and to verify and determine the eligibility of the applicant for enrollment. Every application received shall be stamped received for the date it was received. Upon proper verification, the enrollment office shall submit the application to the Committee for review at its next scheduled monthly meeting. If any application is incomplete the enrollment office shall promptly notify the applicant in writing and suspend

further action until the application and/or documentation is complete and submitted to the enrollment office.

Section 10-5-3. Notification to Applicant. Every applicant shall be entitled to notice of action taken at each stage of the proceeding, including but not limited to:

- (1) Receipt of the application;
- (2) Notification of request for further information/documentation;
- (3) Action taken by the Committee and Tribal Council;
- (4) Notification of rights to appeal if applicant is rejected; and
- (5) Action taken concerning appeals, if filed.

Section 10-5-4. Applications filed on behalf of minors and incompetents. Applications filed for minors or incompetents may be made by a parent, legal guardian, next of kin, or a tribal official on behalf of the minor or incompetent. The individual filing the application on behalf of the minor or incompetent shall be responsible to ensure that all procedures required under this Ordinance for filing applications are followed.

Section 10-5-5. Burden of Proof. The burden of proving eligibility through documentation for enrollment with the Tribe shall be placed solely on the individual or sponsor filing the application. The 1934, 1935, or 1965 base official membership rolls of the Tribe shall be the authoritative document to be used in establishing eligibility for enrollment.

Section 10-5-6. Review by Committee. Upon receipt of a completed application and complete documentation with an initial determination of eligibility by the enrollment office, the application shall be submitted to the Committee at a duly called Committee Meeting for review. The Committee shall review the application and make a determination of the applicants eligibility in accordance with the eligibility criteria set out in the Constitution and this Ordinance. If the applicant is found to be eligible for enrollment, two Committee members shall sign the Committee Report on Application to recommend that the applicant be enrolled. If the applicant is found to be ineligible for enrollment, two Committee members shall sign the Committee Report on Application to recommend that the applicant be denied enrollment. The Committee may table applications only

when there is insufficient documentation upon which a determination can be made. The recommendation of the Committee shall be submitted to the Tribal Council at the next duly called Tribal Council meeting in accordance with Section 10-5-7 of this chapter.

Section 10-5-7. Approval by Tribal Council. Official enrollment into the Tribe shall be by resolution passed by the Tribal Council. Upon recommendation for enrollment or denial of enrollment by the Committee, the enrollment office shall prepare resolutions for all applicants who are recommended for enrollment and for all applicants who are recommended for denial of enrollment. Resolutions shall be submitted to the Tribal Council at the next duly scheduled Tribal Council meeting. Upon receipt by the Tribal Council of either a resolution enrolling an individual or denying an individual enrollment, the Tribal Council may pass the resolution.

Section 10-5-8. Enrollment Notification. Upon passage of the resolution enrolling an applicant into the Tribe, the enrollment office shall immediately add the individual to the Membership Rolls of the Tribe and assign the member an enrollment identification number. The member shall be immediately notified of the enrollment and provided with a certificate of enrollment. If the applicant is denied enrollment, the applicant shall be immediately notified of the denial, the reasons for the denial, and of the right to appeal in accordance with Chapter 9 of this Ordinance. All denial notifications required under this section shall be in writing and delivered by certified mail.

Section 10-5-9. Enrollment Certificate. Each individual who is enrolled into the Tribe shall be issued a certificate of enrollment. The certificate shall include the following information:

- (1) full name of member;
- (2) member's enrollment number;
- (3) member's date of birth;
- (4) member's social security number;
- (5) the member's degree of Ponca blood if they so chose;
- (6) the resolution number; and
- (7) the resolution date.

All certificates shall be signed and dated by the Enrollment Director.

Section 10-5-10. Re-evaluation of Applications. Should the Enrollment Office or Committee find that a applicant mis-represented or omitted facts which may have made him/her eligible/ineligible for enrollment when filing their application, his/her application shall be halted and re-evaluated. The applicant shall be notified in writing via certified mail of the steps that will be taken in this action and the information/documentation/mis-representations that needs clarification or is missing from their file. They will also be notified that they have thirty (30) days to submit what has been requested. If the applicant does not return the requested information/documentation when the thirty days has expired the Enrollment Office shall notify the applicant at least fifteen (15) days in advance that membership will be denied at the next Committee meeting and that they may attend to present evidence that they feel will prove their right to membership and that they can still submit the requested information/documentation. The applicant shall be notified in writing via certified mail if they are denied membership with their right of appeal in accordance with Chapter 9 of this Ordinance. The Committee or Enrollment Office may re-evaluate disapproved applications after the time limitations for appeals have expired if the applicant can produce evidence/documentation which would have made him/her eligible when applying but was not available when the original applications was filed or during the appeal period.

Section 10-5-11: Re-evaluation of a Member. If it is found that a member mis-represented or omitted facts/documentation the member shall be subject to dis-enrollment. The member shall be notified in writing via certified mail of the steps that will be taken in this action and the information/documentation/mis-representations that needs clarification or is missing from their file. They will also be notified that they have thirty (30) days to submit what has been requested. If the individual does not return the requested information/documentation when the thirty days has expired the Enrollment Office shall notify the member at least fifteen (15) days in advance that their file will be subject to dis-enrollment at the next Committee meeting and that they may attend to present evidence that they feel will prove their right to membership and that they can still submit the requested information/documentation. The member shall be notified in writing via certified mail if they are dis-enrolled with their right of appeal in accordance with Chapter 9 of this

Ordinance, or if all actions have ceased because of submission of proper information/documentation.

Section 10-5-12: Dis-enrollment Without Notification.

Notification will be mailed via certified mail if a member is dis-enrolled. If the first notice is returned to sender a second notice will be sent; if the second notice is returned dis-enrollment will proceed without further notification. A final notification will be mailed via certified mail stating that dis-enrollment has taken place.

**CHAPTER 6
Dual Enrollment**

Section 10-6-1. Dual Enrollment. Any person who is enrolled with another tribe shall not be eligible for enrollment into the Ponca Tribe until they have relinquished all membership rights with the other tribe.

Section 10-6-2. Per-Capita Payments. An individual who is or was enrolled with another tribe and who has received payments from the other Tribe in the form of per-capita payments relating to treaty obligations and/or acts of the United States Congress shall not be eligible for enrollment with the Tribe for a period of three (3) years from the date they received their last per-capita payment. Any person who has received a per-capita payment from another tribe shall not be entitled to receive a per-capita payment from the Ponca Tribe of Nebraska for a period of three (3) years from the official date of enrollment into the Ponca Tribe.

Section 10-6-3. Relinquishment from Other Tribe. An individual who is eligible for membership with the Tribe and is enrolled with another tribe shall relinquish all rights to membership he/she may hold in the other Tribe as a condition to his enrollment with the Ponca Tribe of Nebraska.

**CHAPTER 7
Relinquishment**

Section 10-7-1. Relinquishment Generally.

1. Any member of the Tribe may voluntarily relinquish his or her membership in the Tribe. Relinquishment of membership shall be accomplished by submitting a signed notice of relinquishment to the Enrollment Office executed and acknowledged before a notary public. The acknowledgment by the notary public shall be

of the kind, under the law of the jurisdiction where notarized, which means:

(a) That the member who will actually be relinquishing membership is named as the relinquishing member on the notice of relinquishment;

(b) That the relinquishing member or person executing the notice of relinquishment on behalf of a minor or incompetent as provided in this Chapter personally appeared before the notary public on the date and in the jurisdiction identified in the notice of relinquishment;

(c) That the relinquishing member or person executing the notice of relinquishment on behalf of a minor or incompetent as provided in this Chapter signed the notice of relinquishment before the notary public;

(d) That the relinquishing member or person executing the notice of relinquishment on behalf of a minor or incompetent as provided in this Chapter signed the notice of relinquishment without coercion; and

(e) That the relinquishing member or person executing the notice of relinquishment on behalf of a minor or incompetent as provided in this Chapter is aware of the content of the notice of relinquishment.

2. The Enrollment Office shall not refuse a relinquishment of membership unless the Enrollment Office determines that:

(a) The relinquishing member is a minor or incompetent and the relinquishment was not submitted by a parent, legal guardian, or other individual with authority to act on behalf of the minor or incompetent as provided in this Chapter; or

(b) The relinquishment otherwise does not comply with the requirements of this Chapter.

3. Any refusal by the Enrollment Office to allow relinquishment shall be subject to appeal in accordance with the procedures of Chapter 9 herein. Nothing in this Section shall be construed as creating a right to appeal an acceptance of relinquishment by the Enrollment Office or to require approval of any relinquishment by the Enrollment Committee or Tribal Council.

(a) The Enrollment Committee may design, prepare, and approve forms that comply with the requirements of this Chapter for use in relinquishing membership. The Enrollment Committee may require the use of such forms for all relinquishments.

Section 10-7-2. Absolute or Conditional Relinquishment.

1. Relinquishment of membership can be absolute or can be made conditional upon the relinquishing member's acceptance as a member of another tribe.

2. If a relinquishment of membership is conditional upon acceptance as a member in another tribe, the notice of relinquishment shall:

(a) Expressly state that it is conditional upon acceptance as a member in another tribe; and

(b) Specifically identify the other tribe in which the relinquishing member is seeking membership.

3. In the case of a conditional relinquishment, the relinquishing member shall be responsible for informing the Enrollment Office of:

(a) The status and progress of the relinquishing member's pending membership in the other tribe; and

(b) All actions taken regarding the relinquishing member's pending membership in the other tribe.

4. In the case of a conditional relinquishment, if the relinquishing member's membership in the other tribe is rejected or denied, the relinquishment shall be null and void and the relinquishing member shall remain a member of the Tribe and shall not be removed from the membership roll of the Tribe.

Section 10-7-3. Effective Date of Relinquishment.

1. An absolute relinquishment of membership shall be effective immediately upon the date a proper notice of relinquishment is received by the Enrollment Office.

2. A conditional relinquishment of membership shall be effective immediately upon the date the relinquishing member is accepted as a member of the tribe identified in the notice of relinquishment.

3. No express action shall be required by the Enrollment Office, Enrollment Committee, or other department or body of the Tribe to make a relinquishment effective and the fact that the name of an individual who has validly relinquished membership remains on the membership roll of the Tribe shall not alter the effectiveness or validity of an otherwise valid relinquishment.

Section 10-7-4. Relinquishment by Minors and Incompetents.

1. A minor's membership in the Tribe may only be relinquished by the minor's parent or legal guardian. Relinquishment on behalf of a minor may be absolute or conditional as provided in this Chapter. In addition to the other requirements of this Chapter, a relinquishment on behalf of a minor shall include:

(a) Proof that the individual submitting the relinquishment has legal custody of the minor;

(b) In the case of a notice of relinquishment submitted by a legal guardian:

(i) Proof that the person submitting the relinquishment has been granted permanent legal guardianship of the minor by a court with jurisdiction to grant such guardianship, such as the final order of the court;

(ii) Any information regarding any limitations of the guardianship, if any, from the court that granted the guardianship that is not included in the other proof required under this subsection; and

(iii) If parental rights to the minor have been terminated, proof that parental rights have been terminated;

(c) In the case of a natural parent or in the case of a legal guardian where parental rights to the minor have not been terminated, proof that each natural parent whose parental rights have not been terminated approves of the relinquishment; and

(d) A sworn statement that there is no pending or anticipated child custody proceeding involving the minor, whether a voluntary or involuntary proceeding and including foster care placement, adoptive placement, termination of parental rights, and divorce.

2. The membership in the Tribe of an incompetent individual may only be relinquished by the incompetent's legal guardian. Relinquishment on behalf of an incompetent may be absolute or conditional as provided in this Chapter, except that absolute relinquishment on behalf of an incompetent may only be made by order of the Tribal Court of the Ponca Tribe of Nebraska expressly finding that relinquishment of the individual's membership in the Tribe is in the individual's best interests. In addition to the other requirements of this Chapter, a relinquishment on behalf of a legal incompetent shall include:

(a) Proof that the individual has been declared incompetent by a court with jurisdiction to declare the individual incompetent;

(b) Proof that the person submitting the relinquishment has been granted permanent legal guardianship of the incompetent by a court with jurisdiction to grant such guardianship, such as the final order of the court; and

(c) Any information regarding any limitations of the guardianship, if any, from the court that granted the guardianship and that is not included in the other proof required under this subsection.

3. A minor's or incompetent's notice of relinquishment shall be signed by the parent or legal guardian submitting the notice of relinquishment to the Enrollment Office and shall otherwise comply with the provisions of this Chapter. Except where the provisions of this Section require otherwise, a notice of relinquishment submitted on behalf of a minor or legal incompetent shall be processed in accordance with the provisions of this Chapter as though filed by the minor or legal incompetent directly.

Section 10-7-5. Effect of Relinquishment. Upon the effective date of relinquishment, the name of the individual relinquishing his or her membership in the Tribe shall be removed from the current membership roll of the Tribe. Any person who has relinquished membership in the Tribe shall not, after the effective date of the relinquishment, be entitled to any benefits, whether individual or Tribal in nature, accruing to members of the Tribe as a result of their status as members of the Tribe.

Section 10-7-6. Enrollment of Previously Relinquished Members.

1. Any person who has relinquished his or her membership in the Tribe pursuant to this Chapter shall not be eligible to be re-enrolled in the Tribe for a period of three (3) years from the effective date of the relinquishment and no application for re-enrollment shall be considered prior to that time.

2. An individual may be re-enrolled in the Tribe without regard to the three (3) year waiting requirement under the following circumstances:

(a) If the individual's membership was relinquished on his or her behalf when the individual was a minor and the individual has obtained the age of eighteen (18) on or before the date of application for re-enrollment; or

(b) If an individual's membership was relinquished on his or her behalf when the individual was declared incompetent and the individual has been determined to be competent on or before the date of application for re-enrollment.

3. In addition to any other requirement of this Section, an individual may only be considered for re-enrollment under the following circumstances:

(a) If the individual is currently a member of another tribe, the individual provides the Enrollment Office with proof of relinquishment of membership in the tribe in which they are currently enrolled; and

(b) The individual submits a new application for membership to the Enrollment Office under the same requirements and subject to the same procedures and conditions as those applicable to new members.

CHAPTER 8

Honorary Membership

Section 10-8-1. Honorary Membership. In accordance with Article II, Section 3 of the Constitution, the Tribal Council shall establish an honorary roster for persons adopted by the Tribe who do not meet the requirements for membership in the Tribe. Honorary members shall not have the right to vote, hold office, or otherwise exercise the rights or receive benefits of membership in the Tribe.

Section 10-8-2. Purpose of Honorary Membership. The purpose of adopting honorary members into the Tribe is to recognize certain individuals who have voluntarily committed themselves to the

overall development of the Tribe and its members and who have maintained strong social ties with the Tribe. Honorary members are recognized for their unselfish giving of friendship and assistance to the Tribe and its membership.

Section 10-8-3. Eligibility Requirements. Only those individuals or organizations who have contributed to the social, cultural, educational, and/or economic well being of the Tribe shall be considered for honorary membership. The individual or organization must meet at least two (2) of the following factors, unless they have contributed extensively in one of the following areas in numbers (1) through (6), they include but are not limited to:

- (1) Contributions towards the Restoration of the Tribe;
- (2) Contributions towards the cultural preservation of the Tribe;
- (3) Financial and economic contributions to the Tribe;
- (4) Contributions which have increased the social, economic, educational, or cultural well being of the youth of the Tribe;
- (5) Contributions towards the federal or legal advocacies of the Tribe;
- (6) Any other act or acts that have contributed to the development and cultural preservation of the Tribe and its members; and
- (7) Being the wife, husband, or close relative of a Tribal Member.

Contributions include but are not limited to financial contributions.

Section 10-8-4. Procedure for Adopting Honorary Members. Any member of the Tribe may nominate an individual for honorary membership by submitting a completed Honorary Membership Application, approved by the Committee, to the Enrollment Office. The application shall be submitted to the Committee at the next duly scheduled Committee Meeting. The Committee shall review the nomination and determine whether the individual or organization meets the purposes and eligibility requirements for honorary membership. The recommendation of the Committee shall be presented at the next scheduled Tribal Council Meeting by the

Enrollment Office. The Tribal Council shall decide by resolution whether the individual shall become an honorary member.

CHAPTER 9 Appeals Process

Section 10-9-1. Rights to Appeal. Any individual who is denied enrollment or who is removed from the membership rolls in accordance with Chapter 5, Section 10-5-10 of this Ordinance has the right to an appeal and hearing.

Section 10-9-2. Appeal/Hearing Notification. An applicant or disenrolled member desiring to appeal the decision made must request a hearing in writing to the Tribal Council within thirty (30) days after being notified of the actions taken. The thirty (30) days shall begin from the date of the individuals signed receipt of the certified notice. Upon written request for a hearing the Tribal Council shall schedule a hearing within thirty (30) days of receipt of the request and shall notify the individual by written notice of the hearing via certified mail, not less than fifteen (15) days before the hearing. The notification of the hearing shall contain the reason for the hearing, describe evidence to be presented, and inform the individual that they are entitled to present evidence and/or witnesses in his/her own defense or he/she may be represented by legal counsel at his/her own expense.

Section 10-9-3. Hearing and Determination. The individual who is appealing must produce clear and convincing evidence that he/she is eligible for enrollment in accordance with the Constitution and this Ordinance. The Committee and Enrollment Office shall have the opportunity to present evidence based on their findings. After hearing the appeal, membership shall be granted if the Tribal Council by a two-thirds vote of the full Council approves the application or restores membership to the individual into the Tribe. The decision of the Tribal Council shall be based on all evidence heard, shall be in accordance with the Constitution and this Ordinance, and shall constitute a final determination.

CHAPTER 10 Other General Provisions

Section 10-10-1. Prior Inconsistent Ordinances Repealed. All prior ordinance(s), resolution(s), policies or rules that are inconsistent with this Ordinance are hereby repealed and of no further force or effect.

Section 10-10-2. Savings/Severability. Each section of this Ordinance shall be severable from every other section. In the event that any part of this Ordinance is found to be invalid by a court of competent jurisdiction, the invalid part shall be severable and the remainder shall remain in full force and effect.

Section 10-10-3. Severability. If the constitutional requirements for enrollment with the Tribe are changed by constitutional amendment, such amendments shall automatically be included within this Ordinance.

Section 10-10-4. Amendments. Any amendment to this Ordinance shall be by resolution of the Tribal Council. The Committee may make recommendations to the Tribal Council concerning amendments.

Section 10-10-5. Effective Date. This Ordinance shall become effective upon passage by the Tribal Council by resolution.

TITLE XI
HOUSING ORDINANCE

CHAPTER 1

Section 11-1-1. Statement of Policy.

The Ponca Tribe of Nebraska, pursuant to its inherent authority as a sovereign government; its authority to provide for the health, safety, morals, and welfare of the Tribe; and Tribal Council Resolution No. 97-67, designating the Northern Ponca Housing Authority as the Tribally Designated Housing Entity, hereby establishes a public body known as the Northern Ponca Housing Authority, and enacts this Ordinance establishing the purposes, powers and duties of the Authority. The Authority shall be an instrumentality of the Tribe and shall at all times be accountable to the Tribe.

In any suit, action or proceeding involving the validity or enforcement of, or otherwise relating to, any of its contracts, the Authority shall be conclusively deemed to have been established and authorized to transact business and exercise its powers.

Section 11-1-2. Declaration of Need.

The Ponca Tribal Council hereby declares:

(a) That there exists among the members of the Tribe, unsanitary, unsafe, and overcrowded dwelling accommodations; that there is a shortage of decent, safe and sanitary dwelling accommodations available at rents or prices which persons of low income can afford; and that such shortages force such persons to occupy unsanitary, unsafe and overcrowded dwelling accommodations.

(b) That these conditions cause an increase in and spread of disease and crime and constitute a menace to health, safety, morals, and welfare; and that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety protection, fire and accident prevention, and other public services and facilities;

(c) That the provision of decent, safe, and sanitary dwelling accommodations is a public use and purpose, for which money may be spent and private property acquired; and is a governmental function of Tribal concern;

(d) That residential construction activity and supply of acceptable housing are important factors to general economic activity, and that undertakings authorized by this Ordinance to aid the production of better housing and more desirable neighborhood and community development at lower costs will make possible a more stable and larger volume of residential construction and housing supply which will assist materially in achieving full employment; and

(e) That as a matter of legislative determination, the enactment of this Ordinance is necessary in the public interest.

Section 11-1-3. Purposes.

The Authority shall be organized and operated for the purposes of:

(a) Remedying unsafe and unsanitary housing conditions that are injurious to the public health, safety and morals;

(b) Alleviating the acute shortage of decent, safe and sanitary dwellings for persons of low income; and

(c) Coordinating and administering activities, expending and providing Tribal housing funds to other Tribal, local, nonprofit and for-profit housing organizations for the benefit of the Tribal Community in accordance with the One-Year and Five-Year Indian Housing Plans prepared pursuant to the Native American Housing Assistance and Self Determination Act of 1996 ("NAHASDA"), P.L. 104-330, 25 U.S.C. S 4101, et seq. and any statutory amendments thereto; and

(d) Providing employment opportunities through the acquisition, construction, reconstruction, improvement, extension, alteration or repair and operation of property and other economic development activities.

Section 11-1-4. Definitions.

The following terms, wherever used or referred to in this Ordinance, shall have the following respective meanings unless a different meaning clearly appears from the context:

"Authority" means the public body known as the Northern Ponca Housing Authority, which is also the Tribally Designated Housing Entity.

"Board" means the Board of Commissioners of the Northern Ponca Housing Authority.

"Commissioners" means the members of the Board of Commissioners of the Northern Ponca Housing Authority.

"Council" means the duly elected Tribal Council of the Ponca Tribe of Nebraska

"Entities" for this ordinance shall constitute the following: Northern Ponca Housing Authority, Ponca Economic Development Corporation, Gaming Commission and any other subsidiaries established by the Tribe.

"Housing Project" or **"project"** means any work or undertaking to provide or assist in providing by any suitable method (including but not limited to: rental or sale of individual units in single or multi-family structures under conventional condominium or cooperative sales contracts or lease-purchase agreements; loans or subsidizing of rents or housing charges) decent safe and sanitary dwellings, apartments, or other living accommodations for persons of low income. Such work or undertaking may include buildings, land, leaseholds, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances, for streets, sewers, water service, utilities, parks, site preparation or landscaping and for administrative, community, health, recreational, welfare or other purposes. The term "housing project" or "project" also may be applied to the planning of the buildings and improvements, the acquisition of property or any interest therein, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration or repair of the improvements or other property and all other work in connection therewith and the term shall include all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

"Immediate Family" means mother, father, grandparent, child, grandchild, brother, sister, spouse, or individuals residing in the same household. This shall include half, step and in-law relations.

"Obligations" means any notes, bonds, interim certificates, debentures, or other forms of obligation issued by the Authority pursuant to this Ordinance.

"Obligee" includes any holder of an obligation, agent or trustee for any holder of an obligation, or lessor demising to

the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof.

"Persons of low income" means persons whose income does not exceed the level set by applicable programmatic requirements.

"Property" means land, buildings or real property owned or leased by the Authority, including land held in trust or restricted status.

"Service area" means all areas within the jurisdiction of the Tribe and any other area within which the Tribe has authorized the Housing Authority to provide services.

"United States Government, or U.S. Government" includes the United States of America, the Department of Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise of the United States of America.

Section 11-1-5. Board of Commissioners.

(a) The affairs of the Authority shall be managed by a Board of Commissioners composed of seven (7) persons. For purposes of this Ordinance, the seven (7) Commissioners authorized by this Ordinance shall be designated as Positions 1 through 7. . No member of the Tribal Council, employee of the Tribe, or any entities thereof, shall serve on the Board of Commissioners.

(b) Commissioners shall be appointed according to the geographic districts in which they reside in the following counties in Nebraska, Iowa, and South Dakota:

- (i) District 1 comprising Boyd, Knox, and Holt Counties of Nebraska, Charles Mix County, South Dakota and Woodbury County, Iowa. Two (2) Commissioners shall be appointed from District 1.
- (ii) District 2 comprising Douglas, Burt, and Sarpy Counties of Nebraska, and Pottawattamie County, Iowa. One (1) Commissioner shall be appointed from District 2.
- (iii) District 3 comprising Lancaster and Hall Counties of Nebraska. One (1) Commissioner shall be appointed from District 3.

(iv) District 4 comprising Madison, Stanton, Platte, and Wayne Counties of Nebraska. One (1) Commissioner shall be appointed from District 4.

(v) Two (2) Commissioners shall be appointed at large to represent all areas in which the Authority conducts housing activities and these Commissioner shall not be members of the Tribe.

(c) Any person appointed to the Board shall not be less than twenty-five (25) years of age. If convicted of a felony or a sexually-related conviction, misdemeanor, or otherwise such a person shall not be allowed to serve as a member of the Board.

(d) Commissioners shall be appointed and may be re-appointed by the Tribal Council. The Tribal Council will hold interviews for all Board of Commissioner appointments. A certificate of the Secretary of the Tribal Council as to the appointment or reappointment of any Commissioner shall be conclusive evidence of the due and proper appointment of the Commissioner.

(e) No immediate family members may serve on the Board at the same time.

(f) No person shall be barred from serving on the Board because he or she is a tenant, participant, or homebuyer in a housing project of the Authority. Any such Commissioner shall be entitled to fully participate in all meetings concerning matters that affect all of the tenants, participants, or homebuyers, even though such matters affect him as well. However, no such Commissioner shall be entitled or permitted to participate in or be present at any meeting (except in the capacity as a tenant, participant, or Homebuyer), or to be counted or treated as a member of the Board, concerning any matter involving his individual rights, obligations or status as a tenant, participant, homebuyer, or any matters involving immediate family members.

(g) The term of office of all Commissioners shall be four (4) years, and staggered. For purposes of establishing such staggered terms, the four-year term of Positions 5 and 6 shall expire in 2011; the term of Positions 1 and 7 shall expire in 2012; the term of Position 2 shall expire in 2013; and the term of Position 3 and 4 shall expire in 2014. In order to re-establish staggered terms for the Positions straws will be drawn to determine what Position each Board member will hold. Thereafter, all appointments shall be for four (4) years, except

that, in the case of a prior vacancy, an appointment shall be only for the length of the unexpired term. Terms of office shall begin on June 1 and end on May 31 of the year the term expires.

(h) A Commissioner may be removed by the Tribal Council for serious inefficiency, neglect of duty or misconduct in office, but only after a hearing before the Tribal Council, and only after the Commissioner has been given a written notice of the specific charges against him at least ten (10) days prior to the hearing. At any such hearing, the Commissioner shall have the opportunity to be heard in person or by counsel and to present witnesses on his behalf. In the event of removal of the Commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed with the Secretary of the Tribal Council.

(i) The Tribal Council may vote to disband the Board of Commissioners by an affirmative vote of two-thirds (2/3) of the Tribal Council.

(j) The Commissioners shall receive compensation plus per diem at a rate authorized by the Tribal Council.

(k) Five members of the Board shall constitute a quorum for the transaction of business. No Board actions shall be taken by a vote of less than a majority of the Commissioners present, provided a quorum is present.

(l) The Board shall keep full and accurate records of all meetings and actions taken by the Board.

(m) The Board shall keep full and accurate financial records and shall submit a complete annual report no later than December 30th of each year, in written form to the Tribal Council as required by §11-01-08(b) of this Ordinance.

(n) Meetings of the Board shall be held at regular intervals as provided in the By-Laws of the Authority. Emergency meetings may be held pursuant to the By-Laws.

Section 11-1-6. Powers.

(a) The Authority shall have perpetual succession in its corporate name.

(b)(1) The Ponca Tribe of Nebraska hereby confers on the Housing Authority sovereign immunity from suit to the same

extent that the Tribe would have sovereign immunity if engaged in the activities undertaken by the Housing Authority.

(b)(2) The Authority shall have the power to sue and is authorized to consent to be sued in the Tribal Courts or another court of competent jurisdiction. Any consent by the Authority to be sued or waiver of sovereign immunity must be unequivocal, expressed in writing, and shall be narrowly construed and limited to its terms.. A waiver of immunity shall not in itself establish a recognition or consent to suit in any foreign court, but shall be strictly limited to the court or courts and ,matters specified in such waiver. Any waiver of immunity or consent to suit of the Authority shall be limited to the assets or revenues of the Authority which otherwise may be legally executed against or other limited assets or revenues of the Authority specified in the waiver. as such Language in any contract or other document regarding arbitration or other dispute resolution shall not, by itself, constitute a waiver of sovereign immunity.

(b)(3) In no event shall any waiver of sovereign immunity or the authority to grant the same provided herein cause the Tribe to be liable for the debts, liabilities, or obligations of the Authority or allow the levy, attachment, or execution of such assets of the Tribe. Consent to suit by the Authority shall in no way extend to the Tribe, nor shall consent to suit by the Authority in any way be deemed a limitation or waiver of the rights, privileges, and immunities of the Tribe.

(b)(4) The Tribe shall not be liable for the payment or performance of any of the obligations of the Authority and no recourse shall be had against any assets, funds, revenues, or other property of the Tribe in order to satisfy the obligations of the Authority.

(c) The Authority shall have the following powers that it may exercise consistent with the purposes for which it is established:

(1) To adopt and use a corporate seal.

(2) To enter into agreements, contracts and understandings with any government or governmental agency, or with any person, partnership, or corporation.

(3) To agree to any condition(s) attached to financial assistance so long as said condition(s) does not conflict with this Ordinance or any other law of the Tribe.

(4) To agree, notwithstanding anything to the contrary contained in this Ordinance or in any other provision of law, to any conditions attached to financial assistance relating to the determination of prevailing salaries, wages or payment compliance with labor standards in the development or operation of projects. The Authority may include in any contract made in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to maximum hours or labor, and comply with any conditions which an awarding entity may have attached to its financial aid to the project.

(5) To obligate itself, in any contract with the United States Government for annual contributions to the Authority; to convey to the U.S. Government possession of or title to the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenants or conditions to which the Authority is subject. Such contracts may provide that in case of such conveyance, the U.S. Government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of the contract, provided the contract requires that as soon as practicable after the U.S. Government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of contract, the U.S. Government shall reconvey to the Authority the project as then constituted.

(6) To lease property from the Tribe and others for such periods as authorized by law, and to hold, manage or sublease the same.

(7) To borrow or lend money, to issue temporary or long-term evidence of indebtedness and to repay the same. Obligations shall be issued and repaid in accordance with the provisions of §11-01-7 of this Ordinance.

(8) To pledge assets and receipts of the Authority as security for debts and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(9) To purchase land or interests in land or take the same as a gift and to lease land or interests in land to the extent provided by law.

(10) To undertake and carry out studies and analyses of housing needs, to prepare housing plans, to execute the same,

to operate projects, and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(11) With respect to any dwellings, accommodations, lands, buildings or facilities embraced within any project, including individual, cooperative or condominium units:

- (A) To lease or rent, sell, enter into lease-purchase agreements or leases with option to purchase;
- (B) To establish and revise rents or required monthly payments;
- (C) To make rules and regulations concerning the selection of tenants or homebuyers, including the establishment of priorities, and concerning the occupancy, rental, care, and management of housing units; and
- (D) To make any other rules and regulations as the Board may deem necessary and desirable to effectuate the powers granted by this Ordinance.

(12) To finance home purchases by eligible homebuyers in accordance with the regulations and requirements of the Tribe and other applicable regulations.

(13) To terminate any lease or rental agreement or lease-purchase agreement when a tenant, participant, or homebuyer has violated the terms of the agreement or has failed to meet any of its obligations there under, or when such termination is otherwise authorized under the provisions of such agreement and to bring an action for eviction against such tenant, participant, or homebuyer in the Tribal Court or other court of competent jurisdiction as may be provided by contract.

(14) To establish income limits for admission that insure that dwelling accommodations in a housing project shall be made available only to persons of low income, or other families which may be eligible under applicable regulations and law.

(15) To purchase insurance, or participate in a risk management pool from any stock or mutual company, for any property or against any risk or hazard.

(16) To invest funds not required for immediate disbursement.

(17) To establish and maintain such bank accounts as may be necessary or convenient.

(18) To employ an Executive Director, technical and maintenance personnel and other officers and employees, permanent or temporary, as the Authority may require and to delegate to such officers and employees powers or duties as the Board shall deem proper.

(19) To engage in contracts for professional services including, but not limited to, accountants, management consultants, and legal counsel.

(20) To take such further actions as are commonly engaged in by public bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(21) To join or cooperate with any other public housing agency or agencies operating under the laws or ordinances of another government in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other agency or agencies for the purposes of financing (including, but not limited to, the issuance of notes or other obligations and giving security therefore), planning, undertaking, owning, constructing, or operating a housing project or projects of the Authority or such other agency or agencies, or contracting with respect thereto.

(22) To adopt, subject to the approval of the Tribal Council, such By-Laws as the Board deems necessary and appropriate.

(d) It is the purpose and intent of this Section to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of foreign governments in the undertaking, construction, maintenance or operation of any project by the Authority.

Section 11-1-7. Obligations.

(a) The Authority may issue obligations from time to time in its discretion for any of its purposes and may also issue refunding obligations for the purpose of paying or retiring obligations previously issued by it. The Authority may issue

such types of obligations as it may determine, including obligations on which principal and interest are payable:

(1) Exclusively from income and revenues of the project financed with the proceeds of such obligations, or with such income and revenues together with a grant from the Federal government in aid of such project;

(2) Exclusively from the income and revenues of certain designated projects, whether or not financed in whole or in part with the proceeds of such obligations; or

(3) From its revenues generally. Any such obligations may be additionally secured by a pledge of any revenues of any project or other property of the Authority.

(b) Neither the Commissioners nor any person executing the obligations shall be liable personally on the obligations by reason of issuance thereof.

(c) The notes and other obligations of the Authority shall not be a debt of the Tribe and the obligations shall so state on their face.

(d) Obligations of the Authority are declared to be issued for an essential public and governmental purpose and shall be public instrumentalities.

(e) Obligations shall be issued and sold in the following manner:

(1) Obligations of the Authority shall be authorized by a resolution adopted by a vote of a majority of the full Board and may be issued in one or more series.

(2) The obligations shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment and at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(3) The obligations may be sold at public or private sale at not less than face value.

(4) In the event any of the Commissioners whose signatures appear on any obligations cease to be Commissioners before the delivery of such obligations, the signatures shall be valid and sufficient for all purposes the same as if the Commissioner had remained in office until delivery.

(f) Obligations of the Authority shall be fully negotiable. In any suit, action, or proceeding involving the validity or enforceability of any obligation of the Authority or the security therefore, any such obligation reciting in substance that it has been issued by the Authority to aid in financing a project pursuant to this Ordinance shall be conclusively deemed to have been issued for such purpose, and the project for which such obligation was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Ordinance.

(g) In connection with issuing obligations, or incurring obligations under leases, and securing payment of such obligations, the Authority, subject to the limitations in this Ordinance, or as otherwise prescribed by the laws of the Tribe, may:

(1) Pledge all or any part of its gross or net rents, fees or revenues to which its right then exists or may thereafter come into existence.

(2) Provide for the powers and duties of obligees and limit their liabilities; and provide the terms and conditions on which such obligees may enforce any covenants or rights securing or relating to the obligations.

(3) Covenant against pledging all or any part of its rents, fees and revenues or personal property to which its title or right then exists or may thereafter come into existence, or permitting any lien to be placed on such revenues or property.

(4) Covenant with respect to limitations on its right to sell, lease or otherwise dispose of any project or any part thereof.

(5) Covenant as to the obligations to be issued and as to issuance of such obligations in escrow or otherwise, and as to the use and disposition of the proceeds thereof.

(6) Provide for the replacement of lost, destroyed or mutilated obligations.

(7) Covenant against extending the time for the payment of its obligations or interest thereon.

(8) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof.

(9) Covenant concerning rents and fees to be charged in the operation of a project or projects, the amount to be raised each year or other period of time by rents, fees, and other revenues, and the use and disposition to be made thereof.

(10) Create or authorize the creation of special funds for monies held for construction or operating costs, debt service, reserves or other purposes, and covenant as to the use and disposition of the monies held in such funds.

(11) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the proportion of outstanding obligations the holders of which must consent thereto and the manner in which such consent may be given.

(12) Covenant as to the use, maintenance and replacement of its real or personal property, the insurance to be carried thereon and the use and disposition of insurance monies.

(13) Covenant as to the rights, liabilities, powers and duties arising upon the breach by it of any covenant, condition or obligation.

(14) Covenant and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity, and as to the terms and conditions upon which such declaration and its consequences may be waived.

(15) Vest in any obligees or any proportion of them the right to enforce the payment of the obligations or any covenants, securing or relating to the obligations.

(16) Exercise all, part, or any combination of the powers granted in this section.

(17) Make covenants other than and in addition to the covenants expressly authorized in this section, of like or different character.

(18) Make any covenant and do any acts and things necessary or convenient or desirable in order to secure its obligations, subject to review and approval of the Tribal Council, tending to make the obligations more marketable although the covenants, acts or things are not enumerated in this section.

Section 11-1-8. Miscellaneous.

(a) The Authority and the Ponca Tribal Council shall hold joint meetings as directed by the Tribal Council.

(b) The Authority shall submit an annual report no later than 30 days after the end of the program year signed by the Chairperson of the Board, to the Tribal Council showing the following:

- (1) A summary of the year's activities;
- (2) The financial condition of the Authority;
- (3) The condition of the properties;
- (4) The number of units and vacancies;
- (5) Any significant problems and accomplishments;
- (6) Plans for the future; and
- (7) Such other information as the Authority or the Council shall deem pertinent.

(c) The Authority shall submit quarterly financial and programmatic reports. These reports shall be presented by the Chairperson and Executive Director of the Authority. The finances of the Authority shall be subject to review and oversight by the Tribal Finance Department. The Tribal Finance Department may request and require the Authority to submit financial and programmatic reports on a monthly basis if requested by the Tribal Council.

(d) The Authority shall submit to the Tribal Council, in one (1) year and five (5) year increments, a Tribal Housing Plan for the Council's review and approval. Said plan shall describe in detail the goals, objectives and activities of the Authority with respect to providing safe, sanitary, and affordable housing to low income families residing within the Tribe's service areas.

(e) If the Tribal Council deems it necessary and appropriate, it may, at its own expense, require that an audit of the Authority's finances be conducted to ensure that appropriate and acceptable financial management practices have been implemented and are being adhered to by the Authority.

(f) The Authority shall develop and maintain a written code of standards of conduct governing the performance of the Board and the employees of the Authority engaged in the award and administration of contracts. Said code of standards of conduct shall be submitted to the Tribal Council for its review and concurrence. No member of the Board, employee, official or agent of the Authority or its grantee shall participate in selection or award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (1) The employee, officer, or agent,
- (2) Any member of his immediate family,
- (3) His or her partner, or

(4) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Authority or grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The Authority or grantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by the laws of the Tribe, such standards or conduct will provide for penalties, sanctions or other disciplinary actions for violations of such standards by the Authority and grantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may provide additional prohibitions relative to real, apparent, or potential conflicts or interest.

(g) Each project developed or operated under a contract providing for Federal financial assistance shall be developed and operated in compliance with all requirements of such contract or applicable Federal legislation and regulations.

(h) The Authority shall obtain or provide for the obtaining of adequate fidelity bonds for persons handling cash, or authorized to sign checks or verify vouchers.

(i) The property of the Authority is declared to be public property used for essential public and governmental purpose and such property and the Authority are exempt from all taxes and special assessments of the Tribe.

Section 11-1-9. Amendments.

Amendments to this ordinance shall be made by majority vote of the Tribal Council. The Board may recommend amendments to this Ordinance, but is not vested with the power to amend it.

Section 11-1-10. Severability.

All previous resolutions, legislation, laws and acts taken by the Tribal Council which deal with any matter covered under this Ordinance and which are inconsistent with this Ordinance are void and of no further force and effect. If a Court of competent jurisdiction should hold any part of this Ordinance to be invalid, the remainder of the Ordinance shall remain in full force and effect.

Section 11-1-11. Ratification.

This ordinance, as amended, shall be ratified and approved by the Tribal Council and become effective on April 25, 2010.

TITLE XII
TAXATION

CHAPTER 1

12-1-1. Citation.

This Code may be cited as the Ponca Tribal Tax Code.

12-1-2. Purpose.

It being necessary to strengthen the tribal government by licensing and regulating certain conduct within the tribal jurisdiction, provide financing for the current expenses of tribal government and the expansion of tribal government operations and services, and in order for the tribe to exercise its confirmed governmental responsibilities efficiently and effectively, the purpose of this Code is to provide the straightforward, fair, and efficient procedures, to provide for the licensing and regulation of certain conduct, and the levy and collection of certain revenue and taxes for the benefit of the Ponca Tribe.

12-1-3. Tax Commission.

There is hereby created, ordained, and chartered under the authority of the Constitution of the Ponca Tribe of Nebraska a body to be known as the "PONCA TAX COMMISSION" which shall be a public agency of the Ponca Tribe of Nebraska subordinate to the Tribal Council, possessing all the powers, duties, rights and functions hereinafter defined and as are now or as may hereafter be conferred upon the Ponca Tax Commission by law.

12-1-4. Composition of the Ponca Tax Commission.

(1) The membership of the Ponca Tax Commission shall consist of the Vice-Chairperson of the Tribal Council who shall serve as the Chairperson of the Commission, the Treasurer of the Tribal Council and three (3) members of the Tribe who shall be appointed by the Tribal Council for a period of three (3) years.

(2) Upon the selection of the initial commission members appointed by the Ponca Tribal Council, the Tribal Council shall choose, by lot, one commissioner who will serve an initial term of one (1) year, one commissioner who will serve an initial term of two (2) years and one commissioner who will serve an initial

term of three (3) years. Thereafter, the term of each appointed commissioner shall be for three years. The terms of the Vice-Chairperson and the Treasurer of the Tribal Council shall expire if such commissioner's term as Vice-Chairperson or Treasurer of the Ponca Tribal Council expires. Subject to the proviso of the preceding sentence, each director shall hold office until the expiration of the term to which he was elected and until his successor has been selected and qualified. Vacancies on the commission shall be filled by the Ponca Tribal Council.

(3) Members of the Ponca Tax Commission shall not have or voluntarily acquire during their three (3) year term any personal interest, as hereinafter defined, whether direct or indirect, in any entity owned or operated by the Ponca Tribe of Nebraska or any Tribal organization.

(4) Personal interest shall mean private ownership of an entity that does business with or is operated by the Ponca Tribe. Employment by an entity owned by the Ponca Tribe, its agencies, institutions, or entities or by any other person having such an interest shall not be deemed a personal interest by such employee nor shall it be deemed ownership or control of such entity by the employee. Such an employee may be appointed as a member of the Ponca Tax Commission so long as net revenues from the operation of the entity accrue to the Tribe generally.

12-1-5. Seal.

The Ponca Tax Commission is authorized and directed to acquire and use a seal, which shall be of circular form, with the words "PONCA TAX COMMISSION" - "PONCA TRIBE OF NEBRASKA" around the edge and the word "OFFICIAL SEAL" in the center. The seal shall be used on all original and or certified copies of all licenses, orders, rules, regulations and other "official" documents of the Ponca Tax Commission as evidence of their authenticity. The seal shall be secured at all times to prevent unauthorized use.

12-1-6. General Powers of the Ponca Tax Commission.

The Ponca Tax Commission shall generally be charged with the administration and enforcement of all Tribal tax laws. Incidental to the administration or enforcement of the Tribal tax laws, the Ponca Tax Commission shall have the power to:

(1) Assess, collect and issue receipts for such taxes as are imposed by ordinance or resolution of the Ponca Tribal Council and to bring actions on behalf of the Tribe in Tribal

Court for the collection of Tribal taxes, penalties and interest, and the enforcement of the Tribal tax laws, all such actions shall be styled: The Ponca Tribe of Nebraska ex rel. Tax Commission vs. _____;

(2) Administer oaths, conduct hearings and by subpoena to compel the attendance of witnesses and the production of any books, records and papers of any taxpayer relating to the enforcement of the Tribal tax laws.

(3) Make or cause to be made by its agents or employees an examination or investigation of the place of business, equipment, facilities, tangible personal property and the books, records, vouchers, accounts, documents and financial statements of any taxpayer, upon reasonable notice during normal business hours, at any other time agreed to by said taxpayer or at any time pursuant to a search warrant issued and signed by the Tribal Court.

(4) Examine under oath either orally or in writing any taxpayer or any agent, officer or employee of any taxpayer or any other witness in respect to any matter relative to the Tribal tax laws.

(5) Exercise all other authority delegated or conferred upon it by law or as may be reasonably necessary in the administration or enforcement of any Tribal tax laws.

(6) Either before or after the commencement of an action for the recovery of taxes, penalties and interest due to the Tribe, but prior to final judgment thereon, compromise and settle such claims for an amount less than the total amount due, provided that such compromise and settlement shall be approved by the Ponca Tax Commission only when, in its judgment such action is in the best interest of the Tribe and provided further that no settlement shall be made unless the delinquent taxpayer pays the principal amount of taxes due to the Tribe.

12-1-7. Rulemaking Authority.

(1) The Ponca Tax Commission shall have the authority to prescribe, promulgate and enforce written rules and regulations not inconsistent with this Title to (a) provide for its internal operational procedures; (b) to interpret or apply any Tribal tax laws as may necessary to ascertain or compute the tax owed by any taxpayer; (c) for the filing of any reports or returns required by any tribal tax laws; (d) as shall be reasonably

necessary for the efficient performance of its duties; or (e) as may be required or permitted by law.

(2) No rule or regulation of the Ponca Tax Commission shall be of any force or effect until and unless a certified copy of said rule or regulation bearing the signatures of at least two (2) members of the Ponca Tax Commission and the "official seal" of the Ponca Tax Commission shall have been filed for record in the office of the Tribal Council Secretary and the office of the Clerk of the Tribal Court.

(3) The Tribal Court shall take judicial notice of all rules and regulations of the Ponca Tax Commission promulgated pursuant to this Title.

12-1-8. Forms.

The Ponca Tax Commission may prepare and make available to the public such standard forms as are or may be necessary to carry out its function and which are not otherwise provided by this Title.

12-1-9. Tax Stamps and Licenses.

(1) The Ponca Tax Commission shall provide for the form, size, color and identifying characteristics of all licenses, permits, tax stamps, tags, receipts or other documents or things evidencing receipt of any license or payment of any tax or fee administered by the Ponca Tax Commission or otherwise showing compliance with the Tax laws of the Ponca Tribe of Nebraska.

(2) Such stamps or licenses shall contain at least the following information:

(a) The words: "Ponca Tribe"

(b) The words: "Tax Commission"

(c) The monetary amount for which the tax or license was issued.

(d) Wording which indicates the type of tax imposed.

(e) If the instrument is a license, permit or receipt, wording indicating the type of license, permit or receipt, its effective dates and the name and address of the taxpayer to whom issued.

(3) The Ponca Tax Commission shall provide for the manufacture, delivery, storage and safeguarding of such stamps, licenses, permits, tags, receipts or other documents and shall safeguard such instruments against theft, counterfeiting and improper use.

(4) When the Ponca Tax Commission deems it necessary to do so, it may allow the use of metering devices in lieu of paper stamps under such rules and regulations as it shall prescribe.

(5) The Ponca Tax Commission may exchange new stamps for damaged, out of date or otherwise unusable stamps under such rules and regulations as the Ponca Tax Commission shall prescribe.

12-1-10. Records.

(1) The Ponca Tax Commission shall keep and maintain accurate, complete and detailed records that reflect all taxes, penalties and interest levied, due and paid, all licenses issued and each and every official transaction, communication or action of the Ponca Tax Commission.

(2) Such records shall be maintained at the office of the Tax Commission and shall not be removed from said office without the written permission of the Ponca Tax Commission.

(3) Such records shall be subject to audit at any time at the direction of the Tribal Council and shall be audited not less than once each year.

(4) Any and all records of the Ponca Tax Commission, except the record of an official decision or opinion rendered upon administrative appeal, which relate to the individual business or personal activities of a named particular taxpayer or taxpayers shall not be open to public inspection and shall only be released upon written request of the taxpayer involved, written request of tribal officials who have a legitimate official need for such records or upon the written order of the Tribal Court.

(5) Any record of the Ponca Tax Commission which does not relate to the individual business or personal activities of a named particular taxpayer or taxpayers and all decisions or opinions rendered upon an administrative appeal shall be public records of the Ponca Tax Commission and shall be available for public inspection during regular business hours. Copies of such records may be obtained by submitting a signed written request

and upon payment of such copying costs as may be established by rule of the Ponca Tax Commission, provided, that the names and other forms of identification of any taxpayer appearing in such record shall be rendered unreadable prior to issuance of such copy unless the provisions of subsection (d) above would allow release of such information.

12-1-11. Bookkeeping.

There shall be established and kept, within the Finance Department of the Ponca Tribe and subject to the current Indirect Cost rate, such financial records/books as may be necessary under generally accepted accounting standards to adequately account for all funds and monies received and disbursed by the Ponca Tax Commission. Separate accounting books shall be maintained for each type of tax imposed and collected under this Title.

12-1-12. Collection Account; Deposits.

(1) There is hereby authorized to be established an account in a federally insured financial banking institution to be known as the Ponca Tax Collection Account. Tax funds may be kept in an existing federally insured Tribal account provided separate accounting books, clearly designated as Ponca Tax Collection Funds, are maintained in accordance with generally accepted accounting standards.

(2) Tax revenues shall be kept in an interest bearing account and the funds may be invested and reinvested as may be deemed necessary and approved by the Tribal Council.

(3) No monies shall be expended from this fund except upon written resolution of the Tribal Council appropriating a specific amount or source of monies contained therein for the use of a particular department, agency, program or project of the Tribe or in accordance with an approved Tax Commission budget as set forth in Section 12-1-13. Expenditures from this fund will be made utilizing current procedures established by the Tribal Finance Department.

(4) All tax monies, license fees, penalties, interest, service fees/charges or other funds collected by the Tax Commission in the administration and enforcement of the Title shall be clearly identified and submitted to the Tribal Finance Department for deposit in this account for the benefit of the Ponca Tribe. The receipt for such funds shall be maintained as an original record and attached to or reconciled with any

original tax returns or records of receipt of the Ponca Tax Commission.

12-1-13. Ponca Tax Commission Employees and Expenses.

(1) The Ponca Tax Commission may employ such employees and incur such expense as may be necessary and reasonable for the proper discharge of its duties under this Title, subject to the limitations and restrictions herein set out.

(2) The Ponca Tax Commission shall, to the maximum extent feasible, utilize regular tribal staff in exercising the duties and responsibilities set out in this Title. The Ponca Tax Commission shall coordinate with and obtain approval from Tribal Administration to delegate to tribal staff such of its functions as may be necessary to efficiently administer this Title. Any such delegation of functions by the Ponca Tax Commission shall be done by rule, provided, that the Commission's rulemaking authority may not be delegated.

(3) Tribal Administration is authorized and directed to cause such regular staff assistance, as is feasible, to be given to the Ponca Tax Commission.

(4) The Ponca Tax Commission shall prepare and submit to the Tribal Council a proposed line item budget for the next fiscal year no later than the deadline established in each year by the Tribal Council Treasurer for regular tribal appropriation requests. The total amount dispersed by the Ponca Tax Commission in any one fiscal year may not exceed the amount appropriated by the Tribal Council.

(5) The fiscal year for operation of the Ponca Tax Commission shall begin on October 1 of each year and end on September 30 of the following year.

(6) The Ponca Tax Commission may require each staff person who shall be required to handle monies, revenue, tax stamps or who shall be responsible therefore to be insured under the Tribal insurance policy, in such amounts as may be fixed by the Ponca Tax Commission.

(7) The Tribal Council may require each of the Tax Commission members who shall be required to handle monies, revenue or stamps to be insured under the Tribal insurance policy in an amount to be determined by the Tribal Council.

(8) The premiums for the insurance required in (6) and (7) of this section shall be paid from funds authorized in the Ponca Tax Commission budget.

12-1-14. Nepotism.

(1) It shall be unlawful for the Ponca Tax Commission to employ any person related to any member of the Ponca Tax Commission by blood or marriage within the third degree to any office within the Ponca Tax Commission or to any position as an outside or independent contractor. This provision shall not prohibit any officer, appointee or employee already in the service of the Ponca Tax Commission from continuing or being promoted after the appointment or election of a relative to membership on the Ponca Tax Commission as provided by law.

(2) The Tribal Council may provide a waiver of this section by two-thirds (2/3) majority vote in individual cases at the written request of the Ponca Tax Commission, if the Tribal Council determines such waiver to be in the best interest of the Tribe.

12-1-15. Collection of Taxes.

(1) All taxes payable under this Title shall be tendered to the Ponca Tax Commission, who shall promptly issue receipt.

(2) The Ponca Tax Commission shall establish such rules and procedures as may be necessary to assess taxes, provide notice to taxpayers and collect monies owed.

12-1-16. Collection of Delinquent Taxes.

The Ponca Tax Commission is hereby authorized to bring legal action in any appropriate court as necessary for the collection of any taxes, penalties and interest assessed and unpaid by any taxpayer. Such action shall be civil in nature and all penalties and interest shall be in the form of civil damages for non-payment of taxes. Any and all civil remedies, including but not limited to garnishment, seizure, attachment and execution shall be available for the collection of any monies due the Tribe. The Tax Commission may request a Tribal Attorney of the Tribe bring any and all necessary actions for the collection of any taxes, penalties and interest assessed and unpaid against any taxpayer.

12-1-17. Other Remedies.

(1) In addition to the remedies available for the collection of monies, the Ponca Tax Commission is authorized to bring in any appropriate Court an action to enjoin the beginning or operation of any unlicensed business, activity or function where and when Tribal Tax law requires a license to be issued for such business, activity or function.

(2) In addition to the remedies available for the collection of monies, the Ponca Tax Commission is authorized through its members and/or staff, when accompanied by a law enforcement officer and an order issued by the Ponca Tax Commission to seize any property declared contraband by any section of this Title or upon which any tax levied is in excess of 60 days past due or delinquent under the same conditions, limitations and exceptions as evidence of crimes may be searched for and seized, provided that within ten (10) working days of such seizure, the Ponca Tax Commission shall cause to be filed an action against said property alleging the non-payment of tax or other lawful reason for such seizure and forfeiture. The Court, upon proof, shall order such property forfeited for non-payment of taxes and title/ownership thereto is vested in the Ponca Tribe, provided that any person claiming ownership, the right of possession or other interest in said property may intervene in said action and raise any defenses they may have. Such persons shall be served with process, if they are known prior to the beginning of the action, provided further, that such persons may redeem said property at any time prior to final judgment of forfeiture by depositing all taxes, penalties and interest assessed or owing with the Court.

12-1-18. Inventory of Seized Property.

Whenever an authorized person pursuant to this Title seizes any property, he/she shall inventory and appraise such property and leave a written copy thereof with the person from whom it was seized or, if such person cannot be found, a copy shall be posted at the place from which the property was seized. The original of said inventory shall be retained in the Ponca Tax Commission office and a copy provided to the Tribal Attorney.

12-1-19. Public Sale of Forfeited Property

(1) Upon a final order of forfeiture entered by the Tribal Court, the Ponca Tax Commission shall circulate and post for public inspection an inventory of said property. This posting

shall identify the date and time for the sale of said property to the highest bidder.

(2) The order of forfeiture tax sale notice shall be posted for a minimum of twenty (20) days prior to the date of sale and the notice shall also be published at least once in the local newspaper.

(3) The property shall be sold to the highest bidder at a public auction with the sale to be held at the administrative office building of the Tax Commission.

(4) All revenue derived from the sale shall be deposited in the Tax Collection Account.

(5) The Ponca Tax Commission may conduct sales at such times as it deems sufficient property has accumulated to make such sale beneficial to the Ponca Tax Commission and the taxpayer.

(6) The seizure and forfeiture of contraband property shall not reduce or eliminate the tax liability of any person from whom such property was seized. The funds derived from the sale of all other property shall be applied to payment of the interest and penalties first, then to the tax due. If the funds derived from the sale do not satisfy the total amount of interest, penalties and tax due, then the taxpayer remains liable for the balance due the Ponca Tax Commission. In no circumstance shall the taxpayer receive any excess funds received from the sale after the interest, penalties and tax obligations have been satisfied, and any and all remaining funds shall become the property of the Tribe.

12-1-20. Exempt Property

The following property shall be exempt from garnishment, attachment, execution and sale for the payment of taxes, penalties and interest due to the Tribe:

(1) Three-fourths (3/4) of the net wages earned per week by the taxpayer.

(2) One automobile with the fair market value equity not exceeding five (5) thousand dollars.

(3) Tools, equipment, utensils or books necessary to the conduct of the taxpayers business or activities, but not including stock or inventory.

(4) Actual Trust or Restricted title to any lands held in trust by the United States or subject to restrictions against alienation imposed by the United States, but not including leasehold and other possessor interests in such property.

(5) Any dwelling used as the actual residence of the taxpayer including up to five acres of land upon which such dwelling is located whether such dwelling is owned or leased by the taxpayer.

(6) Household goods, furniture, wearing apparel and personal effects, but not including televisions, radios, stereo equipment, tape recorders, more than two (2) firearms, works of art and other recreational or luxury items.

(7) All domesticated animals.

(8) All implements of farming used on the property.

(9) All traditional, ceremonial and/or religious items.

12-1-21. Administrative Appeals.

Any taxpayer against whom the Ponca Tax Commission has assessed taxes, penalties or interest pursuant to the Tax Law of the Ponca Tribe of Nebraska or who has paid under written protest any taxes, penalties and interest assessed by the Ponca Tax Commission who believes those taxes, penalties and interest to be wrongfully assessed or collected may appeal in writing for a hearing before the full Ponca Tax Commission under such rules and regulations as the Tax Commission may prescribe.

12-1-22. Limitations on Administrative Appeals.

Any administrative appeal as provided for in Section 12-1-21 of this Title must begin by filing a written request for a hearing with the Ponca Tax Commission within sixty (60) days of the assessment or payment of the taxes, penalties or interest in controversy, provided that failure to file an administrative appeal shall not prevent the taxpayer from defending any collection action by the Ponca Tax Commission in Tribal Court.

12-1-23. Exhaustion of Administrative Remedies.

(1) All administrative remedies shall be deemed exhausted upon a final decision of the Ponca Tax Commission of an appeal pursuant to Section 12-1-21 of this Title.

(2) If the Ponca Tax Commission shall fail to schedule and hold a hearing on the merits of the administrative appeal within sixty (60) days after receipt of a written request for a hearing, unless a delay is requested or approved by the taxpayer.

(3) If the Ponca Tax Commission shall fail to issue a written decision on said appeal within thirty (30) days of the hearing on the merits of the taxpayer's administrative appeal.

12-1-24. Suits Against the Ponca Tax Commission.

(1) The Ponca Tax Commission, as a governmental agency of the Ponca Tribe of Nebraska, its Commissioners, and employees, shall be immune from any suit in law or equity while performing their lawful duties within the authority delegated to them.

(2) Notwithstanding subsection (1), any taxpayer or other person against whom the Ponca Tax Commission has assessed taxes, penalties or interest or who has paid under protest any taxes, penalties or interest, may bring an action in Tribal Court after exhaustion of administrative remedies for the purpose of enjoining the Ponca Tax Commission from collecting any taxes, penalties or interest assessed or for the recovery of any taxes, penalties or interest paid under written protest which the Tribal Court determines to have been wrongfully assessed or collected.

12-1-25. Limitations on Suits Against the Ponca Tax Commission.

(1) Any suit against the Ponca Tax Commission authorized by Section 12-1-24 must be commenced by filing a petition in Tribal Court within thirty (30) days after the days of exhaustion of administrative remedies.

(2) In no event shall the Court be authorized to award or order the payment of damages or to fashion any remedy except to enjoin the collection or order the return of the taxes, penalties or interest in controversy unless an additional remedy is specifically provided by this Title.

(3) All amounts found to have been wrongfully collected and refundable shall earn simple interest at five percent (5%) per annum until refunded.

12-1-26. Refunds to Taxpayers.

Whenever any taxpayer shall establish in administrative or Court proceedings that they are entitled to a refund of any

taxes, penalties or interest previously paid, the Ponca Tax Commission shall immediately refund all taxes, penalties and interest specified in the administrative or court order.

12-1-27. Forgery of Stamps or other tax instruments.

Any person or taxpayer who without authorization of the Ponca Tax Commission, falsely or fraudulently forges, embezzles, steals, knowingly converts, knowingly misapplies or permits to be applied or counterfeits any stamps, tags, licenses or other instrument evidencing payment of taxes prescribed for use in this Title or who shall use, pass, tender as true or otherwise be in possession of any unauthorized, false, altered, forged, counterfeited or previously used instrument for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty as provided in this Title. Each such counterfeited, embezzled, stolen, converted, misapplied or forged stamp or other instrument shall each constitute a separate violation.

12-1-28. Offenses.

Any person or taxpayer who violates any provision of the Title for the purpose of evading the payment of taxes shall be guilty of an offense punishable by imprisonment for a term not to exceed three (3) months and/or a fine not to exceed Five Hundred (\$500.00) dollars or both such imprisonment and fine for each separate violation.

12-1-29. General Penalties.

Any person or taxpayer who files any false report or return or who fails to file any report or return or who otherwise violates any provisions of this Title for the purpose of evading the payment of taxes imposed by this Title shall forfeit a civil penalty of not more than Five Hundred (\$500.00) dollars for each such violation in addition to any other penalties prescribed by law.

12-1-30. Referrals for Federal Prosecution.

It shall be the duty of all members of the Ponca Tax Commission, the Tribal Attorney and any law enforcement officer upon receiving reliable information that probable cause may exist to believe that any person or taxpayer has violated Section 12-1-28 of this Title to report the facts to the appropriate Federal officials and to request that a federal investigation be commenced to determine whether 18 U.S.C.

Section 1163, Embezzlement and Theft from Indian Tribal Organizations, has been violated.

12-1-31. Interest.

All taxes, fees, or other charges of the Ponca Tax Commission not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date said taxes or fees became due until the date they are paid in full.

12-1-32. Commencement of Actions.

Filing a written request for refund with the Ponca Tax Commission shall commence an action for a refund within the meaning of the civil statute of limitations, if such request is diligently prosecuted under the law.

12-1-33. Taxes Erroneously paid.

Taxes erroneously paid due to mistake of fact or law may be refunded upon application even though no written protest was made at the time of payment. The taxpayer shall file an application for refund with the Ponca Tax Commission. The taxpayer may also appeal the determination of the Ponca Tax Commission to the Tribal Court.

12-1-34. Penalties.

(1) Any Person who knowingly files any false report or return, or who knowingly fails to file any report or return, or who otherwise knowingly violates any provisions of this Article shall pay a civil penalty of five hundred dollars (\$500) per occurrence.

(2) Every retailer who shall fail to collect the taxes imposed by this Title shall be liable for the full amount of the taxes owed plus interest at the statutory rate until paid.

(3) Willful failure to collect or remit the taxes imposed by this Title shall make the retailer liable for an additional penalty of one hundred percent of the taxes due plus interest at the statutory rate until paid.

12-1-35. Records.

Every Person shall maintain complete and adequate records demonstrating compliance with this Title for not less than two years.

CHAPTER 2
SALES TAX

12-2-1. Definitions.

(1) "Consumer" is defined to mean and include any Person, regardless of race, who consensually purchases, receives or comes into possession of goods from a Retailer located on Ponca trust land.

(2) "Goods" is defined to mean and include all tangible personal property of every kind and description. "Goods" shall not include any natural or artificial gas, electricity, water, or any other utility or public service by telephone and telegraph companies or services and rental charges having any connection with the transmission of any messages.

(3) "Non-Taxable Retailer" is defined to mean and include by small or home-based Retailers with annual sales of less than \$10,000 or with continuous operation of less than seven days in duration, including but not limited to vendors at powwows or similar cultural events, school concession stands, community-based fundraisers, and local food vendors.

(4) "Person" is defined to mean and include any natural person, company, tribally owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Title can be applied.

(5) "Retailer" is defined to mean and include any Person in the ordinary course of business who sells or rents any goods Ponca trust land to another Person.

(6) "Sale" or "sales" or their derivatives is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of Goods from a Retailer to any Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use Goods for value received from a Retailer to any Person no matter how characterized.

12-2-2. Tax on sales of goods.

There is hereby levied upon the Sale of Goods on Ponca trust property a tax equal to five percent (5%) of the actual sales price thereof exclusive of any rebate. If a sale is

consummated by trade, barter, or exchange for anything other than money, the tax shall be computed at the fair market value of the property sold.

12-2-3. Exceptions.

The tax imposed by section 12-2-2 of this Title shall not apply to Sales by Non-Taxable Retailers or to the Sale of gasoline, tobacco, prepackaged foodstuffs, medical supplies, medicines or pharmaceutical products, tickets or admissions to events, entry fees, or games of chance. The tax shall apply to the sale of prepared foods.

12-2-4. Impact of tax.

The impact of the tax levied imposed by section 12-2-2 of this Article is declared to be on the Consumer and shall be added to the purchase price of the goods sold and recovered from the Consumer.

12-2-5. Payment of tax.

Every Retailer shall submit to the Ponca Tax Commission twenty days following the end of each month in which the sale of goods occurred a report showing the gross amount of the sale of goods made by said Retailer and the amount of tax collected pursuant to section 12-2-2 of this Article. Every Retailer shall remit the taxes collected pursuant to section 12-2-2 of this Title at the same time the report is submitted.

12-2-6. Permit System.

The Ponca Tax Commission is hereby authorized to establish, by rule, a sales tax permit system for all Retailers to aid in enforcement of this Title.

CHAPTER 3 GASOLINE TAX

12-3-1. Definitions.

(1) "Consumer" is defined to mean and include any Person, regardless of the race of the Person, who consensually purchases, receives or comes into possession of gasoline from a Retailer located on Ponca trust land.

(2) "Person" is defined to mean and include any natural person, company, tribally owned corporation, partnership,

corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Title can be applied.

(3) "Retailer" is defined to mean and include any Person in the ordinary course of business who sells any gasoline on Ponca trust land to another Person.

(4) "Sale" or "Sales" or their derivatives is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of gasoline from a Retailer to any Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use gasoline for value received from a Retailer to any Person no matter how characterized.

(5) "Tribal Wholesaler" is defined as a Person who in the ordinary course of business sells gasoline to Retailers or Persons intended for the sale or use on Ponca trust land.

12-3-2. Tax on sales of gasoline.

There is hereby levied upon the sale of gasoline by a Tribal Wholesaler for sales on Ponca trust land a tax equal to four cents (\$.04) per gallon of gasoline sold exclusive of any rebate.

12-3-3. Exceptions.

(1) The tax imposed by Section 12-3-2 of this Title shall not apply in the applicable jurisdiction if the Ponca Tribe has entered into an agreement or compact regarding fuel tax with the States of Nebraska or Iowa. Where applicable such agreement or compacts shall super cede Section 12-3-2 et al. however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the tribe shall be the amount described in section 12-3-2.

(2) The tax imposed by Section 12-3-2 shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside Ponca trust land.

12-3-4. Impact of tax.

The impact of the tax levied imposed by Section 12-3-2 of this Title is declared to be on the Tribal Wholesaler.

12-3-5. Collection of tax.

The Tribal Wholesaler shall collect the applicable taxes when selling to a Retailer or Persons under this Title or pursuant to any agreement or compact described in Section 12-3-3.

12-3-6. Payment of tax.

Every Tribal Wholesaler shall submit to the Ponca Tax Commission within twenty (20) days following the end of each month in which the sale of gasoline occurred a report promulgated by the Ponca Tax Commission for the Ponca Tribe of Nebraska showing the gross amount of the sale of gasoline made by said Tribal Wholesaler, the gross amount of gasoline subject to section 12-3-3 of this Title and the amount of tax collected pursuant to section 12-3-2 and 12-3-3 of this Title. Every Tribal Wholesaler shall remit the taxes collected pursuant to Section 12-3-2 of this Title and any compacts or agreements described under Section 12-3-3 of this Title to the to the Ponca Tax Commission at the same time the report is submitted.

**CHAPTER 4
TOBACCO TAX**

12-4-1. Definitions.

(1) "Consumer" is defined to mean and include any Person, regardless of the race of the Person, who consensually purchases, receives or comes into possession of a Tribal Tobacco product from a Ponca Retailer or Ponca Internet Retailer located on Ponca trust land.

(2) "Internet Sale" or "Internet Sales" is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of Tribal Tobacco from an Internet Retailer to any Person or Consumer for shipment to an address outside of Ponca trust land. The locus of an Internet Sale occurs on Ponca trust land at the time the transaction is processed.

(3) "Internet Tribal Tax Stamp" is defined as an officially approved tax stamp of the Ponca Tribe that is applied to all tobacco packages intended for sale by a Ponca Internet

Retailer. The Internet Tribal Tax Stamp shall be a distinct color from the Tribal Tax Stamp.

(4) "Person" is defined to mean and include any natural person, company, tribally owned corporation, partnership, corporation, commission, government agency, joint venture, association, trust, or other political or identifiable entity to which this Title can be applied.

(5) "Sale" or "Sales" or their derivatives is defined to mean and include all sales, barter, trades, exchanges, or other transfers of ownership for value of Tribal Tobacco from a Ponca Retailer to any Consumer or Person no matter how characterized and the rental, leasing, or other transfer of actual or constructive possession and right to use Tribal Tobacco for value received from a Ponca Retailer to any Person no matter how characterized.

(6) "Tribal Tax Stamp" is defined as an officially approved tax stamp of the Ponca Tribe that is applied to all tobacco packages intended for sale by a Ponca Retailer.

(7) "Tribal Tobacco" is defined as all tobacco products sold by a Tribal Wholesaler to a Ponca Retailer or Ponca Internet Retailer that do not have another government jurisdiction's tax stamp already affixed to the tobacco package or were manufactured by a major brand tobacco company. The definition of Tribal Tobacco does not include products sold by a Tribal Wholesaler to Persons, customers, retailers or other wholesalers who intend to resell the product outside Ponca trust land.

(8) "Tribal Wholesaler" is defined as a Person who in the ordinary course of business sells Tribal Tobacco products to Ponca Retailers or Persons intended for the sale or use on Ponca trust land or to Ponca Internet Retailers intended for shipment to a Person or Consumer at an address on Ponca trust land.

(9) "Ponca Internet Retailer" is defined to mean and include any Person in the ordinary course of business who sells any Tribal Tobacco product on Ponca trust land to another Person by shipping to an address outside Ponca trust land.

(10) "Ponca Retailer" is defined to mean and include any Person in the ordinary course of business who sells any Tribal Tobacco product on Ponca trust land.

12-4-2. Sales of Tribal Tobacco.

There is hereby levied upon the sale of Tribal Tobacco by a Tribal Wholesaler for Sales on Ponca trust land a tax equal to five cents (\$0.05) per pack of cigarettes sold exclusive of any rebate. Such products are required to have the Tribal Tax Stamp affixed to them.

12-4-3. Internet Sales of Tribal Tobacco.

There is hereby levied upon the sale of Tribal Tobacco by a Tribal Wholesaler for Internet Sales a tax equal to two and one half cents (\$0.025) per pack of cigarettes sold exclusive of any rebate. Such sales shall include surplus Tribal Tobacco products sold locally by a Ponca Internet Retailer. Such products are required to have the Internet Tribal Tax Stamp affixed to them.

12-4-4. Compact Exceptions.

The tax imposed by Section 12-4-2 of this Title shall not apply in the applicable jurisdiction if the Ponca Tribe has entered into an agreement or compact regarding tobacco tax with the States of Nebraska or Iowa. Where applicable, such agreement or compacts shall super cede Section 12-4-2 et al. however, the amount of tax, including any consumer rebates, collected and paid under any agreement or compact to the tribe shall be the amount described in section 12-4-2.

12-4-5. Wholesale Exceptions.

The tax imposed by Section 12-4-2 or Section 12-4-2 shall not apply to sales to Persons, customers, retailers or other wholesalers who intend to sell the product outside Ponca trust land.

12-4-6. Impact of tax.

The impact of the tax levied imposed by Section 12-4-2 of this Title is declared to be on the Tribal Wholesaler.

12-4-7. Tax Collection.

The Tribal Wholesaler shall collect the applicable taxes when selling to a Ponca Retailer or Ponca Internet Retailer or other Persons intending to sell the tobacco products on Ponca trust land.

12-4-8. Payment of tax.

Every Tribal Wholesaler is required to purchase all applicable tax stamps from the Ponca Tax Commission. The Ponca Tax Commission shall sell the applicable tax stamps to the Tribal Wholesaler, Ponca Retailer, or Ponca Internet Retailer at the applicable rate described in sections 12-4-2 and 12-4-2 or in compliance with any compact or agreement as described in section 12-4-4.

12-4-9. Effective Date.

This Title applies to all Sales of Tribal Tobacco occurring as soon as possible after adoption of this Title by the Ponca Tribal Council.

TITLE XIII
SECURED TRANSACTIONS ACT

CHAPTER 1
GENERAL PROVISIONS

Section 13-1-1. Short Title.

This Title may be cited as the Ponca Tribe of Nebraska Secured Transactions Act.

Section 13-1-2. No Waiver Of Sovereign Immunity.

The sovereign immunity of neither this Ponca Tribe of Nebraska nor of any of its agencies or instrumentalities is waived with respect to any provision of any transaction subject to this Title, absent a recorded, properly ratified, express waiver of sovereign immunity.

Section 13-1-3. Purpose.

This Title must be liberally construed and applied to promote its underlying purposes and policies, which are the promotion of economic development and the continued expansion of commercial practices involving this Ponca Tribe of Nebraska.

Section 13-1-4. No Application To Property Not Alienable.

This Title does not apply to any property interest that is subject to federal restrictions regarding sale, transfer, or encumbrance.

Section 13-1-5. Definitions.

In this Title:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for":

(A) means a right to payment of a monetary obligation, whether or not earned by performance:

(i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;

(ii) for services rendered or to be rendered;
(iii) for a policy of insurance issued or to be issued;

(iv) for a secondary obligation incurred or to be incurred;

(v) for energy provided or to be provided;

(vi) for the use or hire of a vessel under a charter or other contract;

(vii) arising out of the use of a credit or charge card or information contained on or for use with the card;
or

(viii) as winnings in a lottery or other game of chance operated or sponsored by a tribe, governmental unit of a tribe, a person licensed or authorized by a tribe or governmental unit of a tribe to operate the game, a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State.

(B) includes health-care-insurance receivables;
and

(C) does not include:

(i) rights to payment evidenced by chattel paper or an instrument;

(ii) commercial tort claims;

(iii) deposit accounts;

(iv) securities or investment accounts, including assets held in investment accounts;

(v) letter-of-credit rights or letters of credit; or

(vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not

include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) [Reserved.]

(5) "Agreement", as distinguished from "contract", means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in the section on those terms (Section 13-114).

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted;

or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under other applicable law may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(8) [Reserved.]

(9) "Cash proceeds" means money, checks, deposit accounts, or the like.

(10) "Certificated security" means a security that is represented by a certificate.

(11) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(12) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. A "monetary obligation" means an obligation secured by the goods or owed under a lease of the goods and includes such an obligation with respect to software used in the goods. The term does not include

(A) charters or contracts involving the use or hire of a vessel or

(B) records that evidences a right to payment arising out of the use of a credit or charge card, or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(13) "Collateral" means the property subject to a security interest. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(14) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(15) "Consignee" means a merchant to which goods are delivered in a consignment.

(16) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is \$3,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery; and

(D) the transaction does not create a security interest that secures an obligation.

(17) "Consignor" means a person that delivers goods to a consignee in a consignment.

(18) "Consumer" means an individual who enters into a transaction primarily for personal, family or household purposes.

(19) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(20) "Consumer transaction" means a transaction in which

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest secures the obligation.

(21) "Continuation statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(22) "Contract", as distinguished from "agreement", means the total legal obligation that results from the parties' agreement as determined by this Act as supplemented by any other applicable laws.

(23) "Control", with respect to a certificated security in registered form, means that the certificate is delivered to the purchaser and

(A) indorsed to the secured party or in blank by an effective indorsement; or

(B) registered in the name of the secured party, upon original issue or registration of transfer by the issuer.

(24) "Control," with respect to an investment account, means that

(A) the secured party has become the holder of the investment account;

(B) the investment intermediary has agreed that it will comply with orders relating to the investment account originated by the secured party without further consent by the holder of the investment account;

(C) another person has control of the investment account on behalf of the secured party or, having previously acquired control of the investment account, acknowledges that it has control on behalf of the secured party; or

(D) a security interest has been granted by the holder of the investment account to the holder's own investment intermediary.

(25) "Control," with respect to mutual fund shares that are not in an investment account, means that

(A) the mutual fund shares have been delivered to the secured party under applicable law; or

(B) the issuer of the mutual fund shares has agreed that it will comply with instructions originated by the secured party without further consent by the debtor.

(26) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor on the debt secured; or

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes: or

(C) a consignee.

(28) "Document" means a record

(A) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and

(B) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods.

(29) "Equipment" means goods other than inventory, farm products, or consumer goods.

(30) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including wild game or aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their unmanufactured states.

() "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, wild game or aquacultural operation.

(31) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(32) "Fixture filing" means the filing of a financing statement covering goods that are, or are to become, fixtures and satisfying the requirements of this Act relating to contents of financing statements. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(33) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(34) "General intangible" means any personal property, including things in Action, other than accounts, chattel paper, commercial tort claims, deposits accounts, documents, goods, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(35) "Goods" means all things that are movable when a security interest attaches. (A) the term includes:

(i) fixtures;

(ii) standing timber that is to be cut and removed under a conveyance or contract for sale;

(iii) the unborn young of animals;

(iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes;

(v) manufactured homes; and

(vi) a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if:

(I) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(II) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods; and

(B) The term does not include

(i) a computer program embedded in goods that consist solely of the medium in which the program is embedded; or

(ii) accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, securities, investment accounts, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(36) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided or to be provided.

(37) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

(A) a security or an investment account;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(38) "Inventory" means goods, other than farm products, which:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(39) "Investment account" means a financial account maintained by an investment intermediary to which securities or commodity contracts are or may be credited by agreement.

(40) "Investment intermediary" means a securities intermediary under applicable law or a commodity intermediary under applicable law.

(41) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(42) "Manufactured home" means any structure meeting the definitional requirements found under 42 U.S.C. ' 5402(6)(2004), as the same may be amended from time to time.

(43) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(44) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral,

(A) owes payment or other performance of the obligation,

(B) has provided property other than the collateral to secure payment of other performance of the obligation, or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(45) "Organization" means a person other than an individual.

(46) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(47) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(48) "Proceeds", means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of,

defects or infringement of rights in, or damage to, the collateral.

(49) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(50) "Public-finance transaction" means a secured transaction in connection with which

(A) debt securities are issued;

(B) all or a portion of the securities issued have an initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is, or is a governmental unit of, this Ponca Tribe of Nebraska or a State.

(51) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(52) "Purchaser" means a person that takes by purchase.

(53) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(54) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(55) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(56) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a consignor;

(C) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(D) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest is created or provided for; or

(E) a person that holds a security interest arising under other applicable law.

(57) "Security" includes mutual fund shares that are not in an investment account.

(58) "Security agreement" means an agreement that creates or provides for a security interest.

(59) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to this Act. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer is limited in effect to a reservation of a security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to the provisions of this Act distinguishing leases from security interests (Section 13-109).

(60) "Send", in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).

(61) "Sign" means, with the present intent to authenticate any record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate an electronic symbol, sound, or process to or with a record.

(62) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(63) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States, including any political subdivision, or any department, agency, or instrumentality thereof.

(64) "Termination statement" means an amendment of a financing statement which:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(65) "Transmitting utility" means a person primarily engaged in the business of

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(66) "Tribal business day" means a day on which the offices of the government of this Ponca Tribe of Nebraska are open for conduct of their ordinary business.

(b) Subject to the provisions of this Act dealing with course of performance, course of dealing, and usage of trade, the meaning of a term not defined by this Act is to be derived from the context involved, with due consideration for consistency in meaning with uniform principles of commercial and contract law operative in the United States.

Section 13-1-6. Notice; Knowledge.

(a) Subject to subsection (f), a person has "notice" of a fact if the person:

- (1) has Actual knowledge of it;
- (2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means Actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover", "learn", or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person Actually comes to know of it.

(e) Subject to subsection (f), a person "receives" a notice or notification when:

- (1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it

would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual Acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Section 13-1-7. Value.

Except as otherwise provided under applicable laws dealing with negotiable instruments, bank deposits, letters of credit and bulk transfers and sales, a person gives value for rights if the person acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(b) as security for, or in total or partial satisfaction of, a preexisting claim;

(c) by accepting delivery under a preexisting contract for purchase; or

(d) in return for any consideration sufficient to support a simple contract.

Section 13-1-8. Lease Distinguished From Security Interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

Section 13-1-9. General Scope.

(a) Except as otherwise provided in the section on excluded transactions (Section 13-1-10), this Act applies to the

following, if within the jurisdiction of this Ponca Tribe of Nebraska:

(1) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(3) a consignment; and

(4) any other commercial activities, including sales of goods, leases of goods, other transactions in goods, negotiable instruments, bank deposits and collections, funds transfers, letters of credit, documents of title, and investment securities, to the extent those commercial Activities are implicated in clauses (1), (2) or (3) of this subsection (a).

(b) Subject to the provisions of this Act dealing with course of performance, course of dealing, and usage of trade (Section 13-1-13), the application of this Act to a type of transaction enumerated in subsection (a)(4) is to be derived from the context involved, with due consideration for consistency in application with uniform principles of commercial and contract law operative in the United States.

(c) The application of this Act to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Title does not apply.

Section 13-1-10. Excluded Transactions.

This Title does not apply to:

(a) a landlord's lien;

(b) a lien given by statute or other rule of law for services or materials, but the Section 13-3-18(k) applies with respect to priority of the lien;

(c) a tribal lien;

(d) an assignment of a claim for wages, salary, or other compensation of an employee;

(e) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(f) an assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(g) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(h) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(i) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections with respect to proceeds and priorities in proceeds apply;

(j) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(k) a right of recoupment or set-off, but the section on agreements not to assert defenses against assignees applies with respect to defenses or claims of an account debtor;

(l) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) a fixture filing; and

(B) security agreements covering personal and real property in Section 13-604;

(m) an assignment of a claim arising in tort, other than a commercial tort claim, except as provided with respect to proceeds and priorities in proceeds; or

(n) an assignment of a deposit account, except as provided with respect to proceeds and priorities in proceeds.

Section 13-1-11. Administration Of Act; Authority To Promulgate Regulations.

The Ponca Tribe, or its designated successor, is charged with the administration of this Act. In accordance with applicable administrative and interpretive rules and after review and approval of the Tribal Council, regulations necessary for the effective implementation and enforcement of this Act may be promulgated.

Section 13-1-12. Obligation Of Good Faith.

Every contract or duty within this Act imposes, with respect to its performance or enforcement, an obligation that each party be honest and Act in a manner that is consistent with reasonable commercial standards of fair dealing.

Section 13-1-13. Course Of Performance, Course Of Dealing, And Usage Of Trade.

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing [, including a local custom or tradition of this Ponca Tribe of Nebraska,] having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to other applicable law, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Section 13-1-14. Purchase-Money Security Interest.

(a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral.

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) if paragraph (1) does not apply, in accordance with the intention of the obligor manifested at or before the time of payment; or

(3) if neither paragraph (1) nor paragraph (2) applies, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

Section 13-1-15. Sufficiency Of Description.

(a) Except as otherwise provided in subsections (b) and (c), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) In a security agreement, a description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(c) A description only by type of collateral defined in this Act is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, any collateral.

Section 13-1-16. Parties' Power To Choose Applicable Law.

(a) Except as provided in subsection (b) and unless preempted by federal law, if a transaction bears a reasonable relation to this Ponca Tribe of Nebraska and also to another Indian tribe or nation, State, or country, the parties may agree

that the law either of this Ponca Tribe of Nebraska or of such other tribe or nation, State, or country governs their rights and duties. In the absence of an effective agreement, this Act applies to all transactions bearing an appropriate relation to this Ponca Tribe of Nebraska. The fact that the law of another Indian tribe or nation, State, or country is applicable as provided in this section does not affect the jurisdiction or venue of this Ponca Tribe of Nebraska, nor does it waive the sovereign immunity of this Ponca Tribe of Nebraska or of any agency or instrumentality thereof.

(b) An agreement otherwise effective under subsection (a) is ineffective in any of the following cases:

(1) in a consumer transaction;

(2) to the extent the agreement purports to vary the provisions of Subpart 1 of Chapter 3 of this Act, concerning the law governing perfection and priority; or

(3) to the extent that application of the law of the Indian tribe or nation, State, or country designated in the agreement would be contrary to a fundamental policy of this Ponca Tribe of Nebraska.

CHAPTER 2

EFFECTIVENESS, ATTACHMENT AND RIGHTS OF PARTIES

Section 13-2-1. General Effectiveness Of Security Agreement.

(a) Except as otherwise provided in this Act or other applicable law, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this Act is subject to any applicable rule of law which establishes a different rule for consumers and

(1) any other applicable tribal, federal or State statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and

(2) any consumer-protection statute or regulation.

(c) In case of conflict between this Act and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation prevails.

Section 13-2-2. Attachment And Enforceability Of Security Interest; Proceeds; Formal Requisites.

(a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (g), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is in the possession of the secured party pursuant to the debtor's security agreement and this Act; or

(C) the collateral is a security or an investment account and the secured party has control pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to a collecting bank's interest in items under applicable law or agreement, any recognized security interest of a letter-of-credit issuer or nominated person under applicable law or agreement, a security interest arising under recognized sales and leases law, and a security interest in a security or in an investment account arising due to the purchase or delivery of the financial asset.

(d) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by this Act.

(e) The attachment of a security interest in a right to payment or performance secured by a security interest, mortgage or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(f) The attachment of a security interest in an investment account is also attachment of a security interest in any securities or commodity contracts credited to the investment account.

(g) Law other than this Act determines when and if another person becomes bound by a security agreement entered into by a debtor.

Section 13-2-3. After-Acquired Collateral; Future Advances.

(a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) A security agreement may provide that collateral secures or that accounts, chattel paper, or payment intangibles are sold in connection with future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 13-2-4. Rights And Duties When Collateral Is In Secured Party's Possession Or Control.

(a) A secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession.

(b) A secured party having possession or control of securities or control of an investment account may create a security interest in the collateral.

(c) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor,

subsection (a) does not apply unless the secured party is entitled under an agreement:

(1) to charge back uncollected collateral; or

(2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral.

Section 13-2-5. Additional Duties Of Certain Secured Parties.

(a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten (10) tribal business days after receiving a signed demand by the debtor, a secured party having control of an investment account shall send to the investment intermediary with which the investment account is maintained a signed statement that releases the investment intermediary from any further obligation to comply with instructions originated by the secured party.

(c) Within ten (10) tribal business days after receiving a signed demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under the provisions of this Act dealing with discharge of an account debtor and notification of an assignment, a signed record that releases the account debtor from any further obligation to the secured party. However, this subsection does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Section 13-2-6. Request For Accounting; Request Regarding List Of Collateral Or Statement Of Account.

(a) A debtor may sign a record indicating what the debtor believes to be the aggregate amount of unpaid indebtedness as of specified date and send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(b) A secured party, other than a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor, must comply with such a request within 10 tribal business days after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor the secured party may indicate that fact in the reply and need not approve or correct an itemized list of such collateral. If the secured party no longer has an interest in the obligation or collateral at the time the request is received, the secured party must disclose the name and address of any known successor in interest. A successor in interest is not subject to this section until a request is received by the successor.

(c) A debtor is entitled to such statement once every six months without charge. The secured party may require payment of a charge not exceeding \$25 for each additional statement furnished.

CHAPTER 3 PERFECTION AND PRIORITY

SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY.

Section 13-3-1. Law Governing Perfection And Priority Of Security Interests.

Except as otherwise provided with respect to goods covered by a certificate of title, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, the local law of this Ponca Tribe of Nebraska governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral

(A) if the security interest is created pursuant to this Act;

(B) from the time that the debtor becomes subject to the jurisdiction of this Ponca Tribe of Nebraska; or

(C) from the time that the collateral is transferred to a person that thereby becomes a debtor and is subject to the jurisdiction of this Ponca Tribe of Nebraska.

(2) Except as provided in paragraph (3), while goods are located in a jurisdiction, the local law of that jurisdiction governs

(A) perfection of a security interest in the goods by filing a fixture filing; and

(B) perfection of a security interest in timber to be cut.

(3) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

(4) This section does not determine the law governing matters not expressly referred to herein, including attachment, validity, characterization, and enforcement.

Section 13-3-2. Law Governing Perfection And Priority Of Security Interests In Goods Covered By A Certificate Of Title.

(a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

SUBPART 2. PERFECTION

Section 13-3-3. When Security Interest Is Perfected; Continuity Of Perfection.

(a) Except as otherwise provided in this section and the next section dealing with security interests perfected upon attachment, a security interest is perfected if it has attached and all of the applicable requirements for perfection set forth in this Act have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) A security interest is perfected continuously if it is originally perfected by one method under this Act and is later perfected by another method under this Act, without an intermediate period when it was unperfected.

(c) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(d) Perfection of a security interest in an investment account also perfects a security interest in any securities or commodity contracts credited to the investment account.

Section 13-3-8. Security Interest Perfected Upon Attachment.

The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in Section 13-311(b) regarding goods subject to certain statutes, regulations or treaties;

(2) a security interest created by an assignment of accounts which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts;

(3) a sale of a payment intangible or a promissory note;

(4) a security interest created by an assignment of a health-care-insurance receivable to the provider of the health-care goods or services;

(5) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(6) a security interest created by an assignment by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

Section 13-3-9. When Filing Required To Perfect Security Interest; Security Interests To Which Filing Provisions Do Not Apply.

(a) Except as otherwise provided in subsection (b) and the section of this Act dealing with perfection of a security interest in money, a financing statement must be filed to perfect all security interests.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 13-308(c), dealing with liens securing rights to payment;

(2) that is perfected when it attaches under Section 13-309;

(3) in property subject to a statute, regulation, or treaty described in Section 13-311(a);

(4) in goods in possession of a bailee which is perfected under Section 13-312(d) (1) or (2);

(5) in certificated securities, negotiable documents, goods, or instruments which is perfected without filing or possession under Section 13-312(e), (f) or (g);

(6) in collateral in the secured party's possession under Section 13-313;

(7) in a security or an investment account perfected by control under Section 13-314;

(8) in proceeds which is perfected under Section 13-315; or

(9) that is perfected under Section 13-316 relating to continued perfection of security interests perfected under the law of another jurisdiction.

(c) If a secured party assigns a perfected security interest, a filing under this Act is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 13-3-10. Perfection Of Security Interests In Property Subject To Certain Statutes, Regulations, And Treaties.

(a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) any law of the United States whose requirements for a security interest obtaining priority over the rights of a lien creditor with respect to the property preempt the provisions of this Act requiring that security interests be perfected by filing;

(2) [list any certificate-of-title statute covering automobiles, trailers, mobile homes, boats, farm tractors, or the like, which provides for a security interest to be indicated on the certificate as a condition or result of perfection, and any central filing statute other than the one provided by this Act; or

(3) a certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Act. Except as otherwise provided in subsection (d) and the provisions of this Act providing for perfection by possession when goods covered by a certificate of title issued by one jurisdiction become covered by a certificate of title issued by another jurisdiction, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and the provisions of this Act providing for continued perfection when goods covered by a certificate of title issued by one

jurisdiction become covered by a certificate of title issued by another jurisdiction, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Act.

(d) During any period in which collateral subject to a statute specified in subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

Section 13-3-11. Perfection Of Security Interests In Chattel Paper, Documents, Goods Covered By Documents, Instruments, And Money; Perfection By Permissive Filing; Temporary Perfection Without Filing Or Transfer Of Possession.

(a) A security interest in chattel paper, negotiable documents, instruments, securities, or investment accounts may be perfected by filing.

(b) Except as otherwise provided in the provisions of this Act dealing with perfection with respect to proceeds, a security interest in money may be perfected only by the secured party taking possession under the provisions of this Act dealing with perfection by possession.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest in the goods that becomes perfected by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of 20 days from the time it attaches to the extent that it arises for new value given under a signed security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this Act.

Section 13-3-12. When Possession By Secured Party Perfects Security Interest Without Filing.

(a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in certificated securities, negotiable documents, goods, instruments, money, or chattel paper by taking possession of the collateral.

(b) With respect to goods covered by a certificate of title issued by this Ponca Tribe of Nebraska or a State, a secured party may perfect a security interest in the goods by taking

possession of the goods only in the circumstances described in Section 13-316(c), relating to continued perfection of goods covered by a certificate of title.

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) the person in possession signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having signed a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(f) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under subsection (c), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this Act otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

Section 13-3-13. Perfection By Control.

A security interest in a security or an investment account may be perfected by control.

Section 13-3-14. Secured Party's Rights On Disposition Of Collateral And In Proceeds.

(a) Except as otherwise provided in this Act and in any applicable law dealing with entrustment of goods:

(1) a security interest continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by the provisions of this Act dealing with commingled goods; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this Act with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses or is terminated under the provisions of this Act dealing with lapse or termination; or

(2) the 21st day after the security interest attaches to the proceeds.

Section 13-3-15. Continued Perfection Of Security Interest Following Change In Governing Law.

(a) A security interest to which this Act becomes applicable that is perfected pursuant to the law of another jurisdiction remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after the debtor becomes subject to the jurisdiction of this Ponca Tribe of Nebraska (subsections (d) and (e)); or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is subject to the jurisdiction of this Ponca Tribe of Nebraska.

(b) If a security interest described in subsection (a) becomes perfected under the law of this Ponca Tribe of Nebraska before the end of the applicable period described in that subsection, it remains perfected thereafter until perfection lapses in accordance with this Act. Otherwise, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A security interest to which this Act becomes applicable which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this Ponca Tribe of Nebraska remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the

goods not become so covered. However, the security interest becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value, if the applicable requirements for perfection under Section 13-311(b) or 13-313, dealing with perfection by compliance with other law or by possession, are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this Ponca Tribe of Nebraska; or

(2) the expiration of four months after the goods had become so covered.

(d) For purposes of this section only, a debtor becomes subject to the jurisdiction of this Ponca Tribe of Nebraska if:

(1) the debtor is an individual whose principal residence comes to be within this jurisdiction or who becomes a member of this Ponca Tribe of Nebraska;

(2) the debtor is an organization, other than a registered organization, and its sole place of business or, if it has more than one place of business, its chief executive office, comes to be within this jurisdiction; or

(3) the debtor comes to be

(A) a registered organization that is organized solely under the law of this Ponca Tribe of Nebraska; or

(B) incorporated under a charter issued to a tribe by the United States Secretary of the Interior pursuant to 25 U.S.C. ' 477, as the same may be amended from time to time.

The term "registered organization" means an organization organized solely under the law of this Ponca Tribe of Nebraska, a single State, or the United States and as to which this Ponca Tribe of Nebraska, the State, or the United States must maintain a public record showing the organization to have been organized. The term "place of business" means a place where a debtor conducts its affairs.

(e) For purposes of subsection (d),

(1) a person other than a registered organization continues to be subject to the jurisdiction of this Ponca Tribe of Nebraska notwithstanding the fact that it ceases to exist, have a residence, or have a place of business; and

(2) a registered organization continues to be subject to the jurisdiction of this Ponca Tribe of Nebraska notwithstanding

(A) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such; or

(B) the dissolution, winding up, or cancellation of the existence of the registered organization.

SUBPART 3. PRIORITY

Section 13-3-16. Interests That Take Priority Over Security Interest.

(a) A security interest is subordinate to the rights of:

(1) a person that becomes a lien creditor before the security interest is perfected;

(2) a buyer of tangible personal property (including instruments and tangible documents or chattel paper), a lessee of goods, a licensee of a general intangible, or a buyer of accounts or general intangibles or securities that

(A) gives value; and

(B) in the case of a buyer of tangible personal property, a lessee of goods, or a buyer of a security certificate, acquires possession;

(C) in all cases to which this subsection (a)(2) applies, without knowledge of the security interest and before it is perfected;

(3) a secured party entitled to priority under subsection (c).

(b) Notwithstanding subsection (a), a purchase money secured party that files a financing statement before or within 20 days after the debtor acquires possession of the collateral has priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

(c) Priority among conflicting security interests in the same collateral is determined as follows:

(1) Conflicting perfected security interests in the same collateral rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest has priority over a conflicting unperfected security interest.

(3) The first security interest to attach has priority if conflicting security interests are unperfected.

(d) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds, except as provided in Section 13-318.

(e) Except as provided elsewhere in this part, a security interest that has priority under Section 13-318(e), (f) or (j) also has priority over a conflicting security interest in proceeds if

(1) the security interest in proceeds is perfected;

(2) the proceeds are cash proceeds or of the same type as the collateral; and

(3) in the case of proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(f) If a security interest in chattel paper, negotiable documents, instruments, securities or investment accounts is perfected by a method other than filing, and if the proceeds are not cash proceeds, chattel paper, negotiable documents, instruments, securities, investment accounts or letter of credit rights, then priority in the proceeds is determined by the order of any filing.

(g) If applicable law other than this Act gives a security interest or right of set-off to a collecting bank, an issuer or nominated person with respect to a letter of credit, a buyer [or seller] or lessee of goods, or in personal property that is not

subject to this Act, that law governs in the event of conflict with the provisions of this Act.

Section 13-3-17. Particular Priority Rules.

(a) This section creates exceptions to the general priority rules of Section 13-3-16.

(b) For the purpose of this Act, while goods are in the possession of a consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer. If Chapter 3 of this Act results in the consignor having priority over a creditor of the consignee, law other than this Act determines the rights and title of the consignee with regard to that creditor.

(c) Except as otherwise provided in this subsection, a buyer in ordinary course of business, a person that takes a non-exclusive license of a general intangible in ordinary course of business, or a person that takes a lease of goods in ordinary course of business, takes its interest in the collateral free of a security interest in the collateral created by the seller, licensor, or lessor, even if the security interest is perfected and the buyer, licensee or lessee knows of its existence. Whether a licensee or lessee takes its interest in ordinary course of business is to be determined by criteria parallel to those for a buyer in ordinary course of business (Section 13-102(a)(7)). This subsection does not apply to

(1) a buyer of farm products from a person engaged in farming operations, unless the buyer

(A) obtains from the seller a notarized statement setting forth the name and address of any person that has a security interest in the farm products; and

(B) either (i) obtains a consent to the sale free of the security interest from the secured party or (ii) makes payment for the farm products jointly to the seller and the secured party;

(2) a buyer of goods in the possession of the secured party (Section 13-313).

(d) A buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) in the case of goods having a value of \$5,000 or more, before the filing of a financing statement covering the goods. However, this subsection does not apply to a buyer of goods in the possession of the secured party (Section 13-313).

(e) (1) A purchaser of chattel paper or an instrument has priority over a security interest if

(A) the purchaser, in good faith and in the ordinary course of the purchaser's business, gives new value and takes possession of the collateral;

(B) the collateral does not indicate that it has been previously assigned to an identified person other than the purchaser; and

(C) the purchaser is otherwise without knowledge that the purchase violates the rights of the secured party.

(1) A purchaser with priority in chattel paper under subsection (e)(1) also has priority in proceeds of the chattel paper to the extent that

(A) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the security interest in the proceeds is unperfected; or

(B) Section 13-3-16(c), (d) or (e) so provides.

(f) This Act does not limit the rights of, or impose liability on, a holder in due course of a negotiable instrument, a holder to which a negotiable document has been duly negotiated, or a person protected against the assertion of a claim to investment property under other applicable law. Filing under this Act is not notice of a claim or defense to the holder or protected person.

(g) (1) With respect to a conflicting security interest, the priority of an advance under a security agreement is determined under Section 13-3-16(b), except that perfection dates from the time the advance is made if the security interest

securing it is perfected only by attachment (Section 13-3-8) or temporarily by law (Section 13-3-12(e), (f) or (g)) and is not made pursuant to a commitment entered into before or while the security interest is perfected by another means.

(2) With respect to a lien creditor, the security interest securing an advance is subordinate if the advance is made more than 45 days after the person becomes a lien creditor, unless the advance is made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien.

(3) With respect to a buyer of goods other than a buyer in ordinary course of business (Section 13-1-2(a)(7)), and with respect to a lessee of goods that does not take its lease in ordinary course of business (Section 13-3-17(c)), the security interest securing an advance is subordinate if the advance is made after the earlier of the time the secured party acquires knowledge of the purchase or 45 days after the purchase, unless the advance is made pursuant to a commitment entered into without knowledge of the purchase and before the expiration of the 45-day period.

(4) Paragraphs (1) and (2) of this subsection do not apply to a security interest held by a person that is a consignor or a buyer of accounts, chattel paper, payment intangibles or promissory notes.

(h) The following rules govern the priority of a purchase money security interest and a conflicting security interest in collateral and its proceeds:

(1) A perfected purchase-money security interest in goods other than inventory or livestock that are farm products has priority over a conflicting security interest, and a perfected security interest in identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) A perfected purchase-money security interest in inventory or livestock that are farm products has priority over a conflicting security interest if the purchase-money security interest is perfected when the debtor acquires possession of the goods and the purchase-money secured party sends timely and appropriate notice to the holder of the conflicting security interest, provided that no such notice is required unless the

holder of the conflicting security interest has filed a financing statement covering the same types of goods:

(A) before the purchase-money security interest is perfected by filing; or

(B) if the purchase-money security interest is temporarily perfected under Section 13-3-11(f), before the beginning of the applicable 20-day period.

If a purchase-money secured party has priority in inventory under this paragraph (2), it also has priority in chattel paper or an instrument constituting proceeds, in proceeds of the chattel paper except as otherwise provided in this section, and in identifiable cash proceeds received on or before delivery of the goods to a buyer. If a purchase-money secured party has priority in livestock that are farm products under this paragraph (2), it also has priority in their identifiable proceeds and products in their unmanufactured states.

(3) A perfected purchase-money security interest in software has priority over a conflicting security interest, and a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods.

(4) Notwithstanding the rest of this subsection (f), if two or more purchase-money security interests are perfected in the same collateral, the security interest securing an obligation for the price has priority, and otherwise priority is determined by the rule of Section 13-3-16(b).

(i) A transferee of money or of funds from a deposit account takes the money or funds free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(j) A security interest in a security or an investment account perfected by control (Section 13-3-14) has priority over a security interest perfected in another way. Multiple security interests perfected by control rank according to time of acquiring control; however, a security interest held by an investment intermediary in the investment account that it maintains has priority regardless of time of acquiring control. A security interest in a certificated security in registered form that is perfected by possession (Section 13-3-12) and not

by control has priority over a conflicting security interest perfected by a method other than control.

(k) A lien created by statute or rule of law which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business and whose effectiveness depends on the person's possession of the goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Section 13-3-18. Priority Of Security Interests In Fixtures And Crops.

(a) A security interest under this Act may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this Act in ordinary building materials incorporated into an improvement on land.

(b) This Act does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by an appropriate filing before the goods become fixtures or within 20 days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by an appropriate filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this Act and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Act; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Section 13-3-10(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails over any inconsistent provisions of the following statutes:

Section 13-3-19. Accessions.

(a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under Section 13-3-10(b).

(e) After default, subject to Chapter 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods.

The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 13-3-20. Commingled Goods.

(a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) [Perfection of security interest.] If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

Section 13-3-21. Priority Of Security Interests In Goods Covered By Certificate Of Title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this jurisdiction

issues a certificate of title (Section 13-1-5(a)(11)) that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 13-3-10(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Section 13-3-22. Priority Subject To Subordination.

This Act does not preclude subordination by agreement by a person entitled to priority.

**CHAPTER 4
RIGHTS OF THIRD PARTIES**

Section 13-4-1. Alienability Of Debtor's Rights.

Whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this Act; however, an agreement between a debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect. This section is subject to Section 13-404, which invalidates certain legal and contractual restrictions on transferability that generally would be effective under other law.

SECTION 13-4-2. Secured Party Not Obligated On Contract Of Debtor Or In Tort.

The existence of a security interest or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Section 13-4-3. Rights Of Assignee.

(a) An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment in good faith, and for value as defined in the law governing negotiable instruments, except as to claims or defenses that may be asserted against a holder in due course of a negotiable instrument. However, such an agreement is not enforceable if

(1) the agreement relates to an obligation incurred on account of a sale or lease of goods or services;

(2) the account debtor seeks or acquires the goods or services primarily for personal, family or household use; and

(3) the assignor, in the ordinary course of its business, sells or leases goods or services to consumers.

(b) If a negotiable promissory note represents an obligation incurred on account of a sale or lease of goods or service, and the issuer seeks or acquires the goods or services primarily for personal, family or household use, and the payee, in the ordinary course of its business, sells or leases goods or services to consumers, then the issuer may assert any claims and defenses against a person entitled to enforce the note, including a holder in due course.

(c) Except to the extent an agreement to the contrary is enforceable under subsection (a), the rights of an assignee are subject to reduction of the amount owed by reason of all terms of the contract between the account debtor and assignor, any defense or claim in recoupment arising from the transaction that gave rise to the contract, and any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives adequate notification of the assignment signed by the assignor or the assignee. This subsection does not apply to the assignee of a health-care-insurance receivable.

(d) An account debtor or party to a negotiable promissory note may discharge its obligation by paying the assignor or person formerly entitled to enforce the note until, but not after, such account debtor or party receives:

(1) adequate notification that performance is to be rendered to the assignee or transferee, signed

(A) in the case of an account debtor, by the assignor or assignee, and

(B) in the case of a negotiable promissory note, by the transferor or transferee; and

(2) if requested by such account debtor or party, reasonable proof of the assignment or transfer.

In the case of an account debtor, discharge under this subsection is effective notwithstanding an otherwise enforceable agreement not to assert claims or defenses. In the case of a party to a negotiable promissory note, discharge under this subsection is effective against a holder in due course.

(e) A modification of or substitution for an assigned contract is effective against an assignee to the extent provided by law other than this Act.

Section 13-4-4. Restrictions On Assignment.

(a) A commercially harmful restriction on alienation (subsections (b), (c) and (d)) of property is invalid.

(b) In an assignment of accounts other than health-care-insurance receivables, an assignment of chattel paper, an assignment of payment intangibles that is not a sale, or a transfer of promissory notes that is not a sale, the term "commercially harmful restriction on alienation" means a term in an agreement between an account debtor and an assignor, or in a promissory note, to the extent that it

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note, to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the affected property; or

(2) provides that such an assignment, transfer, creation, attachment, perfection, or enforcement may give rise to a default or remedy.

(c) (1) In an assignment of a health-care-insurance receivable, a sale of promissory notes, a sale of payment intangibles, or a security interest in other general intangibles (including a contract, permit, or license, or franchise) that is not a sale, the term "commercially harmful restriction on alienation" has the same meaning as in subsection (b) except

that the references to enforcement of a security interest appearing in subsection (b)(1) and (2) are excluded.

(2) To the extent a commercially harmful restriction on alienation under paragraph (c)(1) would otherwise be effective under law other than this Act, the creation, attachment, or perfection of the security interest:

(A) does not impose a duty or obligation on the account debtor or person obligated on the promissory note;

(B) is not enforceable against the account debtor or person obligated on the promissory note; and

(C) does not entitle the secured party to:

(i) use the debtor's rights in or to the property;

(ii) have access to trade secrets or confidential information of the account debtor or person obligated on the promissory note; or

(iii) enforce the security interest.

(d) In addition to the meanings set forth in subsections (b) and (c), the term "commercially harmful restriction on alienation" includes a rule of law to the extent that it

(1) requires the consent of a governmental body or official to the assignment or transfer of, or actions described in subsection (b) or (c), as applicable, regarding a security interest in, the property; or

(2) has any of the effects of a commercially harmful restriction on alienation as defined in subsection (b) or (c), as applicable.

(e) This section is subject to any different rule in other law for a consumer. In addition, this section does not apply to an assignment of

(1) a claim or right to receive compensation for injuries or sickness as described in 26 U.S.C. ' 104(a)(1) or (2), as the same may be amended from time to time;

(2) a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. ' 1396p(d)(4), as the same may be amended from time to time.

(3) a structured settlement payment right; or

(4) a right to payment of winnings in a lottery or other game of chance regulated by law other than this Act.

CHAPTER 5 FILING

Section 13-5-1. Acceptance, Refusal, And Effectiveness Of Financing Statements; Administration.

(a) The place to file a financing statement to perfect a security interest governed by this Act or another record relating to a security interest is the office of _____.

(b) A financing statement may be filed before a security agreement is made or a security interest attaches. Receipt by the filing office of a financing statement or other record, in appropriate form by an appropriate method, and tender of the filing fee, constitutes filing, and in those cases the filing office must accept the record. If the filing office refuses the record, it must communicate that fact to the person that presented the record, as well as the reason for refusal and the date and time that the record would have otherwise been filed.

(c) A record in appropriate form and communicated to the filing office by an appropriate method is effective even if:

(1) it is improperly refused by the filing office, except as against a purchaser of the collateral for value in reasonable reliance on the absence of the record from the files;

(2) it is incorrectly indexed by the filing office; or

(3) it has minor errors or omissions in information required to perfect a security interest, unless the errors or omissions make the record seriously misleading. If a financing statement fails sufficiently to provide the name of the debtor, the name provided does not make the financing statement seriously misleading if a search of the filing office's records under the debtor's correct name using the filing office's standard search logic, if any, would disclose the financing statement.

(d) If information that the filing office's regulations require to be included in a record, but that Section 13-502(a) does not require for perfection of a security interest, is

incorrect at the time the record is filed, the security interest is subordinate to a conflicting perfected security interest or the interest of a purchaser other than a secured party, to the extent that

(1) the holder of the conflicting security interest gives value in reasonable reliance on the incorrect information; or

(2) the purchaser gives value and, in the case of a buyer or lessee of property capable of being possessed, takes possession, all in reasonable reliance on the incorrect information.

(e) The fee for filing and indexing a record under subsection (a) is \$ 100.00. If a uniform form authorized by filing office regulation is used, the fee is reduced to \$50.00.

(f) The filing office is charged with administration of Chapter 5 of this Act. In accordance with applicable administrative and interpretive rules and after review and approval of the tribal legislative body, the filing office shall promulgate and make available the following, in both cases consistent with this Act and with tribal and commercial policy:

(1) regulations to the extent thought necessary for the effective implementation and enforcement of Chapter 5 of this Act; and

(2) an implementation manual providing guidance to persons entering into transactions governed by this Act.

(g) The tribal legislative body may delegate the administration of Chapter 5 of this Act to a third party, including the filing office or offices of another jurisdiction. No delegation of performance relieves the filing office of any duty imposed on it by this Act.

Section 13-5-2. Contents Of Records; Authorization; Lapse; Continuation; Termination.

(a) A financing statement is sufficient to perfect a security interest only if it provides the name of the debtor, the name of the secured party or a representative of the secured party, and indicates the collateral covered by the financing statement with a description, whether or not specific, that reasonably identifies the collateral or states that it covers all assets or all personal property. A financing statement or a

record of a mortgage that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, is sufficient only if in addition it includes such further information as required by filing office regulation. A record that constitutes a termination statement, assigns a record, continues a record, or otherwise amends a record must comply with the regulations of the filing office for such records.

(b) A record may include information other than that required by subsection (a), such as addresses for the debtor and secured party, the characterization of a party as an individual or an organization and, if an organization, the type of organization, and the jurisdiction of organization of the debtor, or a trade name for the debtor, and may use other terms such as "consignor", "lessor", or "licensor", to the extent permitted by and in compliance with the regulations of the filing office, and shall include such other information to the extent required by such regulations.

(c) A validly filed financing statement is effective for five years after the date of filing unless sooner terminated, except as follows:

(1) If the financing statement correctly indicates that it is filed in connection with a manufactured-home transaction or a public-finance transaction, it is effective for thirty years after the date of filing unless sooner terminated;

(2) If the debtor is a transmitting utility and the financing statement so indicates, the financing statement is effective until terminated; and

(3) A mortgage that is effective as a financing statement is effective until the mortgage is satisfied of record.

(d) A financing statement lapses at the end of the period specified in subsection (c) unless a continuation statement is filed within six months before the expiration of the period. A lapsed financing statement ceases to perfect the security interest unless it is perfected otherwise before lapse, and the security interest is deemed to never have been perfected against a purchaser of the collateral for value.

(e) Upon proper continuation, the effectiveness of a filed financing statement continues for an additional period commencing on the date on which it otherwise would have become ineffective, and again may lapse unless further continued. An

amendment to a financing statement other than a continuation statement does not extend the effectiveness of a financing statement, is effective only from its date of filing, and may be effective as a termination statement as prescribed in the regulations of the filing office.

(f) Upon the filing of a termination statement, the financing statement to which the termination statement relates ceases to be effective. A secured party or secured party of record shall file, cause to be filed, or send a termination statement in accordance with the regulations promulgated under this Act.

(g) Only a person authorized by the debtor in compliance with this subsection or with regulations of the filing office, or a person otherwise designated by those regulations, may file a record that is effective. By signing a security agreement, the debtor authorizes the filing of a financing statement and amendments covering (1) the collateral described in the security agreement and (2) property that becomes collateral under Section 13-315(a)(2), relating to identifiable proceeds.

(h) If a debtor so changes its name, or an organization its identity or corporate structure, that a filed financing statement becomes seriously misleading, the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an appropriate filing is made before the expiration of that time. If a security interest continues in collateral transferred by the debtor (Section 13-3-14(a)), a filed financing statement with respect to collateral remains effective, even if the secured party knows of or consents to the transfer.

CHAPTER 6 DEFAULT

SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTERESTS

Section 13-6-1. Rights After Default; Judicial Enforcement; Consignor Or Buyer Of Accounts, Chattel Paper, Payment Intangibles, Or Promissory Notes.

(a) After default, a secured party has the rights provided in this part, the rights and duties related to possession or control of collateral (Section 13-2-4) and, except as otherwise provided in the provisions of this Act dealing with waivers and variances of rights and duties (Section 13-6-2), those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) The rights under subsections (a) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and under the provisions of this Act dealing with an unknown debtor or a secondary obligor (Section 13-6-5), after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of perfection of the security interest in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Act.

(g) Except as otherwise provided in the provisions of this Act dealing with commercially reasonable collection and enforcement (Section 13-6-6(b)), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 13-6-2. Waiver And Variance Of Rights And Duties.

Except as otherwise provided in the provisions of this Act dealing with waivers (Section 13-6-24), to the extent that they give rights to a debtor or obligor and impose duties on a

secured party, the debtor or obligor may not waive or vary the rules stated in the following sections of this Act dealing with:

(1) rights and duties when collateral is in a secured party's possession (Section 13-2-4);

(2) requests for an accounting or requests regarding a list of collateral or statement of an account (Section 13-207);

(3) commercially reasonable collection and enforcement (Section 13-607(b));

(4) application of proceeds, deficiency and surplus (Section 13-608(a) and 13-6-14(c)), to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) application of proceeds and the like (Sections 13-608 and 13-6-14(d)), to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) a secured party's right to take possession after default and limitations thereon (Section 13-6-9), to the extent that it imposes upon the secured party taking possession of collateral without judicial process the duty to do so without breach of the peace and with consent of the debtor;

(7) commercially reasonable disposition (Section 13-610(b)), notification before disposition of the collateral (Section 13-611), and the contents and form of a notification before disposition of the collateral (Section 13-6-13);

(8) calculation of a deficiency or surplus when the fairness of the amount of proceeds is placed in issue (Section 13-6-15(e));

(9) explanation of the calculation of a surplus or deficiency (Section 13-6-16);

(10) acceptance of collateral in satisfaction of obligation (Section 13-6-20);

(11) right to redeem collateral (Section 13-6-23);

(12) waivers (Section 13-6-24);

(13) the secured party's liability for failure to comply with this Act (Sections 13-6-25 and 13-6-26); and

(14) attorney's fees (Section 13-6-29).

Section 13-6-3. Agreement On Standards Concerning Rights And Duties.

The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in the provisions of this Act dealing with waiver or variance of rights and duties (Section 13-6-3), if the standards are not manifestly unreasonable.

Section 13-6-4. Procedure If Security Agreement Covers Real Property Or Fixtures.

(a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this part; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real

property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 13-6-5. Unknown Debtor Or Secondary Obligor.

A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

- (A) that the person is a debtor or obligor;
- (B) the identity of the person; and
- (C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

- (A) that the person is a debtor; and
- (B) the identity of the person.

Section 13-6-6. Collection And Enforcement By Secured Party.

(a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 13-3-10;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(b) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(c) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(d) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Section 13-6-7. Application Of Proceeds Of Collection Or Enforcement; Liability For Deficiency And Right To Surplus.

(a) If a security interest secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 13-6-6 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest under which the collection or enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest under which the collection or enforcement is made if the secured party receives a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish

reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1) (C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 13-6-6 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

Section 13-6-8. Secured Party's Limited Right To Take Possession After Default.

(a) Unless otherwise agreed, a secured party has at the time of or after default the powers described in subsection (b), but such powers may be exercised only pursuant to judicial process or with the debtor's consent. Such consent is effective only if expressed after default by means of a separate dated and signed personal statement in the debtor's handwriting, describing the powers to be exercised by the secured party and expressly acknowledging and waiving the debtor's right to require that such exercise be pursuant to judicial process.

(b) Under the circumstances of subsection (a) the secured party may:

(1) take possession of the collateral;

(2) without removal, render equipment unusable and dispose of collateral on a debtor's premises under Section 13-610; and

(3) require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

(c) A secured party acting pursuant to the debtor's consent under subsection (a) must proceed without breach of the peace.

Section 13-6-9. Disposition Of Collateral After Default.

(a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its

present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms. In order to protect the debtor's right to redeem collateral (Section 13-6-22), a disposition of collateral shall take place only on a tribal business day.

(c) A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Section 13-6-10. Notification Before Disposition Of Collateral.

(a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor a signed notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) [Notification of disposition required.] Except as otherwise provided in subsection (d), a secured party that disposes of collateral under Section 13-6-9 shall send to the persons specified in subsection (c) a reasonable signed notification of disposition.

(c) To comply with subsection (b), the secured party shall send a signed notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, a signed notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 14 calendar days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 14 calendar days before the notification date, held a security interest in the collateral perfected by compliance with other applicable law (Section 13-311).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) not later than 20 calendar days or earlier than 30 calendar days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Section 13-6-11. Timeliness Of Notification Before Disposition Of Collateral.

(a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) Unless a specific time for sending a notification of disposition is established by the court, a notification of disposition is sent within a reasonable time before the disposition when it is sent after default and:

(1) in a consumer transaction, 20 calendar days or more before the earliest time of disposition set forth in the notification; or

(2) in all other transactions, 10 calendar days or more before the earliest time of disposition set forth in the notification.

Section 13-6-12. Contents And Form Of Notification Before Disposition Of Collateral.

The following rules apply to notification before disposition of collateral:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting;

(E) states the time and place of a public disposition or the time after which any other disposition is to be made;

(F) describes any liability for a deficiency by the person receiving the notice; and

(G) states a telephone number or mailing address from which additional information concerning redemption, disposition and the obligation secured is available.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) information not specified by that paragraph;
or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

**Section 13-6-13. Application Of Proceeds Of Disposition;
Liability For Deficiency And Right To Surplus.**

(a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 13-6-9 in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien a signed demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 13-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) Following a disposition to the secured party or a person related thereto, the surplus or deficiency is calculated based on the amount of proceeds that would have been realized in

a hypothetical disposition complying with this part to a person other than the secured party or a person related thereto, if the debtor establishes that the amount of proceeds of the actual disposition is significantly below the range of proceeds that would have been brought by the hypothetical disposition. For purposes of this section, a secondary obligor is a person related to the secured party.

(f) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 13-6-14. Explanation Of Calculation Of Surplus Or Deficiency.

(a) In a consumer transaction, a secured party must provide the debtor or consumer obligor a reasonably detailed explanation in a record of the manner in which any surplus or deficiency was calculated if the debtor or consumer obligor demands such an explanation or, in any event, 10 tribal business days before commencing an Action for a deficiency.

(b) Each debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

Section 13-6-15. Rights Of Transferee Of Collateral.

(a) A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien [other than liens created under [cite Acts or statutes providing for liens, if any, that are not to be discharged]].

(b) A transferee that Acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this Act or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest under which the disposition is made; and

(3) any other security interest or other lien.

Section 13-6-16. Rights And Duties Of Certain Secondary Obligors.

(a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

(1) is not a disposition of collateral under Section 13-6-9; and

(2) relieves the secured party of further duties under this Act.

Section 13-6-17. Transfer Of Record Or Legal Title.

(a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer; and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this Act and does not of itself relieve the secured party of its duties under this Act.

Section 13-6-18. Acceptance Of Collateral In Full Or Partial Satisfaction Of Obligation; Notification Of Proposal; Effect Of Acceptance; Compulsory Disposition Of Collateral.

(a) Except as provided in subsection (e), a secured party may, after default, propose to retain the collateral in full satisfaction of the obligation it secures or, in a transaction other than a consumer transaction, in partial satisfaction of such obligation.

(b) The secured party shall send notice of such proposal to:

(1) the debtor;

(2) any person from whom the secured party has received, before the debtor consented to the acceptance, a signed notification of a claim of an interest in the collateral;

(3) any person that, 14 calendar days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by means of a financing statement or compliance with other law (Section 13-3-10(a)) that makes such interest reasonably discoverable; and

(4) if the proposal is for partial satisfaction of the obligation, any secondary obligor.

(c) The proposal is not effective unless it is covered by subsection (a) and:

(1) the debtor consents to the acceptance in a record signed after default;

(2) no other person specified in subsection (b), and no other person holding an interest in the collateral subject to the secured party's interest, objects to the acceptance within 14 tribal business days after notification was sent;

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance

(d) A secured party's acceptance of collateral pursuant to this section

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of the debtor's rights in the collateral;

(3) discharges the security interest that is the subject of the debtor's consent, and any security interest or other lien or interest that is subordinate thereto, even if the secured party accepting the collateral fails to comply with this article.

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Sections 13-610 through 13-616 if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

Such disposition shall be made within 90 calendar days after taking possession, or within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and signed after default.

Section 13-6-19. Right To Redeem Collateral.

(a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorney's fees described in Section 13-6-14(a)(1), dealing with application of proceeds of disposition.

(c) A redemption may occur at any time before a secured party:

(1) has collected collateral under Section 13-6-7;

(2) has disposed of collateral or entered into a contract for its disposition under Section 13-6-9; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 13-6-18.

Section 13-6-20. Waiver.

(a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 13-6-10 only by an agreement to that effect entered into and signed after default.

(b) A debtor may waive the right to require disposition of collateral under Section 13-620(e), which deals with mandatory disposition of consumer goods, only by an agreement to that effect entered into and signed after default.

(c) In a transaction other than a consumer transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 13-6-20 only by an agreement to that effect entered into and signed after default. In a consumer transaction, a debtor or secondary obligor may not waive such right.

SUBPART 2. NONCOMPLIANCE WITH ACT.

Section 13-6-21. Remedies For Secured Party's Failure To Comply With Act.

(a) If it is established that a secured party is not proceeding in accordance with this Act, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this Act. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 13-628, which deals with the nonliability and limitations on liability of a secured party and the liability of a secondary obligor:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time-price differential plus 10 percent of the cash price.

(d) A debtor whose deficiency is eliminated under Section 13-6-21, which deals with Actions in which a deficiency or surplus is in issue, may recover damages for the loss of any surplus.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:

(1) fails to comply with the provisions of this Act dealing with additional duties of a secured party having control of an investment account (Section 13-2-5(b));

(2) fails to comply with the provisions of this Act dealing with duties of a secured party if an account debtor has been notified of assignment (Section 13-2-5(c);

(3) files a record that the person is not entitled to file under Section 13-5-2(g);

(4) fails to file, cause to be filed or send a termination statement as required by Section 13-5-2(f);

(5) fails to comply with the provisions of this Act dealing with explanations of calculations of surplus or deficiency (Section 13-6-15(a)), and whose failure is part of a pattern, or consistent with a practice, of noncompliance.

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request for an accounting (Section 13-2-7). A recipient of a request under Section 13-2-7 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 13-2-7, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Section 13-6-22. Action In Which Deficiency Or Surplus Is In Issue.

(a) In an Action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement,

disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in the provisions of this Act dealing with nonliability and limitations on liability of a secured party or secondary obligor (Section 13-6-22), if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is subject to setoff for an amount as stated in the provision of this Act dealing with damages for noncompliance (Section 13-6-20(b)), which may be measured by the amount recovered for conversion of collateral.

(4) For purposes of paragraph (3), the liability of the debtor or a secondary obligor is calculated on the presumption that the proceeds of disposition equal the sum of the secured obligation, expenses, and allowable attorney's fees, but the secured party may rebut the presumption.

(b) The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Section 13-6-23. Determination Of Whether Conduct Was Commercially Reasonable.

(a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

Such approval need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 13-6-24. Nonliability And Limitation On Liability Of Secured Party; Liability Of Secondary Obligor.

(a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this Act; and

(2) the secured party's failure to comply with this Act does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any Act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Section 13-6-22(c)(2), which deals with statutory damages where the collateral is consumer goods, for its failure to comply with Section 13-6-15, which deals with explanations of calculations of surplus or deficiency.

(e) A secured party is not liable under Section 13-6-20(c)(2), which deals with statutory damages where the collateral is consumer goods, more than once with respect to any one secured obligation.

Section 13-6-25. Attorney's Fees In Certain Transactions.

If the secured party's compliance with this Act is placed in issue in an Action, the following rules apply:

(1) If the secured party would have been entitled by agreement to attorney's fees as the prevailing party, and the original principal amount of the indebtedness secured does not exceed [\$25,000], a debtor or obligor prevailing on the issue is entitled to the costs of the Action and reasonable attorney's fees.

(2) In other cases, the court may award to a consumer debtor or consumer obligor prevailing on that issue the costs of the Action and reasonable attorney's fees.

(3) In determining the attorney's fees, the amount of the recovery on behalf of the prevailing debtor or obligor is not a controlling factor.

CHAPTER 7
MISCELLANEOUS PROVISIONS

Section 13-7-1. Effective Date.

This Act takes effect on _____ .

Section 13-7-2. Severability.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.