



DELAWARE TRIBE OF INDIANS TITLE 13 – CIVIL PROCEDURE

A TRIBAL JUDICIAL CODE

Approved March 10, 2014 by the Delaware Tribal Council

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Chapter 1 General Provisions

13-101. Scope

This title shall apply to all civil actions, whether cognizable as cases at law or in equity, in the Courts of the Delaware Tribe of Indians unless otherwise specifically provided in other sections of these Law and Order Codes. The term “civil action” shall include those court actions which do not have imposition of a criminal penalty as their object. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

13-102. Jurisdiction in Civil Actions

The Trial Court may exercise jurisdiction over any person or subject matter on any basis consistent with the Constitution of the Delaware Tribe of Indians, the Indian Civil Rights Act of 1968, as amended, and any specific restrictions or prohibitions contained in Federal law.

13-103. No Effect Upon Sovereign Immunity

Nothing in this Title shall be construed to be a waiver of sovereign immunity of the Delaware Tribe of Indians, its officers, employees, agents, or political subdivisions or to be a consent to any suit beyond the limits specifically stated by applicable law.

13-104. Declaratory Judgment

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested nor due.

13-105. Applicability of laws to Civil Actions

(a) In all civil actions, the Court shall apply:

- (1) The Constitution, Statutes, and any traditional or common law of the Tribe that is not otherwise prohibited by applicable Federal law, and if none, then
- (2) Applicable Federal law, including Federal common law, and if none, then
- (3) The laws of any federally recognized Tribe, State, or other jurisdiction which the Court finds to be compatible with the public policy of the Tribe.

(b) No federal or state law shall be applied to a civil action pursuant to paragraphs (2) and (3) of Subsection (a) of this Section if such law is inconsistent with the laws of the Tribe or the public policy of the Tribe.

(c) Where any doubt arises as to the customs and usages of the Delaware Tribe, the Court, either on its own motion or the motion of any party, may subpoena and request the advice of elders and councilors familiar with the customs and usages.

(d) Nothing in this Title shall be deemed to limit the authority of the Delaware Constitution. In instances of conflict between common law, customs, and usages and the Delaware Tribal Constitution, the Court shall apply the Constitution of the Tribe as the supreme and controlling law.

13-106. Parties

The party initiating the civil action will be known as the petitioner. The party against whom the action is brought will be known as the respondent. Additional persons, claims or remedies may be joined in the action in the interest of justice.

13-107. Statute of Limitation

No complaint shall be filed in a civil action unless the event occurred within three (3) years of filing.

13-108. Survival of Action

Civil actions commenced in the Court shall survive to the personal representatives of the petitioner if he or she dies or becomes unable to pursue the action before its completion.

Chapter 2
Commencement of Action
Pleadings, Motions and Orders

13-201. Complaints - Generally

Civil actions shall be initiated by filing a complaint in the Trial Court unless otherwise specified in the Code.

13-202. Notice of Pendency of Action

Upon the filing of a complaint in the Trial Court, the action is pending so as to charge third persons with notice of its pendency. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the petitioner's title, except as provided herein.

13-203. Notice of Pendency Contingent Upon Service

Notice of the pendency of an action shall have no effect unless service of process is made upon the respondent within one hundred twenty (120) days after the filing of the petition.

13-204. Pleadings Allowed, Form of Motions

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if a person who was not an original party is summoned under the provisions herein; and a third party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the Court for an order shall be by motion which, unless made during a hearing or trial, shall:

- (A) be made in writing;
- (B) state with particularity the grounds therefore; and
- (C) set forth the relief or order sought.

13-205. General Rules of Pleading

(a) All pleadings filed in the Trial Court shall contain the following:

- (1) The names of the parties;
- (2) A brief statement of the facts which justify granting the relief asked for;
- (3) A statement of the relief asked for;
- (4) A brief statement of the facts that show that the Court has jurisdiction over the parties and the subject matter of the action;
- (5) A demand for judgment for the relief to be granted on behalf of the movant;
- (6) The signature of the petitioner or counsel; and
- (7) A statement, signed by the petitioner before a notary public or court clerk, swearing or affirming that the petitioner has read the pleading and believes the contents to be true and correct.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. Denials shall fairly meet the substance of the averments denied. A party may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. When he intends to controvert all averments in a pleading, including averments of the grounds upon which the Court's jurisdiction depends, if any, he may do so by general denial subject to the obligation set forth in this Title. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively each of the following defenses relied upon:

- (1) Accord and satisfaction;
- (2) Arbitration and award;
- (3) Assumption of risk;
- (4) Contributory negligence;
- (5) Discharge in bankruptcy;
- (6) Duress;
- (7) Estoppel;
- (8) Failure of consideration;
- (9) Fraud;
- (10) Illegality;
- (11) Injury by fellow servant;
- (12) Laches;
- (13) License;
- (14) Payment;
- (15) Release;
- (16) Res judicata;
- (17) Statute of frauds;
- (18) Statute of limitations;
- (19) Waiver;
- (20) Any other matter constituting an avoidance or affirmative defense.

When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading to Be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required.

(2) A party may set forth and at trial rely upon two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal, equitable, or other grounds. All statements shall be made subject to the obligations as set forth in this Title.

(f) Construction of Pleadings. All pleadings shall be liberally construed so as to do substantial justice.

13-206. Pleading Special Matters

(a) Capacity. It is not necessary to aver or assert the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, except to the extent required to show the jurisdiction of the court, if necessary. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and that party shall have the burden of proof on that issue.

(b) Fraud, Mistake, Conditions of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all condition precedent have been performed or have occurred. A denial of performance or occurrence of conditions precedent shall be made specifically and with particularity.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated, but specific amounts need not be alleged in order to obtain judgment in the amount to which the party is entitled.

13-207. Defenses and Objections - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

(a) When Presented.

(1) A defendant shall serve his answer within twenty (20) days after the service of the summons and complaint upon him, unless otherwise specified in this Title or under another statute of the Tribe, or a different time is prescribed in the order of the court.

(A) A party served with a pleading stating a cross-claim against him shall serve an answer thereto within twenty (20) days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days after service of the answer, or, if a reply is ordered by the Court, within twenty (20) days after service of the order unless the order otherwise directs.

(B) The Tribe or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within sixty (60) days after the service upon the Tribe. No default judgment shall be entered against the Tribe.

(C) The service of a motion permitted under this Section alters these periods of time as follows, unless a different time is fixed by order of the court:

(i) If the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within ten (10) days after notice of the Court's action.

(ii) If the Court grants a motion for a more definite statement the responsive pleading shall be served within ten (10) days after the service of the more definite statement.

(2) Within the time in which an answer may be served, a defendant may file an entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. An entry of appearance shall extend the time to respond twenty (20) days from the last date for answering and is a waiver of all defenses numbered 2, 3, 4, 5, and 9 of paragraph (b) of this Section, provided, that a waiver of sovereign immunity shall not be implied under defense numbered 9 of paragraph (b) of this Section since a defense based upon sovereign immunity is a defense to the subject matter jurisdiction of the Court and not a defense to the parties capacity to be sued. The defense of sovereign immunity may be raised at any time during the proceedings.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

- (1) Lack of jurisdiction over the subject matter;
- (2) Lack of jurisdiction over the person;
- (3) Improper venue or forum non conveniens;
- (4) Insufficiency of process;
- (5) Insufficiency of service of process
- (6) Failure to state a claim upon which relief can be granted;
- (7) Failure to join a party;
- (8) Another action pending between the same parties for the same claim;
- (9) Lack of capacity of a party to be sued; and
- (10) Lack of capacity of a party to sue.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or

objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided herein, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided herein, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion. Every motion for judgment on the pleadings shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(10) in subdivision (b) of this Section, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this Section shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before filing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within ten (10) days after notice of the order or within such other time as the court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just. Such motions are not favored.

(f) Motion to Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by this Title, upon motion made by a party, within twenty (20) days after the service of the pleading upon him or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. If, on a motion to strike an insufficient defense, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for partial summary judgment and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by the rules relating to summary judgment.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Section may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Section but omits therefrom any defense or objection then available to him

which this Section permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) of this Section on any of the grounds there stated. The Court may, in its discretion, permit a party to amend his motion by stating additional defenses or objections at any time prior to a decision on the motion.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue or forum non conveniens, insufficiency of process, insufficiency of service of process or lack of capacity of a party to sue is waived

(A) if omitted from a motion in the circumstances described in subdivision (g) of this Section, or

(B) if it is neither made by motion under this Section nor included in a responsive pleading or an amendment thereof permitted by Section 118(a) to be made as a matter of course, or

(C) if a permissive counterclaim is filed pursuant to this Section.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable, an objection of failure to state a legal defense to a claim, and a defense of another action pending may be made in any pleading permitted or ordered under this Title, or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it is determined, upon suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

13-208. Filing Fee

The petitioner shall pay to the Court a filing fee in accordance with the Court's fee schedule at the time that the complaint is filed. The filing fee may be waived by the Court, in its discretion, upon good cause shown.

13-209. Service of Notice

After the complaint is filed the petitioner shall cause the respondent to be served with a copy of the complaint and a summons in the form maintained by the Clerk of the Court. The Respondent may be served by any person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family. Personal service may be effected by personally delivering a copy of the summons and complaint to the party or by leaving a copy of the summons and complaint with a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. If the respondent cannot be found service may be accomplished by certified mail return receipt requested.

13-210. Service by Publication

When the respondent cannot be found after diligent attempts to serve the respondent by other statutory means, the petitioner may ask the Court to allow service by publication. If the request is granted, the petitioner shall 1) publish the summons once a week for three (3) consecutive weeks in a newspaper of general circulation in the county of the respondent's last known residence, and 3) publish the summons in the next issue of the Delaware Tribe of Indians newspaper which is circulated, after the request to serve by publication is granted.

13-211. Summons - Content

The summons shall notify the respondent that if he does not appear or answer the complaint within twenty (20) days from the date of service, the Court may grant the judgment in favor of the plaintiff.

13-212. Summons, Proof of Service

The person serving the summons and complaint shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on the person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

In case of service by certified mail, the return receipt shall constitute the proof of service. In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

Chapter 3

Default Judgments

13-301. Default

Default - When Granted. When a party against whom a judgment is sought fails to appear, plead, or otherwise defend within the time allowed, and that fact is demonstrated to the Court by appropriate motion and affidavit or testimony, a default judgment may be entered by the Court, and notice of the default judgment shall be sent to the defaulting party.

The moving party may obtain a default judgment upon satisfactory proof to the Court of the following:

- 1) Proper service of the Summons and Complaint;
- 2) A complaint alleging facts to support a cause of action;
- 3) Evidence supporting the granting of the requested relief;
- 4) Jurisdiction of the Court over the persons and subject matter of the action.

13-302. Default Set Aside

Set Aside - Proceeding with case. For good cause shown the Court may set aside a default judgment and proceed with the case per the provisions of this Title in a manner as though the default had not been entered.

Chapter 4 Discovery

13-401. Discovery - Generally

Parties may request information and evidence, which can reasonably be expected to lead to admissible evidence, from any person having such information in his or her possession, knowledge or control.

13-402. Privileges

A person may refuse to make available the information requested if its release would cause undue hardship, or would violate a confidence which it is Tribal policy to protect. If the parties disagree about whether the responding party is required to release the information, the Court shall decide the dispute. The Court may place conditions on a release of information in order to protect confidential material, prevent unreasonable burden or expense to a party and shall otherwise insure fairness to all parties.

13-403. Methods of Discovery

Methods of discovering and exchanging information may include but need not be limited to written questions or oral examination, requests for names of witnesses, requests for admissions, physical inspection for property, requests to perform scientific or physical tests, requests for permission to enter upon land of other property, and requests for documents. The party who makes a request under this rule shall be as clear and specific as possible in describing the requested item and the manner in which it is to be presented.

13-404. Responding to a Request for Discovery

A person who receives a request for information under this chapter shall either

- (1) provide the information;
- (2) respond that he or she does not have the information in his or her possession, knowledge or control; or
- (3) object in writing to the request, stating the specific grounds for the objection.

One of the three (3) responses must be made to the requesting party within twenty (20) days of receiving the request. If the person from whom discovery is sought fails to respond, the discovering party may move for a court order requiring a response. An evasive or incomplete response shall be considered a failure to respond.

Chapter 5 Trial Procedure

13-501. Trial Process

All trials in civil actions shall proceed in the following order:

- (a) Jury selection in those cases to be tried before a jury;
- (b) An opening statement by the petitioner summarizing what he or she intends to prove and stating the burden of proof;
- (c) An opening statement by the respondent summarizing what he or she intends to prove;
- (d) The petitioner shall call witnesses and present other evidence to the court. The witnesses shall be subject to cross-examination by the other parties in the case. Following cross-examination the petitioner shall have a second opportunity to question the witnesses. When the petitioner has presented all his witnesses and evidence he shall inform the court that his case is complete;
- (e) Following the completion of the petitioner's case the respondent may move to dismiss the case. If in the opinion of the Judge, after resolving all the disputed pieces of evidence and testimony in favor of the petitioner and drawing all reasonable inferences in favor of the petitioner there is insufficient evidence to support the case, the case shall be dismissed;
- (f) If the case is not dismissed, the respondent may call witnesses and present evidence. The witnesses shall be subject to cross-examination by all of the parties. The respondent shall then have a second opportunity to question the witnesses followed by a second opportunity for cross-examination by all other parties. Following the testimony of all witnesses and the introduction of all evidence by the respondent, the respondent shall inform the Court that his case is complete;
- (g) The petitioner shall then have an opportunity to introduce additional evidence to rebut the evidence produced by the respondent;
- (h) The respondent shall then have an opportunity to present additional evidence to rebut that presented by the petitioner;
- (i) In the case of a jury trial the Court shall then instruct the jury about the law governing the case;
- (j) The petitioner shall then make a closing argument to the jury or the judge, as the case may be. The respondent shall then have an opportunity to make his closing argument. The petitioner shall have an opportunity to rebut the arguments made by the defendant;
- (k) The jury or the judge shall then deliberate upon the case and announce its verdict;
- (l) Judgment shall be entered on the verdict in accordance with this Code.

13-502. Juries

A party may request that the case be tried before a jury. The request must be filed at least thirty (30) days before the trial date and must be accompanied by a fee or other security in an amount reasonably calculated to cover the costs incurred by having a jury. Any excess shall be reimbursed at the conclusion of trial. The fee may be waived by the Court upon a showing of good cause.

13-503. Standard of Proof

The party asking for judgment shall have the burden of proving all elements of his or her case by clear and convincing evidence.

13-504. Evidence

All relevant evidence shall be admissible in civil proceedings, except when the Court finds that its prejudicial value outweighs its probative value or when inadmissible under the laws of the Delaware Tribe of Indians

Chapter 6 Injunctions

13-601. Definitions

The meaning of the terms used in this Chapter is:

(a) “Unlawful harassment” means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to that person, and which serves no legitimate or lawful purpose. The course of conduct shall be such as would cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the complaining party, or, when the course of conduct would cause a reasonable person to fear for the well-being of her or his family.

(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” includes, but is not limited to, the use of electronic communication as a means of conducting harassment.

(c) “Electronic communication” means any form of expression or exchange of information using electronic means. Electronic communication includes, but is not limited to, communication by telephone, internet, or text message.

(d) “Emergency restraining order” means a court order restricting a person from contacting, approaching, harassing, or threatening another specified person for a period of time not longer than thirty-five (35) days.

13-602. Emergency Restraining Order

(a) Contents of the Application. When the complaining party demonstrates to the Court by affidavit or verified complaint that immediate and irreparable damage, injury or loss will occur unless restrained by the court, the Court may issue an emergency restraining order without notice to the adverse party; provided that the applicant provides the Court with written reasons supporting the applicant’s claim that notice should not be required and certifying the applicant’s efforts, if any, to notify the adverse party.

(b) Contents of the Order. Any emergency restraining orders shall contain a statement of the injury, why it is irreparable, and why the order was granted without notice. No restraining order shall be issued unless a complaint in writing shall have been filed with the Court. An emergency restraining order shall expire by its own terms not more than thirty-five (35) days from the date of its issuance and this fact shall be shown on the face of the order. Such an order may be renewed for a like period of time not more than once for the purpose of securing service and holding a hearing in the matter. Such renewal must be requested before the expiration of the initial order and shall be granted only upon notice to the opposing party. An emergency restraining order may be modified, vacated, or set aside by motion of either party upon notice and opportunity for a hearing.

13-603. Preliminary Injunction

Following opportunity for hearing either on affidavits or on testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action during the pendency of the lawsuit. A preliminary injunction may be entered only

after an appropriate motion by a party and after notice and opportunity to be heard by the opposing party or parties.

13-604. Bond

The Court may, in its discretion, require a bond of the party seeking an emergency restraining order or preliminary injunction to protect the party to be restrained in the event that such relief ultimately is determined to be unjustified; provided, however, that no such bond shall be required of the Delaware Tribe of Indians.

Chapter 7 Judgment

13-701. Judgment

Following the announcement of the verdict, the judge shall announce the judgment in the case. Where there is no jury, the verdict and the judgment may be combined in the same announcement. The judgment shall be reduced to writing. A copy shall be delivered to each of the parties or their spokesperson.

13-702. Judgment - Contents

The judgment shall contain a statement of all relief granted to the prevailing party including, where appropriate, the declaration of rights and responsibilities of the parties, an assessment of damages including a provision for interest until the judgment is paid, an order directing that certain actions be taken or not taken, and an assessment of the costs of the action.

13-703. Preparation of the Judgment

Where desired by one or more of the parties or where directed by the Court, the parties shall prepare a proposed written judgment incorporating the verdict of the Court. In addition, the parties may prepare and present to the judge proposed findings of fact and conclusions of law. No such proposed findings, conclusions or judgment shall be signed by the judge until the other parties have been given seven (7) days notice of their presentation to the judge, or such notice has been waived in writing.

13-704. Reconsideration of Judgment

No later than thirty (30) days after a judgment is final, a party may ask for the judge for a rehearing, reconsideration, correction, vacation, or modification of the judgment. The judge may grant a new hearing or reconsider and change the judgment if he finds one of the following to be true:

- (a) The original judgment was based on or reached as a result of fraud or mistake;
- (b) There is new information available which could have affected the outcome of the case and which could not, with reasonable effort, have been discovered in time for the hearing on the case, or
- (c) The Court did not have the jurisdiction over a party or over the subject matter.

13-705. Costs

The Court may assess the costs of the case against the party or parties against whom judgment was given. The costs shall consist of witness fees and expenses, jury fees and any other expenses connected with the procedure under this Code as the Court may direct.

Chapter 8

Enforcement of Judgments

13-801. Title

This Chapter shall be known as the “Delaware Tribe of Indians Enforcement of Judgments Code”.

13-802. Definitions

The meaning of the terms used in this Chapter is:

(a) “Chapter” means this Chapter 8 of Title 3 the law and order code of the Delaware Tribe of Indians.

(b) “EnforcementOfficer” means a law enforcement officer or other individual designated to act in this capacity by the Tribal Court.

(c) “Foreign Judgment” means any judgment, decree or order of any other tribal, state or federal court.

(d) “Garnishee” or “Garnishee Defendant” means the person served a writ of garnishment, usually a third person indebted to, or in possession of wages or property of, a judgment debtor.

(e) “Immediate Family” means all persons living in the same household, including, but not limited to, husband, wife, children, parents and grandparents.

(f) “Judgment Creditor” means the person in whose favor a judgment has been entered by a court.

(g) “Judgment Debt” means an indebtedness that is the subject of a judgment entered by a court.

(h) “JudgmentDebtor” means the person against whom a judgment has been entered by a court.

(i) “Net Wages” or “Wages” or “Salary” means income by way of earnings, interest, or rent after deducting the payment of mandatory taxes and deductions, family insurance premiums, and voluntary retirement deductions up to five percent (5%) of gross wages.

(j) “Person” means any natural person, corporation, trust, unincorporated association, partnership, and federal, state or local governments, agencies or subdivisions thereof.

(k) “Council” or “Tribal Council” means the Tribal council of the Delaware Tribe of Indians.

(l) “Tribe” means the Delaware Tribe of Indians, a federally recognized Indian Tribe.

(m) “Tribal Court” or “Court” means the Delaware Tribe of Indians’ Court.

(n) “Trust Land” or “Trust Property” means real property held in trust by the United States for the Tribe or tribal members.

13-803. Purpose and Scope

The Council enacts this Chapter to provide a means for enforcement of the judgments of the Tribal Court. This Chapter also provides the exclusive means by which foreign judgments may be enforced in the Tribal Court.

13-804. Jurisdiction

The Tribal Court is vested with the fullest personal, subject matter and territorial jurisdiction permissible under the Constitution of the Delaware Tribe of Indians and to the extent consistent with federal law.

13-805. Enforcement of Judgments

If, after the time for appeal has run, a judgment debtor fails to pay or otherwise comply with the terms or conditions of the judgment, the judgment creditor may seek to enforce the judgment, or the Tribal Court may order enforcement on its own motion, in the manner provided for in this Chapter.

13-806. Timing

Unless the judgment has been renewed by the Court before its expiration and except as may be specifically provided elsewhere by the law of the Tribe, no judgment of the Tribal Court shall be enforceable after ten (10) years from the date it is entered, unless specifically stated otherwise in the order granting the judgment.

13-807. Renewal of Judgments

At the request of a judgment creditor the Court shall order the judgment renewed and extended for an additional ten (10) years if the request is made to the Court prior to the expiration of ten (10) years after the date of entry of the judgment.

13-808. Effect upon Estate

A judgment of the Tribal Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding a deceased person's estate.

13-809. Service of Notice

Any required notice required by this Chapter shall be in writing and shall be served in compliance with the provisions of this Title.

13-810. Sovereign Immunity

Nothing in this Chapter shall affect the right of the Tribe to assert immunity from suit by virtue of its status as a sovereign entity, except that the Tribe may not assert sovereign immunity when named and served as a garnishee in a garnishment order issued by the Tribal Court pursuant to this Chapter. Nothing in this Chapter shall be construed as a waiver of immunity for any administrative order or order from any other court.

13-811. Supplemental Proceedings

After an order of execution has been issued, or upon the motion of a judgment creditor, the Court may require the judgment debtor to submit a list of the location and nature of his or her assets

which may be used to pay the judgment, and those assets that he or she wishes to claim as exempt. The list may be provided by written or oral response and shall be made under oath. A request by the Court to receive this list shall be answered and returned to the court within ten (10) days and the request shall carry instructions to that effect. If the judgment debtor fails to respond in either oral or written form, the judgment creditor may apply to the Court for and serve the judgment debtor with an Order to Show Cause why he or she should not be held in contempt of court.

13-812. Exemptions – Generally

(a) The Tribal Court shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his or her immediate family.

(b) Only property owned by the judgment debtor may be subject to execution, and not property owned by the judgment debtor's immediate family.

(c) All trust property, income from trust property, or property subject to a restriction on alienation is exempt from execution under this Chapter, except for foreclosure against such property as may be allowed elsewhere by the law of the Tribe.

13-813. Personal Exemptions

The Court, upon request of the party to which judgment has been rendered, may determine certain and specific property to be exempt provided that either:

(a) The Court finds good cause for the exemption and states so specifically in its order;

(b) The property claimed is the result of inheritance or is a family heirloom or keepsake;

(c) The property is considered "Tools of the Trade" necessary for any person to carry on the trade, occupation, or profession by which that person habitually earns his or her living;

(d) The property has cultural or religious significance; or

(e) Any property, wages or income that is otherwise protected under this Chapter.

13-814. Residence Exemption

Except as provided in this Chapter, the residence of the judgment debtor is exempt from attachment, execution or forced sale for the payment of any judgment.

(a) The residence consists of the dwelling house or mobile home in which the judgment debtor resides or intends to reside. Residence also includes those buildings or structures necessarily connected with the use and enjoyment of the dwelling house or mobile home, or buildings or structures when they are used with the land for its benefit, and the land on which the residence is located.

(b) If the judgment debtor is married, the residence may consist of the jointly owned property of the spouses, or the separate property of either spouse.

If the judgment debtor is not married, the residence may consist of any of his or her real property and the improvements thereon which are used for the judgment debtor's primary residence.

(c) The same premises and personal property may not be claimed separately by both husband and wife for the purpose of increasing the amount of the residence exemption.

(d) The "net value" of a residence is the market value minus all liens and encumbrances.

The total amount of the residence exemption shall not exceed the lesser of:

(1) The total net value of the lands, residence and improvements, as described in this Section; or

(2) The sum of one hundred thousand dollars(\$100,000).

13-815. Exemption on Wages

(a) Except as provided in paragraph (b) of this Section, if a garnishee is an employer owing the judgment debtor wages, then for each pay period of such wages, an amount shall be exempt from garnishment that is the greater of the following:

(1) Thirty (30) times the federal minimum hourly wage prescribed by federal law in effect at the time the earnings are payable; or

(2) Fifty percent (50%) of the net wages or salary of the judgment debtor.

(b) If the wages of a judgment debtor are derived from self-employment income, fifty percent (50%) of such wages shall be exempt.

(c) The exemptions stated in this section shall apply whether such wages are paid, or are to be paid, weekly, monthly, or at other intervals, and whether wages are due the judgment debtor for one week, a portion of a week, or for a longer period.

(d) Unless directed otherwise by the Court, the garnishee shall determine and deduct exempt amounts under this section as directed in the writ of garnishment and shall pay these amounts to the judgment debtor.

13-816. Limitations on Exemptions

The residence exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by a mechanic's, laborer's, material men's or vendor's lien upon the residence; and

(2) On debts secured by either a security agreement describing as collateral a mobile home that is being claimed as a homestead, or by a mortgage or deed of trust on the residence that has been executed and acknowledged by the husband and wife or by an unmarried claimant.

13-817. Property Owned with Another

If the judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the judgment debtor's interest, provided the property is not otherwise exempt. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at a sale, and thereby obtain the judgment debtor's interest.

13-818. Review of Consumer Transactions

(a) In considering any action to enforce a judgment or repossess personal property located within the Delaware Tribe of Indians' jurisdiction in connection with a consumer transaction, the Tribal Court may review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or practice by the seller of the consumer goods or the creditor for the transaction.

(b) In determining whether an act or practice by the seller or creditor is unconscionable, the Tribal Court shall consider the following circumstances when it is shown that the supplier or creditor knew or had reason to know that:

(1) The seller or creditor took advantage of the inability of the consumer reasonably to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement, or similar factors;

(2) When the consumer transaction was entered into, the price or credit terms grossly exceeded the price at which similar property, services or credit were readily obtainable in similar transactions by like consumers in the geographic area;

(3) When the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer; or

(4) The seller or creditor made a misleading statement of opinion on which the consumer was likely to rely to his or her detriment.

(c) If the Tribal Court determines that an act or practice in a consumer transaction was unconscionable, the Court may deny the relief requested or may enforce only such part of a judgment as was not affected by the unconscionable act or practice.

13-819. Petition for Writ of Execution

A judgment creditor may petition the Tribal Court for a Writ of Execution upon any non-exempt personal property belonging to the judgment debtor when such property is in the possession of the judgment debtor and is found within the jurisdiction of the Court. The petition shall state the following facts:

(1) That the judgment creditor has a judgment wholly or partially unsatisfied in the Tribal Court;

(2) The amount alleged to be due under that judgment;

(3) That the judgment creditor has reason to believe and does believe that the judgment debtor has non-exempt property on which the judgment could be executed; and

(4) A list of the specific non-exempt property on which the judgment creditor is seeking execution and the estimated value of each item of property.

13-820. Hearing on Petition for Writ of Execution

(a) Upon receipt of a petition for a Writ of Execution, the Court shall schedule a hearing date within twenty (20) days. At the hearing the judgment debtor may show that the judgment has been satisfied or that any or all of the property mentioned in the petition is exempt from execution.

(b) The Court shall not reconsider the merits of the original action, except as provided for in this chapter.

13-821. Notice of Hearing

(a) The judgment debtor shall be provided with a notice of the hearing and a copy of the petition no less than ten (10) days prior to the date of the hearing.

(b) The notice shall inform the judgment debtor that the hearing is the judgment debtor's opportunity to show that the judgment has been paid or that any or all of the property mentioned in the petition for Writ of Execution is exempt from execution.

13-822. Service of Petition and Notice of Hearing

The Petition for Writ of Execution and the Notice of Hearing shall be delivered to the judgment debtor in the manner provided for service in this Title.

13-823. Answer to Petition for Writ of Execution

(a) The judgment debtor may file with the Clerk of the Court a written answer or response to the creditor's petition for a Writ of Execution.

(b) The answer is due at least two (2) days before the hearing on the petition.

(c) A copy of the answer or response must also be delivered to the judgment creditor in the manner provided in this Title at least two (2) days before the hearing on the petition.

13-824. Power of the Court – Issuance of a Writ of Execution

(a) The Court may issue a Writ of Execution when it finds that:

- (1) the judgment creditor has a valid judgment that has not been paid;
- (2) the time for appeal of the judgment has run; and
- (3) there exists non-exempt personal property upon which to execute the judgment.

(b) The Court may issue a Writ of Execution solely on the affidavit of the judgment creditor if sufficient evidence is present to show that the property in fact belongs to the judgment debtor.

(c) The Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at a sale. If the property is not able to be sold for the minimum reasonable value assigned, the Court may re-evaluate the minimum reasonable value.

(d) The Tribal Court may amend the Writ of Execution on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures for the issuance of the original Writ.

(e) The Tribal Court may initiate proceedings for a Writ of Execution on its own motion, consistent with the provisions of this Chapter in order to ensure the enforcement of judgments entered by the court or the payment of any civil fines or penalties imposed by the Court. Any party who fails to comply with a Writ of Execution issued pursuant to this Chapter, shall be subject to the civil contempt powers of the Tribal Court, following notice to show cause and a hearing before the Court.

13-825. Writ of Execution – Contents

(a) The Writ of Execution shall:

- (1) State the amount owing to the judgment creditor;
- (2) Describe the property that is to be seized by the authorized enforcement officers;
- (3) Direct the enforcement officers to sell as much of the seized property as is necessary to satisfy the judgment;
- (4) State the date, time, and place of the sale and listing of the items to be sold; and
- (5) State that the judgment debtor has the right to pay the judgment and obtain the return of the property.

(b) A copy of the Writ of Execution must be mailed to the judgment debtor at his or her last known address and posted at the Court in a place where it can be viewed publicly for ten (10) days prior to the sale.

13-826. Service of Writ of Execution

The Writ shall be served on the judgment debtor as provided herein in this Title.

13-827. Substitution or Surrender of Property

(a) A judgment debtor who owns property that is not exempt from execution may substitute other property of equal or greater value that is exempt from execution. This substitution will allow execution against exempt property. The result is that the non-exempt property shall become exempt from execution and the previously exempt property shall be removed from exemption.

(b) A judgment debtor may voluntarily surrender, by written consent, secured personal property to a judgment creditor.

(c) The written consent of the judgment debtor must be obtained at the time of the surrender, must clearly state the agreed upon value of the surrendered property and must be signed by both the judgment debtor and the judgment creditor.

(d) Contract provisions for the voluntary surrender of property, executed in advance of the judgment debtor's voluntary surrender, are not valid or enforceable.

13-829. Execution Sale

(a) An Execution Sale shall be conducted by the enforcement officer who shall issue a bill of sale or invoice for the property to the highest bidder in return for a cash amount.

(b) No item of property shall be sold for less than the minimum value assigned by the Court. If the minimum assigned value is not offered, the property shall be held and notice of another sale shall be given. The Court may re-evaluate the minimum reasonable value upon request or on its own motion.

(c) Proceeds of the Execution Sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, and third to pay any portion of the judgment still owing.

(d) Any remaining funds shall be held for the benefit of the judgment debtor, who shall be noticed in writing of the remaining funds. Said funds will be held for a period of one (1) year from the date of the Execution Sale.

(e) If no claim is made by the judgment debtor for recovery of the remaining funds during the one year period following the Execution Sale, the funds shall be deposited in the General Fund of the Tribe and shall become the property of the Tribe to be expended for the benefit of the Tribe.

Chapter 9 Garnishments

13-901. Petition for Writ of Garnishment

(a) A judgment creditor may petition the Tribal Court for a Writ of Garnishment upon any specific wages owed by another to the judgment debtor or personal property that is in the possession of a third party and is found within the jurisdiction of the Court.

(b) The petition shall state the following facts:

(1) That the judgment creditor has a tribal court judgment that is wholly or partially unpaid;

(2) The amount alleged to be due under that judgment;

(3) That the judgment creditor has reason to believe and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the judgment debtor in an amount exceeding those exempted under this Chapter, or that garnishee has possession or control of personal property or effects belonging to the judgment debtor which are not exempted from garnishment under this Title; and

(4) Whether the garnishee is the employer of the judgment debtor.

13-902. Issuance of Writ of Garnishment

When a Petition for a Writ of Garnishment is made by a judgment creditor and the notice requirements of this Title have been complied with, the Tribal Court Clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor, directed to the garnishee, commanding the garnishee to answer said writ within twenty (20) days after the service of the Writ of Garnishment on the garnishee.

13-903. Writ of Garnishment-Contents

(a) The Writ of Garnishment shall:

(1) Specify the amount owed to the judgment creditor;

(2) Specify the name and address of the garnishee in possession of the wages or personal property;

(3) Order the garnishee not to pay or deliver to the debtor any non-exempt wages or Property owing to the debtor;

(4) Order the garnishee to pay or deliver any non-exempt wages or property owing to the judgment debtor over to the judgment creditor until otherwise ordered by the Court or until the amount owed the creditor has been satisfied, whichever is sooner;

(5) Require the garnishee to file a return with the Court containing the amount and a description of the wages or property of the judgment debtor which is in the garnishee's possession and such return shall be filed with the Court within twenty (20) days from the date the garnishee was served with notice of the garnishment; and

(6) Notify the garnishee that, if the garnishee relinquishes non-exempt wages or personal property to the judgment debtor after receipt of the notice, the garnishee may be found liable to

the judgment creditor for the amount of the wages or the value of the property or wrongfully released to the judgment debtor.

(b) The Writ of Garnishment shall state the garnishee's processing fee as follows:

(1) The garnishee of a Writ of Garnishment for a continuing lien on wages may deduct a processing fee from the remainder of the judgment debtor's wages after withholding the required amount under the writ. The processing fee may not exceed twenty dollars (\$20.00) for the first answer and ten dollars (\$10.00) at the time the garnishee submits a subsequent answer.

(2) For all other Writs of Garnishment, the garnishee is entitled to a check or money order payable to the garnishee in the amount of twenty dollars (\$20.00) at the time the Writ of Garnishment is served on the garnishee pursuant to the provisions of this Chapter.

13-904. Notice of Garnishment to the Judgment Debtor

When a Writ of Garnishment is issued as provided in this Chapter, the court clerk shall at the same time issue and deliver to the judgment debtor a Notice of Garnishment. The notice shall inform the judgment debtor that a Writ of Garnishment has been issued. It shall also inform the judgment debtor that a hearing may be requested if the judgment debtor believes he or she is entitled to exemptions from garnishment other than those specified in the Writ.

13-905. Service of Writ and Notice of Garnishment

The Writ of Garnishment shall be served on the garnishee and the Notice of Garnishment shall be served on the judgment debtor as specified in this Title. A copy of the Writ of Garnishment shall be attached to the Notice of Garnishment served on the judgment debtor.

13-906. Hearing on Writ of Garnishment

(a) Upon proper request by the judgment debtor, judgment creditor, or garnishee and after the time for filing of the answer by the garnishee defendant has passed, the Court shall schedule a hearing on the matter. The request for hearing must specify the reason the party is requesting the hearing.

(b) If the judgment debtor is requesting the hearing he or she must specify any exemptions he or she is claiming and specify any payments made on the judgment.

(c) The court clerk shall issue a Notice of Hearing, a copy of which shall be served, along with a copy of the request for hearing, on all parties no later than ten (10) days prior to the date of the hearing.

13-907. Notice of Hearing

(a) The Notice of Hearing on the Writ of Garnishment shall inform the parties:

- (1) the matters set for hearing as specified in the Request for Hearing;
- (2) the date, time, and place of the hearing; and
- (3) that the parties shall have an opportunity to contest the claims made by the party requesting the hearing.

(b) If more than one party requests a hearing, the hearings shall be consolidated.

13-908. Power of the Court – Garnishment

(a) The Tribal Court may amend the Writ of Garnishment on the basis of the evidence presented at the hearing on the Writ. The new Writ shall be issued in accordance with the procedures for the issuance of the original Writ.

(b) The Tribal Court may initiate garnishment proceedings on its own motion, consistent with the provisions of this Chapter in order to ensure the enforcement of judgments entered by the court or the payment of any civil fines or penalties imposed by the Court.

(c) Any party who fails to comply with a Writ of Garnishment issued pursuant to this Chapter, shall be subject to the civil contempt powers of the Tribal Court, following notice to show cause and a hearing before the Court.

13-910. Tribe as Garnishee

It shall be proper for the Tribal Court to issue a Writ of Garnishment against the Tribe upon a Tribal Court judgment when it is determined that the Tribe qualifies as a garnishee, and for this limited purpose the Tribe shall not assert its immunity from suit.

Chapter 10 Repossessions

13-1001. Self-Help Repossession Prohibited

Self-help repossession is prohibited. Creditors shall not use “self-help repossession” but must repossess property only in conformity with this Chapter.

13-1002. Consent to Repossession

(a) A creditor may contact a debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the jurisdiction of the Tribe, unless the debtor has notified the creditor in writing to cease such contact.

(b) A debtor may give written consent to the creditor permitting a repossession of personal property without formal court proceedings. The written consent of the debtor must be obtained at the time of the repossession of the property. Contract provisions for the voluntary surrender of personal property that are executed in advance of the repossession are not valid or enforceable.

(c) Upon receipt of written consent for repossession, the creditor must abide by any restrictions concerning time or manner of repossession stated in the written consent.

13-1003. Court Order Absent Written Consent

If a debtor does not sign a written consent allowing repossession, the property may be removed from the debtor only pursuant to a Writ of Repossession issued by a Court of competent jurisdiction.

13-1004. Petition for Writ of Repossession

(a) A creditor may petition the Tribal Court for a Writ of Repossession when the creditor desires to repossess the personal property of a debtor and such property is located within the jurisdiction of the Court.

(b) The petition shall be accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the debtor.

(c) The petition shall be served in the manner provided for in this Title.

13-1005. Hearing on Petition for Writ of Repossession

(a) Upon receipt of a petition for a Writ of Repossession, the Court shall schedule a hearing date within twenty (20) days. The timing of the hearing may be accelerated by the Court if:

(1) The petition contains verified, specific facts showing reasonable cause to believe that the personal property involved may be lost, damaged or removed from the Tribe’s jurisdiction prior to a regularly scheduled hearing; and

(2) An accelerated hearing can be held without substantially prejudicing the ability of the debtor to present any good faith defenses to the petition for the Writ of Repossession.

13-1006. Notice of Hearing on Petition for Writ of Repossession

(a) The debtor shall be provided with a notice of the hearing and a copy of the petition no later than ten (10) days prior to the date of the hearing.

(b) The notice shall inform the debtor that the hearing is the debtor's opportunity to contest the creditor's claim to a right of repossession.

(c) The notice shall also inform the debtor that if he or she fails to appear, a Writ of Repossession may be issued and he or she will have lost his or her opportunity to contest the repossession of the property mentioned in the petition.

13-1007. Power of the Court – Issuance of the Writ of Repossession

(a) If after a hearing, the Court determines that repossession is justified, the Court shall issue a Writ of Repossession authorizing the creditor to repossess the personal property involved in the proceeding.

(b) If it appears to the Court that the return of the property to the creditor would be unjust because of the amount of equity the debtor has in the property, the Court may award money damages to the creditor in the amount owed by the debtor on the property.

(c) The Court may enter a Writ of Repossession in the absence of the debtor if the debtor fails to appear at the hearing despite proper notice.

13-1008. Writ of Repossession – Contents

The Writ of Repossession shall provide that:

(1) The property which has been specified is to be seized by the authorized enforcement officers and turned over to the judgment creditor; and

(2) The enforcement officers are authorized to use reasonable force to enforce the Writ of Repossession.

13-1009. Remedies for Violation of this Chapter

(a) Any creditor and any agents or employees of any creditor who are found by the Tribal Court to be in deliberate or willful violation of the provisions of this Chapter governing repossession may be sanctioned appropriately. The Court shall afford any creditor fair notice and an opportunity for hearing prior to the order of sanctions.

(b) Any person who violates this Chapter and any creditor whose agents or employees violate this Chapter shall be deemed to have breached the peace of the Delaware Tribe of Indians and they shall be liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this Chapter.

Chapter 11

Recognition and Enforcement of Foreign Judgments

13-1101. Foreign Judgments – When Recognized

(a) The Tribal Court shall not recognize or enforce any foreign judgment unless the proponent of the foreign judgment:

- (1) Complies with the procedure set forth in this Section;
- (2) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Tribal Court;
- (3) Submits proof that the foreign judgment is based on valid subject matter and personal jurisdiction;
- (4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction in which the foreign judgment was rendered and that such attempt was unsuccessful; or good cause is shown why an attempt at enforcement of the foreign judgment in that jurisdiction would be futile; and
- (5) Submits proof that the foreign judgment is final and that no appeal therefrom is allowed.

(b) The Tribal Court shall not recognize or enforce a foreign judgment when to do so would require the Tribe to waive its immunity from suit except when the Tribe is to be served as a garnishee for the wages or property of a judgment debtor, in which case the requirements for garnishment that are set out in this Chapter shall be followed.

(c) The Tribal Court need not recognize a foreign judgment if:

- (1) The defendant in the proceedings in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;
- (2) The foreign judgment decree or order violated the Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 -1341, or any state or federal constitution;
- (3) The foreign judgment was obtained by fraud;
- (4) The foreign judgment would serve to violate any federal law, tribal law, custom or tradition of the Delaware Tribe of Indians;
- (5) The cause of action on which the judgment is based is contrary to the general welfare of the Tribe or its members; or
- (6) The government from which the foreign judgment is issued does not provide reciprocal full faith and credit or comity to the orders, decrees and judgments of the Tribal Court.

13-1102. Procedure for Recognition and Enforcement of Foreign Judgments

(a) The proponent of a foreign judgment shall file in the Tribal Court:

- (1) a certified copy of the foreign judgment, identifying the date of its entry;
 - (2) the record of any subsequent entries affecting the judgment, such as levies of execution and payments in partial satisfaction;
 - (3) a motion requesting that the Tribal Court recognize and enforce the foreign judgment;
- and
- (4) submission of proof required by this Chapter.

(b) A properly filed foreign judgment shall be docketed and recorded in the Tribal Court in the same manner as other cases.

(c) Upon proper filing of a foreign judgment with the Tribal Court, the Court shall issue a summons directing the defendant to appear on a date not more than sixty (60) days or less than fifteen (15) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign judgment. Such summons shall be served on the defendant in a manner consistent with this Title.

(d) Failure of the defendant to appear as directed by the summons or failure to respond to the motion requesting the Court to recognize and enforce the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Court from ruling on the motion.

(e) After reviewing all the relevant evidence concerning the foreign judgment the Court shall issue an order granting or denying the motion to recognize and enforce the foreign judgment if doing so would be consistent with the provisions of this Chapter. Such an order shall be a final judgment of the Tribal Court in favor of either the plaintiff or defendant to the foreign judgment and shall be enforceable as such.

13-1103. Severability

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of this Chapter, or the application to other persons or other circumstances shall remain in effect.

Chapter 12

Civil Forfeiture Procedures

13-1201. Property Which May be Forfeited

(a) The Tribal Court may order forfeiture of the following kinds of property located within its jurisdiction:

- (1) Property which is made contraband by Tribal law;
- (2) Property being used to violate or in violation of Tribal law;
- (3) Property otherwise subject to forfeiture by specific Tribal law.

(b) If a specific Tribal law sets forth its own forfeiture proceedings they shall be controlling and the Court may rely on such additional provisions in this chapter as justice may require.

13-1202. Nature of Forfeiture

Forfeiture proceedings shall be in the nature of a civil suit against the property to be forfeited.

13-1203. Initiating A Forfeiture Proceeding

In order to initiate a forfeiture proceeding, the Tribe shall file a Petition for Forfeiture in the Court and deliver a copy of the petition to all persons believed to have an ownership interest in the property at issue.

13-1204. Order for Seizure of Property

Any time after a Petition for Forfeiture is filed, if the Tribe demonstrates that there is probable cause to believe the property named is subject to forfeiture under Tribal law, the judge may issue an order which directs Tribal law enforcement officers to seize and hold the property pending resolution of the forfeiture suit.

13-1205. Seizure of Property Before Petition is Filed

(a) In the following circumstances the Tribe, through its law enforcement officers, may seize any property which is subject to forfeiture before a Petition for Forfeiture is filed or before an order of seizure has been obtained:

- (1) When a Tribal law or regulation allows immediate seizure;
- (2) When the property presents an urgent danger to persons, property, or wildlife within the Tribe's jurisdiction;
- (3) When the Tribe has probable cause to believe that the property is subject to forfeiture and is likely to be removed from the Tribe's jurisdiction if it is not seized immediately.

(b) Whenever the Tribe seizes property before it has filed and served a Petition for Forfeiture, it must file and serve the petition no later than five (5) days after the seizure has taken place. At the time of filling or as soon after that as the judge can schedule a hearing, the Tribe shall request an order of seizure as provided in this Chapter.

13-1206. Inventory of Property and Notice of Seizure

(a) The Tribal officer who seizes property pursuant to these provisions shall prepare a complete list to a notice which states the time and place of seizure, the name and address of the owner, if known, and the authority for seizure.

(b) The officer shall promptly deliver a copy of the notice and list to the Court, to the owner of the property, and to the person in whose possession the property was found. If the owner of the property cannot be identified or located, the officer shall post the notice and list at the place where the property was found and at the Court in a location visible to the public.

13-1207. Release of Property Pending Forfeiture Trial

(a) Pending the forfeiture trial, a person who presents satisfactory proof that he or she owns the property which has been seized may gain possession of the property by posting a bond or cash deposit with the Tribe. The bond or deposit shall be in the amount equal to the market value of the property. The amount and form of the bond shall be subject to approval of the Tribal court.

(b) The Court shall order the Bond or cash forfeited if it is shown by a preponderance of the evidence that the owner used the property in violation of Tribal law after posting the bond. If the Court ultimately rules in the Tribe's favor on the Petition for Forfeiture the court shall order either the bond or the property itself forfeited.

13-1208. Procedures and Burdens of Proof

Procedures and burdens of proof in a forfeiture proceeding shall be the same as in any civil suit, except that in cases where the property owner does not post bond and regain possession of the property, trial of the principle issue in the case must be held no later than thirty (30) days after the petition for forfeiture is filed. The property owner may voluntarily waive this right to a speedy hearing.

13-1209. Disposition of the Property

If the Court rules in favor of the property owner, all property seized or bonds or cash deposited shall promptly be returned to the owner. If the Court rules in favor of the Tribe, and orders the property forfeited, the Court's order shall transfer title to the property of the Delaware Tribe of Indians. The Tribe may then dispose of the property as it sees fit.

Chapter 13 Contempt of Court

13-1301. Contempt - Generally

The Tribal Court shall at all times have authority to utilize contempt powers upon persons who may disobey orders, act in a manner that is disorderly or insolent. The contempt process shall be classified in two categories: (1) Direct Contempt and (2) Indirect Contempt.

13-1302. Direct Contempt

(a) Direct contempts shall exist where the Court makes a finding an individual's behavior is

- (1) disorderly or insolent; and
- (2) committed during the session of the court, and in its immediate view and presence;

(b) Individuals found to be in direct contempt of Court may be sanctioned appropriately and in a manner reasonable to the incidents leading up to the contemptuous activity or may be incarcerated for a period of time, not to exceed six (6) months.

13-1303. Indirect Contempt

(a) Indirect Contempt of court shall consist of:

- (1) willful disobedience of any process or order lawfully issued or made by the court; or
- (2) resistance willfully offered by any person to the execution of a lawful order or process of a court.

(b) Individuals found to be in indirect contempt of Court may be sanctioned appropriately and in a manner reasonable to the incident leading up to the contemptuous activity or may be incarcerated for a period of time, not to exceed six (6) months.