

Chapter 50

FAMILY LAW

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ARTICLE I. MARRIAGE

Sec. 50-1. Marriage.

The institution of marriage between a man and a woman is recognized in the territory of the Eastern Band and shall be officially solemnized by any ordained minister or any judicial official of the Cherokee court. For a marriage to be legally recognized, a couple seeking to marry shall obtain a marriage license from, and record it with, the register of deeds in their county of residence. Alternatively, members of the Eastern Band may elect to obtain a marriage license from, and record it with, the Cherokee court.
(Ord. No. 504, 12-20-2000)

Sec. 50-2. Full faith and credit.

A marriage duly solemnized under the laws of North Carolina or any other state or Indian nation shall be given full faith and credit within the Eastern Band's territory.
(Ord. No. 504, 12-20-2000)

Secs. 50-3—50.9. Reserved.

ARTICLE II. DIVORCE

Sec. 50-10. Divorce.

Either spouse in a marriage may obtain a divorce, without a showing of fault by either spouse, by filing an action in the Cherokee court showing the following:

- (a) One of the parties has resided within the territory of the Eastern Band of Cherokee for at least 30 days prior to the filing of the complaint; and
- (b) The parties have lived separately from each other for a period of at least 30 days prior to the filing of the complaint unless they mutually voluntarily consent to the divorce; and
- (c) The party seeking the divorce believes that the bonds of marriage are irretrievably broken.

(Ord. No. 504, 12-20-2000; Ord. No. 882, 7-23-2007)

Sec. 50-11. Property distribution.

(a) Either former spouse may file an action in the Cherokee court seeking equitable distribution of personal property and real property, owned or acquired jointly by the parties during the marriage. Such action shall be filed no later than three years after a judgment for divorce has been entered by the court or shall be forever barred.

(b) A decision of the court ordering the equitable distribution of possessory interest in the Cherokee trust lands does not constitute a grant, approval or assignment of the possessory interest that would otherwise be prohibited in Tribal law. After being issued by the court and after the period for appealing the order to the court has expired, a party to an order that orders the distribution of a possessory interest shall submit the order to the Tribal Council to effectuate the order. The Tribal Council is prohibited from reviewing the equity of the distribution, and shall within 60 days of receipt effectuate the decision of the court applicable to the possessory interest.

(c) In determining the division of property, the court shall make all reasonable efforts to divide the jointly owned or acquired property so that each party receives a share of equal value, or to equalize the distribution by award of compensation from one former spouse to the other.

(d) Nothing in this section shall be deemed to recognize or grant any rights in Cherokee trust land to any person who is not an enrolled member of the Eastern Band, other than those rights recognized by other provisions of Cherokee law.
(Ord. No. 504, 12-20-2000; Ord. No. 882, 7-23-2007)

Sec. 50-12. Other family law issues.

(a) Either spouse may file an action for child custody, child support, and spousal support. An action for child custody or child support shall be filed on or before the date the child reaches age 18. An action for spousal support shall be filed no later than three years after a judgment for divorce has been entered.

(b) There shall be no action for divorce from bed and board.

(c) Actions for protection from domestic violence shall be filed pursuant to chapter 50B of the Cherokee Code.

(d) Death of a biological or adoptive parent will constitute grounds for a biological or adoptive grandparent to petition the court for visitation with a biological or adoptive grandchild if it is established by clear and convincing evidence that the grandchild enjoyed a significant bond and relationship with the grandparent prior to the death of the child's biological or adoptive parent.

Upon establishing by clear and convincing evidence that a grandchild enjoyed a significant bond and relationship with the biological or adoptive grandparent before the death of the child's biological or adoptive parent, the court may order visitation with the grandparent if in the court's discretion it is in the best interests of the child. (Ord. No. 504, 12-20-2000; Ord. No. 846, 8-15-2005)

Sec. 50-13. Choice of law.

Except as set forth in this chapter or another provision of the Cherokee Code, the parties to a marriage and parties seeking a divorce, property distribution, child custody, child support, or spousal support shall have all rights provided by the laws of North Carolina. The court shall look to the laws of North Carolina for guidance in resolving any family matter not specifically governed by the Cherokee Code or established Cherokee customs and traditions.

(Ord. No. 504, 12-20-2000; Ord. No. 846, 8-15-2005)