

# TITLE 6 DOMESTIC RELATIONS

## CHAPTER 1 MARRIAGE

**Section 6-1-1. Authority.** The Flandreau Santee Sioux Tribe shall have the authority to issue marriage licenses to individuals who are residents of the reservation.

**Section 6-1-2. Marriage License** No marriage shall be performed under authority of this Code unless the parties have first obtained a marriage license from the Clerk of the Flandreau Santee Sioux Tribal Court. The Clerk 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 Clerk shall keep a record of all marriage licenses and certificates issued.

**Section 6-1-3. 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 Flandreau Santee Sioux Tribe. All marriages performed on the Flandreau Santee Sioux Tribe Indian Reservation prior to the effective date of this Code, including those perfected according to any Tribal custom, are declared valid for all purposes under this Code. Parties to such marriages may obtain a marriage certificate upon proof to the Clerk by affidavit or otherwise of the validity of their marriage, and payment of a \$25.00 fee.

**Section 6-1-4. 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 18 years of age, or at least 16 years of age but less than 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 of the reservation.

**Section 6-1-5. Solemnization.** To be valid, a marriage shall be solemnized on the reservation in the presence of at least two witnesses. A marriage may be solemnized by any of the following individuals:

- a. Recognized clergyman or persons recognized by their religions as having authority to marry;
- b. A judge of the Flandreau Santee Sioux Tribe;
- c. The Clerk of Courts of the Flandreau Santee Sioux Tribe;
- d. Any person recognized by South Dakota 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 6-1-6. 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 thereafter declares them to be husband and wife.

**Section 6-1-7. 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:
  - a. Actually believed in good faith that the prior marriage had been dissolved as a result of divorce or annulment; or
  - b. Actually believed, in good faith, that his or her prior spouse was dead.

**Section 6-1-7. 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 6-2-1. 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 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 6-2-2. 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 causes 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 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 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 years after the marriage.

**Section 6-2-3. 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 6-2-4. 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 6-3-1. Authority.** The Tribal Court shall have the authority to grant divorces to individuals who are residents of the reservation whether the marriage was consummated under marriage license issued by Clerk of the tribal court or under any other proper civil authority.

**Section 6-3-2. 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 persons.

**Section 6-3-3. 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 of the Flandreau Santee Sioux Reservation, 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 6-3-4. 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 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 shall be required to enter into mediation to settle issues involving 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 6-3-5. 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 6 months;
4. Willful neglect;
5. Habitual drunkenness or drug incapacitation of the defendant for a period of at least one year;
6. Conviction of a felony;
7. Extreme cruelty; or
8. 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 6-3-6. Limitations.** A divorce may be denied:

1. When the cause is adultery and the action is not commenced within one 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 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 years have passed since the grounds became or should have known to the complaining party.

**Section 6-3-7. 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 anyway 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 6-3-8. Temporary Alimony and Suit Money; Restraint.** The court may after notice and hearing:

1. Order either party to pay to the clerk 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 6-3-9. 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 cause by the Court who shall make and file its findings and decree upon the evidence.

**Section 6-3-10. Irreconcilable differences defined.** Irreconcilable differences are those which 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 6-3-11. 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 which 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 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-day period, either party may move for the dissolution of the marriage or a legal separation.

**Section 6-3-12. 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 6-3-13. 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 6-3-14. 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 6-3-15. 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 6-3-16. Action for separate maintenance without Divorce-Alimony and support.** An action for separate maintenance may be maintained without request for divorce, upon any grounds which 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 6-3-17. 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 6-4-1. Visitation.** Upon the dissolution of a marriage or order for separate maintenance, and an award of custody of the parties 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 6-4-2. 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 6-4-3. Written request 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 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 6-4-4. 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 6-4-5. Violation of custody or visitation decree-Punishment.** Each violation of the custody or visitation provisions of a court decree may be punished by imprisonment in jail not to exceed three days, by fine not to exceed one hundred dollars, or both.

## **CHAPTER 5 CHILD SUPPORT**

**Section 6-5-1. 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 obligers 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 consecutive days, and the nature of the absence constitutes family disassociation because of substantial severance of marital and family ties and responsibilities, resulting on the child losing or having a substantial reduction of physical care, communication, guidance and support from the parent.

**Section 6-5-2. Amount of Support Obligation.** The child support obligation may be established in accordance with the child support obligation guidelines set by the State of South Dakota. A judge may deviate from the guidelines upon agreement of the parties or where it appears that application of the guidelines would work a financial hardship on either party

**Section 6-5-3. 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 6-5-4. 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 federal law. No foreign court order for support shall be enforced until it has been recognized by the Tribal Court.

**Section 6-5-5. 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 order. The obligor shall have the right to object to enforcement of the order and shall be given two 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 6-5-4 of this Chapter.

**Section 6-5-6. 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 clerk of courts 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 6-5-4.

**Section 6-5-7. 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 Clerk of Court 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. Employers on the reservation shall be required to honor such orders for withholding.

**Section 6-5-8. Definitions.** For purposes of this Chapter, the following definitions shall apply.

1. **Foreign Court Order for Support:** means any 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.
4. **Wages:** means income earned from employment, including self-employment and income received from the Tribe in the form of a lifestyle betterment grant.

## **CHAPTER 6 PARENT AND CHILD**

**Section 6-6-1. 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 6-6-2. 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 interest of the child. If it appears to the court to be in the best interest 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 which the court finds unique to a particular family or in the best interest of the child.

**Section 6-6-3. 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 6-6-4. 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 6-6-5. 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 6-6-6. 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 6-6-7. Parent and child not answerable for act of other.** Except as provided by Section 6-6-8, neither parent nor child is answerable as such, for the act of the other.

**Section 6-6-8. 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 Flandreau Santee Sioux Tribe 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 years while residing with their parents, shall have therefor a cause of action against and recover of 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 fifteen hundred dollars 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 authorized by this section shall be justified in a specific finding, in writing or on the record.

**Section 6-6-9. 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, or until the child attains the age of nineteen if he is a full-time student in a secondary school.

**Section 6-6-10. Emancipation by express agreement-Approval of tribal 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 interest. The declaration of emancipation and a copy of the agreement shall be filed by the clerk of courts.

**Section 6-6-11. Emancipated minor defined.** Any person under the age of eighteen 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 6-6-13; is an emancipated minor.

**Section 6-6-12. 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 6-6-8 or some other principle of law other than the parent-child relationship.

**Section 6-6-13. Petition for emancipation-Procedure.** A minor may petition the court for a declaration of emancipation. The petition shall be verified and shall set forth with specificity all of the following:

1. That he is at least sixteen years of age;
2. That he willingly lives separate and apart from his parents or guardian with the consent of 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 Flandreau Santee Sioux Tribe 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 interest.

If the petition is sustained, the court shall forthwith issue a declaration of emancipation, which shall be filed by the clerk of court.

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 6-6-14. Rescission of declaration of emancipation.** A minor declared emancipated under Section 6-6-13 or 6-6-10 or his conservator may petition the court 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 6-6-13, which shall be filed by the clerk of courts.

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 6-6-15. 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 proceedings 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 6-6-16.

## **CHAPTER 7 PROTECTION FROM DOMESTIC ABUSE**

**Section 6-7-1. Application for relief.** An application for relief under this Section may be filed in tribal court.

**Section 6-7-2. Definitions.** Terms used in this Chapter inclusive unless a different meaning is clearly indicated by the context, mean:

- 1) "Domestic abuse," physical harm, bodily injury or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury on a family or household member;

- 2) "Family or household member," spouse, former spouses, persons related by consanguinity or 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 three years or less; 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 days.

**Section 6-7-3. Petition for protection order-Parties-Allegations-Affidavit-Pending action-Costs-Standard petition form.** There exists an action known as a petition for a protection order in cases of domestic abuse. Procedures for the action are as follows:

1. A petition under this section may be made by any family or household member against any other family or household member.
2. A petition shall allege the existence of domestic abuse and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances of the domestic abuse.
3. A petition for relief may be made whether or not there is a pending lawsuit, complaint, petition or other action between the parties.
4. If a petitioner files an affidavit with his petition stating that he does not have the funds available to pay the cost of filing and service, the petition shall be filed and served without payment of costs. If a petition is filed and served without payment of costs, the court shall determine at the hearing described in Section 6-7-3 if the petitioner is indigent. In determining if the petitioner is indigent, the income of the alleged perpetrator of the domestic abuse may not be considered. If the court finds



that the petitioner is not indigent, the court may order the petitioner to pay the costs of filing and service.

The Clerk of the Flandreau Santee Sioux Tribal Court shall make available standard petition forms with instructions for completion to be used by a petitioner.

**Section 6-7-4. Hearing-Time-Service on respondent.** Upon receipt of the petition, the court shall order a hearing which shall be held not later than twenty-one days from the date of the order. Personal service of the petitions, affidavit and notice for hearing shall be made on the respondent not less than five days prior to the hearing.

**Section 6-7-5. Relief authorized on finding abuse-Time limitation.** Upon notice and a hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief as follows:

1. Restrain any party from committing acts of domestic abuse;
2. Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
3. Award temporary custody or establish temporary visitation with regards to minor children of the parties;
4. Establish temporary support for minor children of the parties or a spouse;
5. Order that either or both of the parties obtain counseling;
6. Order other relief as the court deems necessary for the protection of a family or household member, including orders or directives to tribal law enforcement.
7. To surrender any dangerous weapons in the possession of the respondent to the court or law enforcement.

Any relief granted by the order for protection shall be for a fixed period and may not exceed three years.

**Section 6-7-6. Ex parte temporary protection order.** When an affidavit filed with a petition under this Chapter alleges that immediate and irreparable injury, loss or damage will result before an adverse party or his attorney can be heard in opposition, the court may grant an ex parte temporary protection

order pending a full hearing and granting relief as the court deems proper, including an order:

1. Restraining any family or household member from committing acts of domestic abuse;
2. Excluding any family or household member from the dwelling or the residence of the petitioner.

**Section 6-7-7. Limited duration of temporary order-Service on respondent.** An ex parte temporary protection order is effective for a period of twenty-one days. The respondent shall be personally served forthwith with a copy of the ex parte order along with a copy of the petition, affidavit and notice of the date set for the hearing.

**Section 6-7-8. Security not required of petitioner-Exception.** The court may not require an undertaking or other security of any party to a petition for an order of protection other than in exceptional circumstances.

**Section 6-7-9. 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 6-7-10. Modification of order.** Upon application, notice to all parties, and hearing, the court may modify the terms of an existing order for protection.

**Section 6-7-11. Real estate titles not affected.** No order issued pursuant to this section may affect title to real estate.

**Section 6-7-12. Delivery of order to law enforcement agencies.** The petitioner may deliver an order for protection granted pursuant to this section within twenty-four hours to the tribal 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 6-7-13. Violation of order as misdemeanor.** If a temporary protection order or a protection order is granted pursuant to this section, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. Any proceeding under this section is in addition to other civil and criminal remedies.

**Section 6-7-14. Effect of divorce or other civil proceedings prior to criminal proceedings.** In any action involving domestic abuse, the court may not:

- 1) 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;
- 2) Require proof that either party is seeking dissolution of marriage prior to instigation of criminal proceeding.

**Section 6-7-15. Conditional bond-Violation as misdemeanor.** If bond for the defendant in any domestic abuse action is authorized, a condition of no contact with the victim shall be stated and incorporated into the terms of the bond. Willful violation of any such no contact provision is a Class 1 misdemeanor.

**Section 6-7-16. Surrender of weapon by defendant.** The court may require the defendant to surrender any dangerous weapon in his possession to local law enforcement.

**Section 6-7-17. Convicted defendant prohibited from contacting victim.** The court may order that any defendant convicted of a crime involving domestic abuse be prohibited from contact with the victim and the sheriff shall give the victim a copy of any such order.

## CHAPTER 8 ADOPTION OF CHILDREN

**Section 6-8-1. Adoption of illegitimate child by acknowledgment 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 6-8-2. 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 proceedings, shall have acknowledged the child as his own by affirmatively asserting paternity, within sixty days after the birth of the child,

- 1) As outline in Section 6-8-1, or
- 2) By causing his name to be affixed to the birth certificate;
- 3) Otherwise by commencing a judicial proceedings claiming a parental right.

**Section 6-8-3. Adoption of minor child permitted.** Any minor child within the reservation 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 years older than the person adopted.

**Section 6-8-4. 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 6-8-5. 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 the parent's companionship for a critical period of time;
- 2) Has abandoned his or her child for a period of one year;
- 3) Has been adjudged by a court of competent jurisdiction to be an habitual drunkard or mentally incompetent; or
- 4) Has had his/her parental rights terminated by a court of competent jurisdiction, if the adjudication is final on appeal to the court of last resort or the time for an appeal has expired.

**Section 6-8-6. Consent of child over twelve required.** The consent of the child, if over the age of twelve years, is necessary to its adoption.

**Section 6-8-7. Joinder of proceedings as to two or more children-Separate orders required.** The adoption of two 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 6-8-8. Period of residence in home required before petition 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 months.

**Section 6-8-9. Home study report by required.** 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 6-8-10. Time of hearing on petition fixed-Investigation ordered by court.** Whenever a person, or a husband and wife jointly, petition the court for leave to adopt a minor child, a judge of the tribal court shall fix a time for hearing not less than ten 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 6-8-11. 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. The court may, in its discretion, waive the requirements of this section.

**Section 6-8-12. 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 6-8-13. 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 thenceforth 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 persons.

**Section 6-8-14. 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, or furnish certified copies of any such records, except upon order of the court except as otherwise provided by this section and section 6-8-21 to 6-8-23, inclusive. 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 6-8-15. 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 Section 6-8-20 to 6-8-23, inclusive.

**Section 6-8-16. 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 6-8-17. 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 6-8-18. 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 parents 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.

## **CHAPTER 9 GUARDIANSHIP**

**Section 6-9-1. Jurisdiction.** The Flandreau Santee Sioux 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 Flandreau Santee Sioux Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Tribe or of another Indian tribe or the child of a member of the Tribe or of another Indian tribe, whether or not he lives on the Reservation.

**Section 6-9-2. Appointment of Guardian in Connection with Probating an Estate.** 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.

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



**Section 6-9-3. Petition For Guardianship.** 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 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.

The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent; shall list the name of the parents of the minor or the known relatives of the incompetent and their addresses, 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; and 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 6-9-4. Notice; Hearing.** The petitioner, or the Clerk of the Court, if a minor or the Court itself initiates the proceedings, shall cause notice of the hearing to be given by mail or personal service to all know 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.

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.

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, oral, 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 6-9-5. Who May Serve As Guardian.** Any adult person 21 years of age or older and subject to the jurisdiction of the Flandreau Santee Sioux 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 a person with whom the minor or incompetent is living at the time of guardianship hearing. Preference shall be given to the person 14 years of age, but in all cases, the Court shall determine the best interest of the minor or incompetent in selecting a guardian. The court may appoint a person who is not subject to the courts jurisdiction as a guardian if the person consents to the guardianship in writing.

**Section 6-9-6. 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 guardians' duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Flandreau Santee Sioux Tribal Court for the purposes of action against such security.

**Section 6-9-7. Letters of Guardianship.** Upon filing with the Court such security, if any, as may have been required, the guardian shall be issued letters of Guardianship, issued by the Clerk 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 6-9-8. Inventory and Appraisalment.** Within 45 days after the appointment of a guardian of property or estate of a minor or incompetent, the guardian shall prepare and submit to the Court an inventory and appraisalment of the estate.

The appraisalment shall be made by three disinterested persons who shall certify under oath to their appraisalment and may receive reasonable compensation for their services.

No appraisalment 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 appraisalment is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

**Section 6-9-9. Annual Accounting.** 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.

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 6-9-10. Guardian's Compensation.** No guardian shall receive any compensation for acting as such without the prior approval of the Court.

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 10% of the gross income of the estate.

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.

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

**Section 6-9-11. Powers and Responsibilities of Guardian.** 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 govern 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 6-9-12. Discharge of Guardian.** Every guardian appointed as provided herein shall serve until discharged by the Court.

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.

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 6-9-13. Guardianship Records.** The Clerk 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 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 Clerk of Courts.

**Section 6-9-14. 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 interest 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.