



WINNEBAGO TRIBE OF NEBRASKA DIVORCE HANDBOOK

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Introduction

This Divorce Handbook was developed by Legal Aid of Nebraska's Native American Program. Legal Aid of Nebraska is a private, non-profit law firm that provides legal services to low-income Nebraskans. If you would like more information about Legal Aid of Nebraska, or if you would like to make a donation, please visit our website at legalaidofnebraska.org.

If you would like to apply for services please call the Native American AccessLine at 1-800-729-9908, between 9:00 a.m. and 12:00 p.m. Central Time, Monday through Friday.

You can also apply online for services. The online application is available 24/7 on our website at legalaidofnebraska.org.

You can also apply during "office hours" which are regular times every month when the Native American Program comes to the Winnebago Nation Reservation. Native American Program Staff are available at the following time and location:

- Winnebago Senior Center, 103 Bluff Street, Winnebago, Nebraska.
The 4th Tuesday of every month, from 12:00 p.m. until 2:00 p.m.
- Behavioral Health Department, IHS Hospital, Lower Level, Winnebago, Nebraska
3rd Thursday of every month, from 1:30 p.m. to 3:30 p.m.

Important Disclaimer

Use of this informational Divorce Handbook is not intended to and does not create an attorney-client relationship between you and Legal Aid of Nebraska's attorneys. The information provided to you through this Handbook is intended for educational purposes only. Nothing in this Handbook should be considered legal advice or as a substitute for legal advice.

Please understand that the information contained in this Handbook is based upon generally applicable Winnebago Law. The specific facts and circumstances of your case may affect whether the advice herein is appropriate. If you want legal advice about your specific issue you must consult an attorney.

Divorce Handbook

PART I: THE BASICS

CHOICE OF COURT

If you or your spouse is a member of the Winnebago Tribe or one of you has lived in the Winnebago Reservation for at least three months prior to filing for divorce, you can file for divorce in the Winnebago Tribal Court. You may also be able to file for divorce in a Nebraska state court.

Deciding where to file your case is an important decision and one of the first decisions to make after deciding to get a divorce. The requirements for filing in the Winnebago Tribal Court and a Nebraska state court are different. For example, to file in a Nebraska court you will have to show the judge that you or your spouse has lived in Nebraska for a full year right before you filed for divorce.

There are many things to consider in determining where to file. You may feel more comfortable filing in the Winnebago Tribal Court than a Nebraska state court. Filing fees are generally lower in the Winnebago Tribal Court. The filing fee in the Winnebago Tribal Court is \$50.00. If you cannot afford this fee you can ask the Winnebago Tribal Court to waive the fee. You can also ask fees be waived in a Nebraska state court. Winnebago Tribal Court hearings take place in Winnebago, NE. Consult an attorney to discuss in more detail where you would like to file.

NOTE: If you choose to file for divorce in a Nebraska state court, please see Legal Aid of Nebraska's Nebraska Divorce Handbook. The Handbook you are reading gives information that is specific to the Winnebago Court, which will be different than in a Nebraska state court.

GROUND FOR DIVORCE

In addition to showing the judge that you or your spouse live on the Winnebago Reservation or are enrolled in the Winnebago Tribe, you also need to show the Judge that you and your spouse are not compatible to be married. If you think you and your spouse are no longer compatible to be married, the judge will agree.

Other grounds for divorce include abandonment, adultery, extreme cruelty, habitual intoxication, and imprisonment. These reasons are not required to get a divorce.

The Winnebago Tribe generally follows "no-fault" divorce law. The judge does not decide who was wrong. The judge determines custody, property and debt division, and alimony, not who is at fault.

This handbook outlines the basic steps to get a divorce in the Winnebago Tribal Court. A simple divorce can take a few months. But few are that simple. Each divorce is different.

PART II: YOUR DIVORCE – ONE STEP AT A TIME

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STEP ONE – CHOOSING A LAWYER

It is not required to have a lawyer in order to file for divorce. There is no law that prevents a person from filing for divorce themselves. However, it is recommended to have a lawyer represent you in a divorce case if at all possible.

Attorneys must be admitted by the Winnebago Tribal Court in order to represent people in Winnebago Tribal Court. When looking for an attorney, contact those admitted to practice law in the Winnebago Tribal Court. The Winnebago Tribal Court may be able to provide you with a list of attorneys licensed to practice in the Winnebago Tribal Court.

A lawyer cannot represent both a husband and a wife in a divorce case. Even if you and your spouse agree now about everything, problems can come up later on. Some people may tell you that they only used one lawyer for their divorce, but even in those situations the lawyer was actually representing one spouse and the other spouse did not have an attorney. Your spouse may suggest that it would be cheaper to get one lawyer. If you choose to use only one lawyer, make sure the lawyer is representing only you. This means that on the papers filed with the court, the lawyer is listed as your lawyer.

The money you will pay for your divorce include court costs and what your lawyer charges for his or her time. Some lawyers will charge a set fee for a divorce, but most will charge by the hour. Before you hire a lawyer be sure to ask about the lawyer's fee. Some lawyers will meet with a potential client for a free initial consultation (but ask first to be sure!) and that is your chance to get to know the person who may be representing you in this very important matter. You should shop for an attorney just as you shop for anything else—you probably wouldn't buy the first house or car that you look at, and the choice of a lawyer is every bit as important as your choice of a house or car. You should check out several and choose the one with whom you feel the most comfortable.

In addition to the lawyer's fee, there will be other expenses associated with the divorce. Those expenses will be discussed later. You can keep your costs down and help speed up the divorce process by always being ready when you talk with your attorney. When you meet with your attorney, bring:

- A list of your household goods, such as appliances, jewelry, furniture, etc.
- The legal description of your real estate, which can be found on the deed to the property or tax statements.
- Vehicle identification numbers (VINs), which can be found on the vehicle or on the registration.
- Income tax returns, W-2s and paycheck stubs.
- Credit cards and the most recent credit card statements.
- Your social security number and social security numbers of any children of your marriage
- List of who wants what property.
- List of monthly bills for food, rent, utilities, doctors, medicine, lunch money, bus fare, cleaning expenses and everything else you pay for each month.

Remember that if you forget anything and have to call your lawyer later, your lawyer may charge you for the call. However if you do not have these things don't be discouraged from seeking a lawyer.

When you get into the legal system, it is easy to become confused. You will hear new words and be put into new situations. People, including your lawyer, may think you know what is going on. Sometimes you won't. It is important that you do know. Ask questions about things you do not understand. Your lawyer should be willing to explain. If your lawyer is not willing to explain things to you, then perhaps you need a different lawyer. Just as you hired the lawyer, you can fire the lawyer. You should be able to find the right lawyer for you.

IF YOU CANNOT AFFORD A LAWYER

You may not be able to afford a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Please see the "Where to Go for Help If You Cannot Afford a Lawyer" Section at Part IV of this Handbook for places where you may be able to get help if you cannot afford a lawyer.

STEP TWO - FILING YOUR DIVORCE CASE

The next step in your divorce is to file all the proper paperwork with the court. You need to file a "Complaint" with the court to start the divorce process. Your Complaint will tell the judge:

1. You and your spouse's names;
2. The date you were married and where your marriage license was filed;
3. Where you and your spouse currently live;
4. Your tribal enrollment information;
5. Your spouse's tribal enrollment information;
6. Whether you and your spouse have lived on the reservation for three months prior to filing the Complaint;
7. Whether you or your spouse are active members of the Armed Forces of the United States or its allies;
8. That you and your spouse are incompatible to stay married, and any other grounds for divorce that exist;
9. The names of any children born during your marriage, their ages, their addresses, and any other children you share with your spouse;
10. Whether the wife is pregnant;
11. A statement saying that there are no other divorce or separation cases open, and no other cases have been filed concerning the custody of your children, if true;
12. What you want to happen with the children, your real estate, your furniture, your household goods, and your bills;
13. Whether you want alimony from your spouse;

14. Whether you want your maiden name restored, and if you do, what your maiden name is.
15. That you want the judge to decide who pays child support;
16. That you want the judge to end the marriage; and
17. Anything else you want the judge to do.

Usually some time will go by between your first meeting with your lawyer and the time the papers are ready. When they are ready, read them carefully. Make sure all of the information in the paperwork is correct. Once everything is correct, you may need to sign the Complaint. By signing the Complaint you are swearing that everything said in the Complaint is true. Make sure that it is! After you sign the divorce papers, your lawyer will file them in Tribal Court, either by mailing, emailing, faxing, or personally delivering the papers to the Tribal Court. When filed, your case will be given a number. This number will appear on your court file and all the papers filed from that point forward. The person filing the Complaint is called the “Plaintiff” or “Petitioner”. The other spouse is called the “Defendant” or the “Respondent”.

When you file your divorce you will need to pay a filing fee. The Winnebago Tribal Court filing fee is \$50.00. This amount can change; you should confirm the current filing fee by asking your lawyer or the court. If you cannot afford the fee you can ask the court to waive the fee.

STEP THREE - LETTING YOUR SPOUSE KNOW THAT YOU HAVE FILED FOR DIVORCE—“NOTICE”

It is possible that you and your spouse have been talking about a divorce for some time. However, your spouse still must be given legal notice that you have filed for divorce. There are three ways you can provide legal notice to your spouse:

1. In person notice,
2. Notice by mail, or
3. Notice by publication.

IN PERSON NOTICE

The first way to give notice is to have another person provide “Service of Process” to your spouse. Usually the court, the police, or a county sheriff does this. This means someone (called the “process server”) will deliver a copy of your Complaint and another paper called a “Summons” to your spouse. A Summons is a paper which tells your spouse they are required to respond to the complaint, how long they have to do so, and what will happen if they do not respond. The process server must give these papers to your spouse, or leave them with an adult living your spouse at your spouse’s house. If you have a lawyer, tell them the best place to serve your spouse and the best times. The process server might charge a fee to provide personal service to your spouse. The more times the process server has to go out to find your spouse, the more it may cost.

If your spouse is not living on the Winnebago Reservation, you still can have a sheriff give your spouse the papers. The Clerk of the Tribal Court may arrange for service on its own, or they may give you or your lawyer

the Summons and a filed copy of your Complaint. If this happens you or your lawyer can send the Complaint and Summons to the sheriff where your spouse lives. If your spouse does not live on the Winnebago Reservation, there also may be a problem with "Jurisdiction." This means that the Judge may not have the power to make decisions about some of the things you asked for in your Complaint. Jurisdiction is complicated; speak to a lawyer to make sure the tribal court will have jurisdiction to hear your divorce.

The process server should report back to you, your lawyer, and/or the court whether they were able to find your spouse and give him or her the papers. If the process server gives you this report, it should be filed with the court. If the process server cannot find your spouse the first time, your lawyer can ask them to try again. A new Summons may need to be issued. You can keep trying to have your spouse served this way if you find new addresses for him or her. However, if the process server is still not able to find your spouse, you will have to serve him or her (give notice) in another way.

SERVICE BY MAIL

The second way to give your spouse notice is by mail. Service by mail can be easier, quicker, and cheaper than in person notice, but you will need to know an address for your spouse and they will need to be home to sign for the complaint and summons. To serve your spouse by mail, the complaint and the summons must be mailed by certified mail, return receipt requested and delivery restricted to the addressee. This means that your spouse will need to sign for the papers him or herself. If you go to the post office, they should be able to help you make sure the complaint and summons are mailed the right way. If your spouse signs for the papers, the postal service will send you or your lawyer the card showing that your spouse signed for the papers. When the card is received, you or your lawyer should make a copy and file it with the Tribal Court. Keep the copy for yourself. Service by mail is only complete if your spouse signs for the papers, the card is sent back to you or your lawyer, and the card is filed with the court. If your spouse refuses to sign for the papers, you can still complete service by mail. Contact an attorney if your spouse refuses to accept service.

SERVICE BY PUBLICATION

The third way to give your spouse notice is by newspaper publication. This is used only if you do not know where your spouse is. Your lawyer will prepare a paper called an "Affidavit" for you to sign. By signing it, you are swearing that you do not know where your spouse is. It asks that the judge let you tell your spouse you have filed for divorce by placing a notice (like an ad) in a local newspaper of general circulation. Your lawyer can tell you which paper to publish the notice in.

No one expects your spouse to see the notice and because of this, the judge may not be able to order your spouse to do certain things such as pay child support or alimony. If you serve your spouse using newspaper publication, the judge likely can dissolve your marriage, award you custody of the children, award you property in your possession, but little else. Because of this it is better to have your spouse personally served. Service by publication is a last resort.

Giving your spouse notice means that you must do one of the three things listed above. They all take different amounts of time. The costs are different for each.

STEP FOUR – THE WAITING PERIOD

Some time will pass from the day your spouse is given notice before you have a final divorce hearing. During this period of time, several things may happen.

If there are any children of the marriage, and sometimes even if there are not, during the waiting period you or your spouse may want to ask the judge for a temporary or emergency order. Common issues addressed in temporary and emergency orders are child custody, child support, visitation, restraining orders and alimony. If you need a temporary or emergency order for any of these reasons, it is usually a good idea to ask for them when filing your Complaint. You can request these kinds of orders by filing a motion describing what you want and why. If a temporary or emergency order is requested, the court will schedule a hearing. At the hearing, the judge will accept sworn statements from each side and make a decision. For example, if requested, the judge can decide who will have custody of the children while you are waiting for the final hearing. Speak to a lawyer if you want to request a temporary or emergency order.

Another thing that will happen during the waiting period is that you will find out if your spouse is going to file an “Answer” to your Complaint. In an Answer, your spouse will tell the court if he or she agrees or disagrees with what you said in the Complaint. In the Winnebago Tribal Court Answers usually must be filed within 20 days of being served.

If your spouse does not file an Answer they are “in default”. Default divorces are usually simple and easy. You or lawyer can schedule a default hearing. A default hearing may only take 10-15 minutes. At the default hearing you may need to testify about what you want, but your spouse probably will not be present. If what you ask for is fair and reasonable, you will probably get it.

If your spouse does file an Answer, it may mean they have hired a lawyer. During the waiting period you, your spouse, and your lawyers will try to reach an agreement on the issues involved in the divorce, such as custody, parenting time (also called “visitation”), child support, division of property, division of debts, alimony, etc.

The part of the agreement that involves custody and parenting time is often called the “Parenting Plan”. The Parenting Plan might also just be called an agreement or something else. As part of this plan, you and your spouse can agree on the responsibilities for raising your children and how much time you will each spend with the children. Remember, there will need to be give and take on both sides. The Parenting Plan should be what is best for the children—not what is best for the parents. If you and your spouse agree on a Parenting Plan it should be submitted to the court at the final hearing or trial in all divorce cases that involve custody.

If you cannot reach an agreement with your spouse, you or your spouse may ask the Judge to go to mediation. At mediation, a neutral person will try to work out the differences you have with your spouse

regarding custody, parenting time, and other issues. A parenting plan may be mediated. Some lawyers attend mediation with their clients, but often they do not.

If you cannot reach an agreement on all the issues in your divorce, you may need to have a trial. At a trial, the judge will hear testimony and will decide the issues that could not be agreed upon. You and your lawyer may use the waiting period to prepare for the trial. To prepare, your lawyer may need to review documents or talk with people. You can help by getting copies of important documents to your lawyer, and providing contact information for the people you think your lawyer should talk to.

STEP FIVE – THE FINAL HEARING

At some point after your complaint has been filed and your spouse has been served, you will need to have a final hearing. Usually several months will go by between the time you filed your Complaint and your final hearing.

UNCONTESTED HEARINGS

If you and your spouse have worked things out, or if your spouse never filed an Answer, your hearing will be simple. Your lawyer will ask you to take the stand to testify. Your lawyer will ask you a few simple questions, most of which will be about things you asked for in your Complaint and the Decree your lawyer prepared. Your lawyer will give the Decree to the judge. The judge will read it. If the judge agrees that the Decree is fair, he or she will sign it. If you don't have a proposed decree the judge may write one for you. Your lawyer should give you a signed copy of the Decree that has been file stamped with the court.

TRIALS

If you and your spouse have not been able to work things out, you will have to let the judge decide what is right and fair. This is done by going through a trial. Both you and your spouse may be sworn in and questioned. You and your spouse may bring people to court (witnesses) who can tell the judge things that will help your side.

Your lawyer also should tell you what questions your spouse's lawyer is likely to ask you. Your lawyer should talk with any witnesses you will bring with you so that they know what your lawyer and the other lawyer will ask. Your lawyer will want to know if you know of any problems that may come up. Be honest with your lawyer. Your lawyer cannot get ready to deal with problems if he or she doesn't know about them.

At the end of the trial, the judge may decide everything immediately. Or, the judge may say they want time to think about what everyone has said. When the judge makes a decision, your lawyer should tell you and you should be given a copy of your decree that has been signed by the Judge and file-stamped with the court.

STEP SIX – THE DECREE

Your lawyer or the court should give you a copy of the decree as soon as it is signed. The decree contains orders about all issues involving your divorce. You and your spouse need to follow those orders about all issues involved in your divorce. You and your spouse need to follow those orders. Some things may begin on different dates if the judge said so in the decree. For example, child support may begin the month after the decree is signed. Read your decree carefully so you know which dates apply. If the judge ordered that your name return to your maiden name, this should be in the decree.

If you do not understand something in the decree, ask your lawyer to explain it. If you agree with the Judge's decision, your divorce is final. If you do not agree with something in your decree, speak with your lawyer. There are short time frames if you would like to file a motion for a new trial or an appeal.

STEP SEVEN – WHAT TO DO IF YOU DO NOT GET WHAT YOU WANT

If you do not agree with something the judge has decided, talk to your lawyer right away. Your lawyer can ask the judge to listen to some or all of the issues in the case a second time by filing a motion for new trial in hopes that the judge will change his or her mind. If you want to request a new trial, you only have ten days from the date the Decree was entered to request a new trial. If the judge makes the same decision, or if you didn't ask for a new trial you can ask the Winnebago Supreme Court to listen to your case by filing an appeal. The Supreme Court will decide whether the Winnebago Tribal Court was right and fair.

An appeal can be very expensive and take a lot of time to get a decision. Ask your lawyer if there is a good chance to win an appeal. Your lawyer should talk to you about whether or not he or she thinks your appeal will be successful. Appellate judges often will not change another judge's decisions unless they feel the judge was clearly unfair or made a serious mistake of some kind. If your lawyer tells you your chances of winning are not good, you may want to get a second opinion from another lawyer, but do so right away. You may only have 20 days from the date the decree was entered to file an appeal.

PART III – COMMON TERMS THAT ARE USED IN DIVORCE

ALIMONY

Alimony is money one spouse is ordered to pay for the other's support. The judge can order alimony whenever it is fair to do so. There are no hard rules when alimony is appropriate, but in general the more the judge thinks one spouse depends on the other financially, the more likely they will be awarded alimony. One example of when alimony might be fair is if you need to go back to school in order to learn skills that allow you to re-enter the job market. In this case, the judge might order that your spouse support you, at least until you are able to support yourself. Another example is if you were disabled and could not work at all, the judge might order that support be paid for your lifetime or until you remarry.

CHILD SUPPORT

Usually, the parent who does not have custody of the children will be ordered to pay money for their support. Child support is paid to the parent who has custody of the children, to help that parent care for the children, and lasts until the children turn 18 years old, or in some cases 19 years old. The Winnebago Tribal Court takes into consideration the income of both parents in setting the amount of child support.

Once child support is ordered, it must be paid to the Winnebago Child Support Enforcement Office, which then documents the payment and forwards it to the recipient. In addition to regular child support, the court can order a parent to pay additional support to cover certain child care expenses and medical expenses not covered by health insurance.

CONTEMPT OF COURT

When a judge says someone is in “contempt of court” the judge means that the person is not doing something he or she was ordered to do even though they are able to do it. The judge can punish them for this. Contempt hearings can be very serious. The Winnebago Tribal Court can fine a person and take other measures when someone is in contempt of court. A common type of contempt hearing is held when a parent who was ordered to pay child support gets behind in their payments. Contempt can also occur when a parent refuses the other parent court ordered visitation for no good reason. Usually a judge will start by giving the person a chance to get caught up. In extreme cases the court can order a person in contempt of court to spend time in jail.

CUSTODY OF THE CHILDREN

Custody of children can be divided into two issues: legal custody and physical custody. Legal custody means the legal authority to make decisions and have control over a child. Physical custody means having physical possession of a child.

When a judge has to decide who will have custody of the children, the judge will make that decision based upon what is in the best interests of the children. Both the father and the mother have equal rights to custody of the child. The judge must decide which parent can, on a day-to-day basis, best provide for the children. Providing means more than a house and food, it also means meeting the child’s emotional needs and ensuring that the child grows up happy and healthy.

A judge cannot give the mother custody just because the judge thinks children belong with their mother. He cannot give the father custody just because the father makes more money than the mother. The judge listens to all that is said at the hearing. This could include reports from a psychologist. If the judge believes that the child is mature enough, the judge can consider the child’s wishes. After listening to everything, the judge must decide what is best for the children. The activities of the parent are not always considered unless they have an effect on the children. So, don't think you'll automatically lose your children if you have had an extramarital affair. Be sure to talk to your lawyer about it, however.

DIVISION OF PROPERTY

In general, property that you and your spouse bought together while you were married, with money that you shared is known as marital property and belongs to both of you. This includes real estate, household goods, appliances, furniture, cars, boats, trailers, stocks, bonds, etc. It generally does not matter who bought the property or whose name is on any titles or deeds as long as it was purchased during the marriage. If you and your spouse cannot agree on how the marital property should be divided, the judge will have to decide.

The judge is supposed to divide the property in a fair way. Some things are not easy to divide, like your house or your car, so if something cannot be divided the judge can give something of equal value to the other person, or order that property to be sold and the profit divided.

If you and your spouse have been separated for a while, you probably have already divided most of the property. The judge usually will not change this division unless one of you complains and the Judge agrees that the division was not fair.

DIVISION OF DEBTS

While you and your spouse were married, you probably had joint credit cards, loans, etc. Someone has to continue to pay these bills. Again, if you and your spouse cannot agree on who should pay what, the judge will have to decide how to divide these debts.

One important thing to remember is that your divorce decree only affects your relationship with your spouse, not with your creditors. As far as the creditors are concerned, you and your spouse both owe the debts. Your divorce decree does not take your name off of the bill. If the decree says your spouse should pay a bill, and your spouse does not pay, your creditors will want you to pay. If you do not, they may try to repossess whatever you named as security (collateral) on the loan or sue you.

If your spouse does not pay, you can ask your lawyer about a contempt of court hearing. The judge can punish your spouse for not paying the bills he or she was ordered to pay. If you ever find out that your ex-spouse is filing for bankruptcy, talk to your lawyer. Your spouse cannot include alimony or child support in a bankruptcy.

If you have a lot of debt you should talk to your lawyer about bankruptcy. If you want to file bankruptcy, it may be better for you to file it before your final divorce hearing. You need to talk to your lawyer about this.

DOMESTIC VIOLENCE

Domestic violence is a pattern of abusive behavior used by an intimate partner to gain or maintain power and control over the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats that influence another person. This includes any behavior that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, blames, hurts, injures, or wounds someone.

Domestic violence can occur between people who are married, and can lead to divorce. It can be difficult to divorce someone who is using domestic violence to control their spouse, but divorce can help spouses escape domestic violence. If you think you might be a victim of domestic violence, contact a domestic violence advocate and/or an attorney. A domestic violence advocate can be found by contacting the Winnebago Domestic Violence Intervention & Family Preservation Program at 402-878-4308. More resources for victims of domestic violence can be found at <http://ndvsac.org>, by calling the StrongHearts Native Helpline at 1-844-762-8483, or by calling National Domestic Violence Hotline, 1-800-799-7233.

FILING FEES

The Winnebago Tribal Court charges a fee to file your divorce case. The filing fee for a divorce is \$50.00. This amount can change. You should confirm filing fees by asking your lawyer or the court. If you cannot afford the fee, you can request that the filing fee be waived by completing a form that sets out information about your ability to pay. This form can be obtained from the Winnebago Tribal Court.

GETTING YOUR PRIOR NAME BACK

After your divorce, you may want to go back to using your former last name. If this is not your first marriage, you may want to go back to your former married name, especially if you have children with that name. Be sure to tell your lawyer you want this at your first interview. Your request should be in your Complaint for divorce, but if it is not, you are sometimes allowed to add the request at a later date. If you do get your former name back, you will need to have a certified copy of your decree to change your name on your driver's license, social security card, and other important things. The Court may send you or your lawyer a certified copy of the decree when the decree is entered. You can also obtain a certified copy of your decree from the Clerk of the Winnebago Tribal Court. A small fee may apply.

JOINT CUSTODY

Custody of children can be divided into two issues: legal custody and physical custody. Legal custody means the legal authority to make decisions and have control over a child. Physical custody means having physical possession of a child. If parents share joint legal custody they must make decisions together on major decisions affecting the children. If parents share joint physical custody, they share the physical possession of their children close to a 50/50 basis.

When determining custody, including whether to award joint legal or joint physical custody, the judge will decide whether joint custody is in the best interests of the children. Often parents must be able to get along with each other in order for joint physical custody to be successful. The children should feel comfortable going back and forth between two different homes on a frequent basis. If you and your spouse fought about how to raise the children when you were together, you may have difficulty making joint physical custody work. Child support could still be ordered if you and your spouse share joint physical custody, as support is determined based upon each parent's income and the amount of time each parent spends with the children.

Sometimes parents will share joint legal custody, but one parent will have sole or primary physical custody. In these situations, the children live with the custodial parent, have visitation (or Parenting Time) with the non-custodial parent, and the non-custodial parent pays child support. These situations are not much different than cases where the parents do not have any type of joint custody. The only difference is that the parents are subject to a court order that requires them to jointly share in decisions affecting their children. Both parents are required to consult with each other, but in the event of a disagreement the court might order the parent who provides the primary residence gets to make the decision.

JURISDICTION

Jurisdiction is the authority of the court to hear and decide a case. In the Winnebago Tribal Court there are several different kinds of jurisdiction. Personal jurisdiction is the authority of the court over a person. Subject matter jurisdiction is the authority of the court over the subject of the court case. Territorial jurisdiction is the territory the court can hear cases from. Jurisdiction can be very complicated. Speak to an attorney to determine if the Winnebago Tribal Court has jurisdiction over you and your case.

LEGAL SEPARATION

If for religious or other reasons you do not want to divorce your spouse, but you want to end your relationship with your spouse, you can request a legal separation. The things you and your lawyer must do are just about the same as when you file for a divorce. The Judge can make decisions about the children, support, division of property and debts, restraining orders, etc. Some people confuse legal separation with a trial separation. A legal separation is not a temporary thing that gives you and your spouse time to work things out. A legal separation is a final court order. The only difference between a divorce and a legal separation is that a legal separation does not legally end the marriage.

MEDIATION

People who are getting divorced can meet with a mediator in order to try to come to an agreement on the issues that need to be decided in the divorce. This is called mediation. The purpose of mediation is not to make your marriage work. Mediators are specially trained to help people resolve their disputes. If you decide to try mediation, you and your spouse will sit down with a mediator and they will work with you and your spouse as a neutral third party and try to help you come to an agreement on custody, visitation, child support, and property and debt division. At no point are you ever required to come to an agreement about these matters. You can always go to trial and have the judge decide if you want. Mediators often charge a fee, however many change fees based on what you can afford. A list of mediation centers can be found online at <https://supremecourt.nebraska.gov/programs-services/mediation/odr-approved-mediation-centers>. The Winnebago Tribal Court may also have a list of mediation resources.

MODIFICATION

Modification simply means change. You can ask the judge to change things that were ordered in the divorce decree. You can ask the judge to change things that were ordered in the divorce decree, including custody, visitation, and child support. Generally the judge will only change the divorce decree if it is in the best interest of your children to make a change. To change child support, there must be a significant change in the circumstances of your or your spouse since the Decree was entered. You usually cannot ask the judge to change the decree only because you do not agree with the decree. Talk to your lawyer to determine whether you have a good reason to change the Decree.

PATERNITY

Paternity is another way of referring to whomever is the father of a child. Under Winnebago Law, children born during a marriage are presumed to be the husband's children, even if another man is biologically the father. If you have had children born during your marriage that you think might not be your husband's children, tell your attorney. Genetic tests can be done to determine who the father is.

PROTECTION ORDERS

Protection orders are separate from divorce cases, but can be very helpful if domestic or family violence is taking place. If your spouse has caused or tried to cause physical harm to you or your children, or has done something to make you or children afraid of physical harm, you can request the Winnebago Tribal Court enter an order requiring the abusive person to stop having contact with the victim. The judge may deny or grant the request, and a hearing may be held in court. If the judge leaves a protection order in place after a hearing, the order can remain in effect indefinitely.

If a person violates a Protection Order, it is a crime and they can be arrested by any law enforcement officer in the United States. This is true even if the protection order was entered in a tribal court. Be sure to keep a certified copy of the protection order with you. Protection Orders can require an abuser or harasser to leave the home where the victim lives, even if the abuser lives there also. In addition you can ask for temporary custody of children in Protection Order cases, and you can ask the court require abusers to turn in any weapons they own to the police.

To request a protection order, you must file an application with the Winnebago Tribal Court. There is no filing fee or other fee to request a protection order. A protection order petition form is available from the Winnebago Tribal Court, and at the Winnebago Tribal Court's website, <http://www.winnebago-tribe.com/index.php/government/tribal-court>.

If you have concerns about your personal safety, your children's safety or have experienced domestic abuse, you should contact the Winnebago Domestic Violence Intervention & Family Preservation Program at 402-878-4308. More resources for victims of domestic violence can be found at <http://ndvsac.org>, by calling the StrongHearts Native Helpline at 1-844-762-8483, or by calling National Domestic Violence Hotline, 1-800-799-7233.

VISITATION OR “PARENTING TIME”

The parent who does not have custody of the children still has the right to see and spend time with their children. This is usually called visitation or parenting time. In all cases involving custody of children, the judge will include in the decree not only who has custody, but also what visitation/parenting time the other parent has. The judge will likely also say how the children should be exchanged for visitation, and other important things about how you and your spouse will address issues involving your children. If these things are in your decree, you must follow the decree. Sometimes these orders are called the “Parenting Plan”.

Child support and visitation are separate things. If your spouse does not pay child support you cannot keep him or her from seeing the children.

Studies show that children whose parents are going through a divorce have fewer problems when both of their parents stay involved in their life. Children often feel that the divorce is their fault. If one parent seems to drop out of the child's life, it can increase the child's feelings of guilt and loneliness.

Try to keep your spouse involved in your child's life. Talk with him or her about decisions which need to be made. Encourage your spouse to keep their relationship with your child as unchanged as possible. This may not be easy. You may have very bad feelings about your spouse and the divorce. Get outside help if you cannot put aside those bad feelings. Remember, you divorced your spouse, but your children did not.

However, if you or your children were abused by your spouse, talking to your abusive spouse about divorce, custody, and visitation issues may put you at risk of harm. If your spouse was abusive to you or your children, be sure to tell your attorney. You and your children's safety should be addressed when determining custody and parenting time. In some extreme cases, if a parent has been abusive or is involved in other things that would place the children in harm during visitation, visitation can be restricted, or not allowed at all.

PART IV: WHERE TO GO FOR HELP IF YOU CANNOT AFFORD A LAWYER

You may not be able to afford to pay a lawyer to represent you in a divorce case. If so, you may be able to get free help or you may be able to file your own divorce. Some resources are:

LOW-INCOME LEGAL SERVICES

LEGAL AID OF NEBRASKA
legalaidofnebraska.org

If you cannot afford an attorney you can apply with Legal Aid of Nebraska's Native American Program to see if you qualify for assistance. There are three ways to apply.

- By Phone: Call 1-800-729-9908, Monday through Friday, between 9:00 a.m. and 12:00 p.m.
- Online: At Legal Aid of Nebraska's website, legalaidofnebraska.org.

- In Person: Staff with the Native American Program go to the Winnebago at regular times every month to do applications face to face. Native American Program staff is available in Winnebago at the following locations:
 - Winnebago Senior Center, 103 Bluff Street, Winnebago, Nebraska.
The 4th Tuesday of every month, from 12:00 p.m. until 2:00 p.m.
 - Behavioral Health Department, IHS Hospital, Lower Level, Winnebago, Nebraska
3rd Thursday of every month, from 1:30 p.m. to 3:30 p.m.

In person times are subject to change. Contact Legal Aid’s Native American Program at 402-644-4761 to see if any changes have been made.

PRO BONO / REDUCED FEE ATTORNEYS

Many attorneys will represent people at a reduced fee or pro bono (no cost) basis. If you cannot afford an attorney you can contact any attorney licensed in the Winnebago Tribal Court and ask if he or she can take your case for reduced or no fees. Many tribes and states have adopted code of professional conduct that ask attorneys to consider representing people who are unable to afford an attorney. The Winnebago Tribal Court may be able to give you a list of attorney licensed to practice law in the Winnebago Tribal Court.

SELF-HELP RESOURCES:

The Winnebago Tribal Court has developed self-help forms that can help a person file for divorce on their own. These are available at the Winnebago Tribal Court, and on the Court’s website, <http://www.winnebagotribe.com/index.php/government/tribal-court>.

The Winnebago Tribal Court can be reached at (402) 878-2570, PO Box 626, 1000 Industrial Parkway, Winnebago, NE 68071.



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“Promoting Justice, Hope, Dignity and Self-Sufficiency through quality legal aid for those who have nowhere else to turn.”

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