

TITLE XIV - FAMILY LAW

CHAPTER 80 - MARRIAGE AND DIVORCE

Sec. 80.1 Marriage and Divorce

All marriages consummated according to State Law or Tribal custom or tradition before the effective date of this Code are declared valid and binding by the Pueblo of Santa Clara, but hereafter, shall conform to the provisions of this Code.

Formerly Sec. 23.1, Santa Clara Law and Order Code 1985.

Sec. 80.2 Jurisdiction

The Pueblo of Santa Clara Tribal Court shall have jurisdiction over marriages and divorces of the members of the Pueblo of Santa Clara.

1. The Tribal Court shall have jurisdiction to hear and determine matters of divorce, separate maintenance, annulment, adoptions, determination of paternity and support, custody of minor children and change of name and to determine if full faith and credit will be given to judgments of courts or other jurisdictions in these matters involving members of the Pueblo of Santa Clara, except that a divorce obtained in another jurisdiction shall be of no force or effect in this Pueblo if both parties to the marriage were domiciled in this Pueblo at the time the proceeding for divorce was commenced.

Formerly Sec. 23.2, Santa Clara Law and Order Code 1985.

Sec. 80.3 Marriages

A valid marriage hereunder shall be constituted by:

1. The issuance of a marriage license by the Pueblo of Santa Clara Tribal Court or the State of New Mexico and by execution of a written contract by both parties to the marriage and recorded with the Clerk of the Court.

2. The solemnization of the marriage by Pueblo tradition and custom, by a Judge within the territorial jurisdiction of the Pueblo of Santa Clara or by a recognized clergyman or by public official authorized to do so by the laws of any State is optional.

3. Pueblo custom marriages consummated after the effective date of this Code shall be recognized as legal and binding if they are duly recorded within the records of the Trial Court by signing of a Marriage Register maintained by the Clerk of the Court. A license must be obtained, and each party must sign such Register within five (5) days of the Pueblo custom marriage ceremony.

Formerly Sec. 23.3, Santa Clara Law and Order Code 1985.

Sec. 80.4 Marriage License

A marriage license shall be issued by the Clerk of the Court in the absence of any showing that the proposed marriage would be invalid under any provision of this Code or Pueblo custom and tradition and:

1. Upon written application of an unmarried male and unmarried female, both of whom must be eighteen (18) years or older. If either party to the marriage is under the age of eighteen (18), then that party must have the written consent of the parent or legal guardian.

2. Upon filing with the Clerk of the Court of a certificate of a physician that the parties are free of any venereal disease.

Formerly Sec. 23.4, Santa Clara Law and Order Code 1985.

Sec. 80.5 Solemnization

In the event a judge, clergyman, tribal official or anyone authorized to do so solemnizes a marriage, he shall file with the Clerk of the Court a certification thereof within thirty (30) days of the solemnization. The validity of any marriage under this Code is not affected by the absence of a ceremony.

Formerly Sec. 23.5, Santa Clara Law and Order Code 1985.

Sec. 80.6 Invalid or Prohibited Marriages

Marriages which are prohibited or invalid under this Code are:

1. Where either party is lawfully married to another living spouse unless the former marriage has been legally annulled or dissolved.

2. Between ancestors and descendants of every degree, between a stepfather and stepdaughter or between stepmother and stepson, between brothers and sisters, aunts and nephews, uncles and nieces, and between first cousins, whether the relationship is of the half or whole blood and, legitimate or illegitimate.

3. When marriages are prohibited by custom and traditions of the Pueblo.

4. All such marriages listed in this Section are invalid for the purpose of this Code.

Formerly Sec. 23.6, Santa Clara Law and Order Code 1985.

Sec. 80.7 Grounds for Annulment or Voidable Marriage

A marriage may be voided or annulled by the Tribal Court for any one of the following reasons upon the application of one of the parties:

1. When either party to the marriage shall be incapable of consenting thereto.
2. When the consent was obtained by force or fraud.
3. When either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing.
4. When the marriage was invalid on one of the grounds set forth in Section 60.6.
5. If, after correction of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.
6. Procedure for annulment must be instituted by petition of the party laboring under the disability or upon whom the force or fraud is imposed in a civil action.

Formerly Sec. 23.7, Santa Clara Law and Order Code 1985.

Sec. 80.8 Effects of Annulment of Voidable Marriage

The legitimacy of children and their entitlement to enrollment conceived or born prior to a judgment of annulment shall not be affected by the judgment. The judgment shall be conclusive only as against the parties to the action and those claiming under them.

Formerly Sec. 23.8, Santa Clara Law and Order Code 1985.

Sec. 80.9 Divorce

A marriage may be dissolved by divorce in the Santa Clara Tribal Court for incompatibility of the parties for whatever reason; when either party is a resident within the jurisdiction of the Pueblo of Santa Clara for ninety (90) days. The Rules of Civil Procedure as set forth in this Code shall be followed, except the trial will be conducted by the Court only. The Court may require a waiting period of sixty (60) days before making any divorce final.

Formerly Sec. 23.9, Santa Clara Law and Order Code 1985.

Sec. 80.10 Actions of the Court Pending Divorce or Annulment

The Santa Clara Tribal Court may order:

1. The husband and wife to provide for the separate maintenance of his or her spouse and

children as the Court may deem just upon application therefore or in the disposition of a divorce proceeding.

2. The care, custody and maintenance of the minor children of the marriage during the pendency of the proceedings.

3. For the approval of any property settlement between the parties or recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the giving of the judgment.

4. To restore the maiden name of the wife, if requested.

Formerly Sec. 23.10, Santa Clara Law and Order Code 1985.

CHAPTER 81 - ADOPTIONS

Sec. 81.1 Adoption

The Pueblo of Santa Clara Tribal Court shall have jurisdiction to hear, pass upon, and approve applications for family adoption of or by members of the Pueblo following Pueblo custom and tradition, or any ordinance adopted by the Council of the Pueblo of Santa Clara governing adoptions pursuant to the Act of Nov. 8, 1978 (PL 95-608; 92 Stat. 3069).

1. Adoption proceedings shall be instituted by filing of an application with the Court which shall conduct the proceeding in accordance with the Civil Rules of Procedure of this Code and the Rules of the Court, and Rules and Regulations of the Secretary of the Interior.

2. Any minor Indian child under the age of eighteen (18) years may be adopted by an Indian person, if the adoption is approved by the Court or by a non-Indian person if the adoption is approved by the Court and the Tribal Council.

3. Any surviving natural parents must consent in writing to the adoption or the Tribal Court must consent if it has legally terminated parental rights or if there are no surviving parents.

4. The person or persons seeking to adopt the child shall appear before the Court and be examined and the Court may require a report to be rendered by the Social Worker of the Bureau of Indian Affairs, the Social Service Agency of a state or other person designated by the Court to make such a report, on the qualifications of the adoptive person or persons, and provide any other information for or against the proposed adoption stating the reasons therefore.

5. If the child is of the age of twelve (12) or over, the child must also appear before the court and consent in writing to such adoption.

6. After the Court has heard all the facts on such adoption proceedings and believes that it is to the best interests of the child to be adopted, it shall enter an order accordingly which shall be kept in the records of the Pueblo of Santa Clara, the Bureau of Indian Affairs, and the Bureau of Vital Statistics of the State of New Mexico.

7. The Court may, however, issue a temporary order giving the care and custody of the child to the prospective adoptive parent or any other suitable person or persons for not more than twelve (12) months, where the adoptive family situation may be observed pending final action by the Court.

8. After a final order is issued in an adoption proceeding by the Tribal Court, the adoptive parents shall succeed to all rights and responsibilities of the natural parents whose rights shall thereafter be terminated forever and, thereafter, neither the adopted child nor his natural parents may inherit from each other, with the exception of any trust property that passes by blood descent.

9. Adoption of any minor child who is a member of the Pueblo of Santa Clara shall not affect the child's status as member.

10. The proceedings in all adoption cases shall be confidential and held in closed Court. All records and files except final judgment of adoption, shall be kept confidential by the Clerk of the Court and may be inspected only upon order of the Courts.

11. An adult person may be adopted by any other adult person with the consent of the person to be adopted or his guardian. After a hearing and after such investigation as the Court deems advisable if the Court finds that it is to the best interests of the persons involved, a decree of adoption may be entered.

Formerly Sec. 24.1, Santa Clara Law and Order Code 1985.

CHAPTER 82 - PATERNITY AND SUPPORT

Sec. 82.1 Determination of Paternity and Support

The Santa Clara Tribal Court shall have jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child.

1. All proceedings in this Section shall be in accordance with the Civil Rules of Procedure of this Code and the Rules of the Court.

2. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance and in criteria for enrollment with the Pueblo of Santa Clara.

Formerly Sec. 25.1, Santa Clara Law and Order Code 1985.

CHAPTER 83 - GUARDIANSHIP

Sec. 83.1 Appointment of Guardians

The Court shall have the jurisdiction to appoint and remove legal guardians for minors and for persons who are incapable of managing their own affairs.

1. All proceedings in this Section shall be in accordance with the Civil Rules of Procedure of this Code and the Rules of the Court.
2. The Court may appoint guardians over the property or over the person, or both, of a minor or for persons determined by the Court as being incapable of managing their own affairs. Appointment of any non-Indian as guardian by the Court must be approved by the Council.
3. The Court may require a report from the Social Worker of the Bureau of Indian Affairs, or the State of New Mexico or other person designated by the Court to make a report on the parties involved and such other information as the Court may order.
4. Any guardian appointed under this section shall advise the Court by written report at least once a year or upon request of the Court all actions of the guardian on behalf of the ward or on his estate.
5. No guardian may dispose of any of the ward's property without the approval of the Court in advance.
6. Any guardianship over the person of a minor shall automatically terminate when the ward becomes the age of eighteen (18) years.
7. Any guardianship over the property of a minor shall terminate upon application of the guardian or minor for termination of the guardianship to the Court and the approval of the Court.
8. A special guardian may be appointed for the special purpose of signing deeds, contracts or other documents on behalf of a minor or a person who is incapable of managing his own affairs. The document to be valid must be approved by the Court and also approved by the Secretary of the Interior or his designated representative if it involves trust or restricted real property or funds.

Formerly Sec. 26.1, Santa Clara Law and Order Code 1985.

CHAPTER 83A – KINSHIP GUARDIANSHIP

Sec. 83A.1 Jurisdiction; Policy; Definition

1. The Pueblo of Santa Clara Tribal Court (“Court”) shall have jurisdiction over proceedings brought under this Chapter.
2. It is the policy of the Pueblo that the interests of children are best served when they are raised by their parents. When neither parent is able or willing to provide appropriate care, guidance and supervision to a child, it is the policy of the Pueblo, whenever possible, that a child should be raised by family members or kinship caregivers.
3. A “kinship caregiver” is an adult who is not a parent of the child but who is a relative of the child who provides the child with the care, maintenance, and supervision that a parent would provide to a child and is the person with whom the child resides.

4. A kinship guardianship creates a legal relationship between a child and a kinship caregiver when the child is not residing with either parent and provides a child with a stable and consistent relationship with a kinship caregiver that will enable the child to develop physically, mentally and emotionally to the maximum extent possible when the child's parents are not willing or able to do so.

Enacted by Res. No. 2019-022, May 10, 2019; approved by Sec'y Jan. 31, 2020.

Sec. 83A.2 Procedure

1. The parent of the child or the kinship caregiver may petition the Court for a kinship guardianship.

2. A petition for kinship guardianship shall include:

- a. the name of the petitioner;
- b. the child's name, date of birth, marital status, and residence;
- c. the name and address of the kinship caregiver;
- d. the name and address of the person(s) having legal custody of the child;
- e. the existence of any matters pending involving the custody of the child;
- f. the existence of any matters pending involving abuse or neglect of the child;
- g. a statement that the kinship caregiver agrees to accept the duties and responsibilities of guardianship; and
- h. the relationship of the child to the kinship caregiver;
- i. the reason for the kinship guardianship; and
- j. the requested duration of the kinship guardianship.

3. The Court shall hold a hearing and provide notice of the hearing in conformity with the Civil Rules of Procedure (Title VII, Chapter 40), and upon conclusion of the hearing shall enter a written order on the petition.

4. The grounds for a kinship guardianship shall be proved by clear and convincing evidence.

5. An order of the Court granting kinship guardianship divests the child's parents of legal custody of the child but is not a termination of parental rights.

6. An order of kinship guardianship is a final order for purposes of appeal and shall remain in effect until the child reaches the age of eighteen (18) years, and may include provisions for visitation with the parents, siblings, or other relatives of the child and any other provisions necessary to provide for the child's safety and well-being.

7. The Court may revoke the order of kinship guardianship upon motion of any party where a change of circumstances has been proven by a preponderance of the evidence and it is in the child's best interest to revoke the order.

8. Any party may appeal from a final order under this Chapter to the Southwest

Intertribal Court of Appeals in the manner provided by Title VII, Section 42, Rules of Appellate Procedure. The appeal shall be heard by the appellate court upon the record of the Court.

Enacted by Res. No. 2019-022, May 10, 2019; approved by Sec'y Jan. 31, 2020.

CHAPTER 84 - CARE AND SUPPORT OF DEPENDENT PERSONS

Sec. 84.1 Desertion and Non-Support of Children

Any person who shall desert or willfully neglect or refuse to provide for the support of maintenance of a child of such person, including an illegitimate child or child in the lawful custody of such person, when the person is financially able to provide therefore, shall be guilty of a violation and, upon conviction, may be subject to pay a penalty assessment of not more than \$300.00, with costs, and required by the Court to provide for support and maintenance of the person or persons as provided by this Chapter or by whatever means the Adjudication Officer or Court may direct.

Formerly Sec.61.1, Santa Clara Law and Order Code 1985.

Sec. 84.2 Failure to Support Dependent Persons

Any person who shall, without lawful excuse, refuse or neglect to furnish food, shelter or care to those dependent upon him under the laws of customs and usages of the Pueblo, or who shall fail to make proper use of funds or property of a dependent person for the benefit of the dependent shall be guilty of a violation and, upon conviction thereof, may be subject to pay a penalty assessment of not to exceed \$100.00, with costs, and may be ordered by the Adjudication Officer or Court to provide adequate and proper support as provided by this Chapter and make such other restitution as may be ordered.

Formerly Sec.61.2, Santa Clara Law and Order Code 1985

Sec. 84.3 Alternative Remedies to Enforce Support--Procedure on Failure to Comply with Order

In any cause enumerated in this Code, the Adjudication Officer or Court may render one of the following orders:

(1) Should a penalty assessment be imposed, it may be directed by the Adjudication Officer or Court to be paid in whole or in part to the wife, or to the guardian, or to the custodian of the child or children, or to an individual appointed as guardian.

(2) The Adjudication Officer or Court in its discretion having regard to the circumstances and to the financial ability or earning capacity of the defendant, shall have the power, either before or after trial and conviction, to make an order, with the consent of the defendant, which shall be subject to change from time to time as circumstances may require, directing the defendant to pay a certain sum weekly during such time as the Adjudication Officer or Court may direct, to the wife or to the guardian, or custodian of the minor child or children, or to an individual appointed by the Adjudication Officer or Court, and to release the defendant during

such time as the Adjudication Officer or Court may direct, upon his or her entering into a recognizance, with or without sureties, in such sum as the Adjudication Officer or Court may direct. The condition of the recognizance to be such that if the defendant shall make his or her appearance before the Adjudication Officer or Court whenever ordered to do so, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall remain in full force and effect.

If the Adjudication Officer or Court is satisfied that at any time the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original complaint, information, or enforce the original penalty as the case may be, in addition to declaring a forfeiture of the defendant's recognizance. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the Adjudication Officer or Court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children upon such terms or conditions as may, to the Adjudication Officer or Court, be just and proper.

(3) Where conviction is had and it is so ordered, the Adjudication Officer or Court may direct that the person so convicted shall be compelled to work upon the Pueblo roads or highways or any other public work for the Pueblo where such conviction is had, during the time ordered. And it shall be the duty of the Pueblo where such conviction and penalty is had, and where such work is performed by persons under orders of the Adjudication Officer or Court, to allow and order the payment out of current funds to the wife, or to the guardian or the custodian of the child or children or to an individual appointed by the Adjudication Officer or Court at the end of each calendar month, for the support of such wife, child or children, ward or wards, a sum not to exceed one and fifty one hundredths dollars for each day's work of such person, or to request payment by the Northern Pueblos Agency, Bureau of Indian Affairs, of sufficient funds to meet the needs of the child or children.

(4) Whenever, during the pendency of such proceedings, it shall appear to the Adjudication Officer or Court that any moneys are due the defendant from any person, firm, Pueblo or corporation, or that any person, firm, Pueblo or corporation has funds or property of the defendant in his or its possession, the Adjudication Officer or Court may enter an order requiring such person, firm, Pueblo or corporation to appear and answer, under oath, as to such moneys or property and if it appears at such hearing that such moneys or property should be applied to the support of said defendant's family, the Adjudication Officer or Court may enter judgment against the said person, Pueblo or corporation for the amount he or it was indebted to said defendant at the time of service of said order. If it appears that said person, firm, Pueblo or corporation is not indebted to the defendant but at the time of service of said order upon it or at the time of judgment he or it has or had personal effects of the defendant in his or its possession, the Adjudication Officer or Court may enter an order requiring said person, firm, Pueblo or corporation to deliver up to the Clerk on demand such person property or effects or so much as may be required for the support of the defendants and said family or dependents and said property and effects shall hereupon be sold by the Clerk as other chattels on execution and the proceeds of said sale applied to the support of the said dependents of said defendant. The provisions of this subsection shall be ancillary to and be invoked in addition to the remedies provided in subsections (1), (2), and (3) of this Section.

Formerly Sec.61.3, Santa Clara Law and Order Code 1985

CHAPTER 85 - MISCELLANEOUS

Sec. 85.1 Change of Name

The Santa Clara Tribal Court shall have the authority to change the name of any person upon petition of such person or upon the petition of the parents of any minor. Any order issued by the Court for change of name shall be kept as a permanent record and copies shall be filed with the Pueblo of Santa Clara, Bureau of Indian Affairs, and Bureau of Vital statistics of the State of New Mexico or state of residence of the application.

Formerly Sec. 27.1, Santa Clara Law and Order Code 1985.