

CHAPTER 4 - CIVIL ACTIONS

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Section 4-1 Jurisdiction

4-1.01 Jurisdiction The Spokane Tribal Court shall have jurisdiction of all civil suits wherein the defendant is a resident of the Spokane Reservation, or the defendant has come onto the Reservation for whatever reason, and the cause of action arises from defendant's presence and activity on the Reservation.
Readopted 8/01/06, Resolu. 2006-524.

4-1.02 Jurisdiction Over Non-Indians Who Violate a Tribal Code. Non-Indians who violate any Code approved and promulgated by the Spokane Tribal Council shall be subject only to the imposition of monetary civil penalties contained in any Code, and/or the initiation and completion of exclusion proceedings as set forth elsewhere in this Code, and/or any court order issued in conformity with such Code to correct the violation of such Code, and/or such other civil remedies that are appropriate.
Readopted 8/01/06, Resolu. 2006-524.

4-1.03 Personal Jurisdiction Over Non-Residents.

- (a) Any person, whether or not a resident of Spokane Indian Country, who in person or through an agent does any of the acts in this section, as set forth below, within Spokane Indian Country, thereby submits said person, and if an incapacitated individual, his personal representative, to the jurisdiction of the Tribe as to any cause of action arising from the doing of any of said acts:
- (1) Transaction of business;
 - (2) Commission of tortuous act;
 - (3) The ownership, use, or possession of any property whether real or personal;
 - (4) Contracting to insure any person, property or risk;

- (5) The act of sexual intercourse with the respect to which a child may have been conceived;
 - (6) Living in a marital relationship notwithstanding subsequent departure so long as the petitioning party has continued to reside within the jurisdiction;
 - (7) Any other basis consistent with law.
- (b) In a proceeding to: establish, enforce or modify a child support order for an Indian Child; to determine or terminate parentage of an Indian Child; and to establish custody and/or visitation of an Indian Child, the Spokane Tribal Court may exercise personal jurisdiction over a non-resident individual or the individual's guardian if:
- (1) The individual is personally served with summons within Spokane Indian Country;
 - (2) The individual submits to the jurisdiction of the Spokane Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 - (3) The individual resided with the Indian Child in Spokane Indian Country;
 - (4) The individual resided in Spokane Indian Country and provided prenatal expenses or support for the Indian Child;
 - (5) The Indian Child resides in Spokane Indian Country as a result of the acts or directives of the individual;
- (c) For the purposes of this Section, "Spokane Indian Country" shall mean any and all lands and waters within the jurisdiction of the Spokane Tribe of Indians as set forth in Article II of the Constitution of the Spokane Tribe.
- (d) For the purposes of this Section the term "Indian Child" shall be defined pursuant to Chapter 6, Section 1.07(l) of this Code. In addition the term "Indian Child" shall also specifically include any biological child of an enrolled member of the Spokane Tribe of Indians.

Legislative History - Spokane Tribal Council Resolu. 1995-219; Readopted 8/01/06, Resolu. 2006-524.

Section 4-2 Commencement of Civil Actions

4-2.01 Commencement of Civil Actions. Civil actions may be commenced by the filing of a complaint with the Clerk of the Tribal Court, stating the names of the plaintiff and the defendant, accompanied by a simple statement of the facts giving rise to the grievance for which relief is requested and the nature of such relief. Readopted 8/01/06, Resolu. 2006-524.

4-2.02 Signature of Complaint. Complaints filed in the Tribal Court shall bear the signature of the complainant, witnessed by a duly qualified Judge of the Tribal Court, Court Clerk, Tribal Executive Director or the Superintendent. Readopted 8/01/06, Resolu. 2006-524.

4-2.03 Limitations on Filing. An action must be commenced within a period of 3 years from the date of the act or event giving rise to the cause of action, except that:

- (a) any action based upon a contract in writing, or liability expressed or implied arising out of a written agreement, must be commenced within 6 years; and,
- (b) any action based upon a claim of damages to plaintiff's person or property, or damages related to consumer transactions, must be commenced within 3 years from the date the plaintiff discovered or reasonably should have discovered the damage, or the event that caused the damage, whichever is later.

Legislative History-Amended 12/12/97, Resolu. 1998-061; Readopted 8/01/06, Resolu. 2006-524.

4-2.04 Tolling the Limitation.

(a) The 3 year limitation on the commencement of civil actions shall not apply during the time a person entitled to bring a civil action under this Code is incapacitated or under disability to bring suit by reason of being a minor under 18 years of age or by reason of being mentally incompetent.

(b) Provided, however, that if the action is brought after the 3 year limitation has expired, a written statement of reasonable cause must be given why the person's parent, guardian or other available representative did not bring the action in behalf of said disabled or incapacitated person within the 3 year limitation.

(c) The statement shall be filed with the complaint and if attached by the defendant or other party to the suit the Tribal Court shall consider the reasonable cause given and in its discretion decide whether it is sufficient to justify the tolling of the statute of limitations.

(d) The decision of the Tribal Judge in this respect shall be appealable.

(e) The 3-year limitation on the commencement of civil actions also shall not apply to actions brought by the Spokane Tribe related to damages to natural resources of the Tribe during the reasonable time necessary for the Tribe to discover, assess and determine the nature and extent of said damages.

Legislative History--Amended 12/12/97, Resolu. 1998-061; Readopted 8/01/06, Resolu. 2006-524.

4-2.05 Filing Fee. The complainant shall pay a filing fee of \$15 or such other fee prescribed in the rules. Such fee may be waived by the Tribal Court upon a showing of good cause.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-3 Summons

4-3.01 Summons. Upon the filing of a complaint, the Clerk shall cause to be issued a summons requiring the defendant to appear before the Spokane Tribal Court at a date and time certain which shall be at least 5 days, but no more than 20 days after service of summons and complaint upon the other party.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-4 Service of Summons and Complaint

4-4.01 Service. A summons, with a copy of the complaint attached, shall be served upon the defendant by personal service, by mail, or by publication.

Readopted 8/01/06, Resolu. 2006-524.

4-4.02 Personal Service. Service may be obtained by personally delivering the summons and complaint to the defendant or by leaving the summons and complaint at the place of his usual abode with some adult person who is a resident therein.

Readopted 8/01/06, Resolu. 2006-524.

4-4.03 Service by Mail. Service may be obtained by means of certified mail, return receipt requested.

Readopted 8/01/06, Resolu. 2006-524.

4-4.04 Service by Publication.

(a) The Judge may allow service to be made upon the defendant by the posting of copies of the summons and complaint in 2 public places on the Reservation for 3 weeks and by publication of notice of the filing of said summons and complaint once a week for 3 consecutive weeks in any newspaper of general circulation on or adjacent to the Spokane Reservation or by 1 publication in the official Tribal newspaper.

(b) Such service shall be made only upon sufficient showing by the complainant to the Tribal Court that diligent efforts were made to serve the summons with a copy of the complaint on the defendant and that service could not be made.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-5 Service Upon Minors, Wards, and Corporations

4-5.01 Service of Summons and Complaint Upon Minors. If the suit be against a minor under the age of 14 years, on such minor personally and also on his father, mother, or guardian, or if there be none within this state, then on any person having the care or control of such minor, or with whom he resides, or in whose service he is employed, if such there be.

Readopted 8/01/06, Resolu. 2006-524.

4-5.02 Service Upon Guardian. If the suit be against any person for whom a guardian has been appointed, then on such guardian.

Readopted 8/01/06, Resolu. 2006-524.

4-5.03 Service Upon Corporation. If the suit be against any company or corporation doing business within the Spokane Reservation, on the president or other head of the company or corporation, secretary, cashier, or managing agent thereof or on the secretary, stenographer, or office assistant of the president or other head of the company or corporation, secretary, cashier, or managing agent.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-6 Proof of Service

4-6.01 Proof Service. When there has been personal service, an affidavit of service shall be returned to the Clerk and filed in the Court records.

(a) Where service was obtained by mail, the return receipt on such delivery shall be made a part of the records of the Court.

(b) When there has been service by publication, affidavits shall be obtained for the Court records from the individual posting the summons and complaint and from the newspaper publishing the notice.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-7 Guardian Ad Litem for Minor or Incompetent

4-7.01 Guardian Ad Litem for Minor or Incompetent.

(a) When a minor or incompetent is a party, he shall appear by guardian.

(b) If he has no guardian or his guardian is not proper or unable to act as such, the Court shall appoint one.

Readopted 8/01/06, Resolu. 2006-524.

4-7.02 Minors. If the party is a minor without a proper guardian, the Court shall appoint him a guardian upon the minor's request if he is 14 or older or upon the application of a relative or friend, if the minor is under the age of 14 years.

Readopted 8/01/06, Resolu. 2006-524.

4-7.03 Incompetent. If the party is incompetent other than by age, and has no proper guardian, the Court shall appoint one upon application of a friend or relative or upon the Court's own motion.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-8 Applicable Law in Civil Actions

4-8.01 Applicable Law in Civil Actions.

(a) The Spokane Tribal Court shall, in civil cases, apply the applicable laws of the United States, regulations of the Department of the Interior and any relevant laws, Resolutions, Codes, customs or codes of the Tribe, not prohibited or superseded by Federal laws.

(b) As to any matters not covered by the above, the Tribal Court may be guided by common law as developed by State and Federal Courts.

Readopted 8/01/06, Resolu. 2006-524.

4-8.02 Tribal Custom Advisor. In the event of dispute or uncertainty regarding traditional Tribal customs, the court may utilize advisors familiar with these customs.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-9 Judgments in Civil Actions

4-9.01 Judgments. In all civil cases in which plaintiff prevails, judgment shall consist of an order of the Court directing payment to plaintiff of the monies found owing him, awarding money damages to be paid to the injured party, or ordering the performance of some other act for the benefit of the injured party.

Readopted 8/01/06, Resolu. 2006-524.

4-9.02 Judgments in Cases Involving Injury. In cases involving injury to persons or property:

- (a) Where the injury inflicted was the result of carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.
- (b) Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Tribe.
- (c) Where the injury was inflicted as the result of an accident in which both the complainant and the defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered which shall reflect an adjustment thereof for the ratio or proportion of the accident caused by his negligence or fault.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-10 Default Judgment

4-10.01 Default Judgment.

- (a) Upon the failure of a defendant to appear at the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within 20 days of the default judgment, showing good cause for his failure to answer the summons.
- (b) Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court may dismiss the case.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-11 Costs

4-11.01 Costs. Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, service fees, expense of witnesses, expert witness fees, compensation of jurors and other incidental expenses.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-12 Appeal

4-12.01 Appeal. Any person who is a plaintiff or defendant in a civil proceeding and is aggrieved by a final order of the Court may appeal as provided in Chapter 1, Section 1-7.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-13 Payment of Judgments From Individual Indian's Monies

4-13.01 Payment of Judgments from Individual Indian's Monies. Whenever the Spokane Tribal Court has ordered payment of money damages to an injured party and payment is not made within the time specified therein, and when the party against whom judgment is rendered has sufficient funds to his credit, in an Individual Indian Money account with the BIA, to satisfy all or part of the judgment against him, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the Agency where the losing party has such funds on deposit.

- (a) The Superintendent shall send this record and a statement as to the amount of funds available in the individual's account, to the Secretary of the Interior.

- (b) The Secretary of the Interior may direct the disbursing agent to pay over from the delinquent party's account to the injured party the amount of judgment, or such amount as may be specified by the Secretary of the Interior not to exceed the amount of judgment.

Readopted 8/01/06, Resolu. 2006-524.

4-13.02 Where Applicable. Provisions for the payment of judgments from Individual Indian Monies shall not be applicable in any case where the judgment creditor is neither the Tribe nor an Indian as defined in this Code.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-14 Effect Upon Estate

14-14.01 Effect on Estate. A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding decedent's estates.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-15 Judgment Lien

4-15.01 Judgment Lien. An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Spokane Tribe upon the delivery of a copy of the judgment to the Chairman or Executive Secretary of the Tribe.

- (a) When such copy is received, the Chairman or Executive Secretary of the Tribe shall arrange for the pay over of the amount specified in the judgment as the funds become available to the credit of the judgment debtor.
- (b) If such funds be wages, seventy-five percent of the disposable earnings of defendant shall be exempt, such percentage to be computed for each interval said wages are to be paid defendant.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-16 Writ of Execution

4-16.01 Writ of Execution. The judgment creditor may seek a writ of execution upon specific personal property of the judgment debtor to be sold in order to satisfy all or part of the judgment.

- (a) The writ shall specify the property to be seized and the amount owing the judgment creditor.
- (b) A notice must be posted at 2 public places within the Reservation for 7 days prior to the sale by the Court.
- (c) The sale will be conducted by the Court Clerk, the property being sold to the highest bidder, but not for less than the appraised value of the property.
- (d) The proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of the judgment still owing.
- (e) Any amount remaining after the above has been paid shall be paid over to the defendant.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-17 Garnishment

4-17.01 Definitions.

- (a) "Earnings" means compensation paid or payable to an individual for personal services, whether called wages, salary, commission, bonus, or otherwise, and includes periodic payments from a pension or retirement program.
- (b) "Disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld.

Readopted 8/01/06, Resolu. 2006-524.

4-17.02 Grounds for Issuance of Writ. The Clerk of Court may issue writs of garnishment returnable to the Tribal Court for the benefit of a judgment creditor who has a Spokane Tribal Court judgment wholly or partially unsatisfied.

- (a) A pre-judgment writ of garnishment may be issued if the Court is satisfied:
 - (1) That the pending lawsuit is based upon a debt owed.
 - (2) That 1 of the following is true:
 - (3) The defendant is present on the Reservation now, but is not a resident of the Reservation, or if a resident of the Reservation is about to move off the Reservation.
 - (4) The defendant has concealed himself or herself so that the ordinary process of law cannot be served upon him or her.
 - (5) The defendant has removed or is about to remove any of his or her property from the Reservation with intent to delay or defraud creditors.
- (b) The proceeds of any pre-judgment writ of garnishment shall be paid into the Court and held by the Court pending a final determination of the lawsuit by the Court.
 - (1) If the Court finds for the defendant, the money shall be returned to the defendant.
 - (2) If the Court finds for the plaintiff, all or part of the monies or property shall be paid to the plaintiff in accordance with the terms of the judgment.

Readopted 8/01/06, Resolu. 2006-524.

4-17.03 Service of the Writ.

- (a) The garnishee defendant shall be served with the writ pleadings by certified mail, in accordance with Section 4-4.03, or by personal service, in accordance with Section 4-4.02.
- (b) The defendant shall, at that time, be sent a copy of the garnishment pleadings by the creditor through first class mail.

Readopted 8/01/06, Resolu. 2006-524.

4-17.04 Form of Writ Pleadings. The Court shall make available for use by creditors the following garnishment pleadings and forms that set forth in detail the duties and rights of the various parties.

- (a) The Court Clerk shall assist all creditors in the preparation and use of the forms.
- (b) The substantive provisions listed in the form set forth the law on the issue of garnishment and shall have the force of law.

Readopted 8/01/06, Resolu. 2006-524.

4-17.05 No Discharge of Employees. No employer shall discharge an employee for the reason that a creditor has attempted a writ of garnishment on the employee.

Readopted 8/01/06, Resolu. 2006-524.

4-17.06 Spokane Tribe of Indians Immune From Writs of Garnishment. The Spokane Tribe of Indians possesses sovereign immunity from all writs of garnishment, except that it specifically allows writs of garnishment of Tribal employees based upon delinquent child support as long as such are judgments entitled to full faith and credit in conformity with this Chapter, or writs issued at the request of Spokane Tribal Housing, Spokane Tribal Credit, or the Wellpinit Trading Post.

Readopted 8/01/06, Resolu. 2006-524.

4-17.07 Failure to Answer Writ or Perform Under the Terms of the Writ. If a garnishee defendant fails to answer the writ or otherwise perform under the terms of the writ, the creditor may seek payment of judgment by the garnishee defendant, and may file suit accordingly.

Readopted 8/01/06, Resolu. 2006-524.

4-17.08 Appeal by Defendant.

(a) Any defendant wishing to object to or contest a writ of garnishment shall file an objection in writing with the Court.

(b) The Court shall send a copy of the objection to the creditor and set the time and place for a hearing of the objection.

Readopted 8/01/06, Resolu. 2006-524.

4-17.09 Order to Pay Into Court. At the completion of the writ period, and upon receipt of the second answer by the garnishee defendant, the plaintiff shall seek an Order to Pay Into Court for the amount being held by the garnishee defendant.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-18 Examination of Judgment Debtor

4-18.01 Order for Examination of Judgment Debtor.

(a) At anytime while a judgment is enforceable, a creditor may request the Court to order a judgment debtor to appear at a special time and place to answer questions posed by the creditor regarding the payment of the judgment, the assets or employment of the debtor, or any other question relevant to the payment of the judgment.

(b) The debtor shall be personally served with a copy of the order in conformity with Section 4-4.02 of this Code.

Readopted 8/01/06, Resolu. 2006-524.

4-18.02 Procedure of Examination. The judgment debtor shall appear at the time and place set.

(a) The judge shall administer an oath, and the debtor shall respond to questions asked by the Court or the creditor.

(b) If the creditor requests, the proceedings shall be on the record.

(c) If it appears to the Court that testimony indicates that the debtor has money or personal property which belongs to the debtor and is capable of satisfying the judgment in whole or in part, the Court shall order the delivery of the same to the creditor within a certain time limit.

(d) Failure of the debtor to do so will be disobedience of a lawful order of the Court, and punishable in accordance with Section 14-7 of this Code.

Readopted 8/01/06, Resolu. 2006-524.

4-18.03 Failure to Appear. If the debtor, though properly served in accordance with Section 4-4.02 of this Code, fails to appear for examination, the Court shall issue a warrant for the debtor's arrest.

(a) When arrested, the debtor shall be held until the creditor has an opportunity to be notified and appear for the examination.

(b) The debtor shall not be released until the debtor has been examined or posted a bond equal to the amount of the debt.

(c) If the examination cannot take place within 72 hours, the Court shall release the debtor provided the debtor pays into the Court the amount of the judgment or a bond sufficient enough to assure the appearance of the debtor for a subsequent examination.

Readopted 8/01/06, Resolu. 2006-524.

4-18.04 Property Exempt From Seizure. This section does not authorize the seizure of:

(a) Trust property unless permitted by Tribal and Federal law.

- (b) Any property exempted by law from levy and sale through execution, attachment or garnishment.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-19 Limitation of Enforcement of Judgment

4-19.01 Limitation of Enforcement of Judgment. A judgment shall be unenforceable after a period of 10 years has elapsed from the date of entry; provided, that said limitation shall not apply to any judgment obtained by the Spokane Tribe or its Entities.

Readopted 8/01/06, Resolu. 2006-524. Amended 12/11/2012, Resolu. 2013-088

Section 4-20 Satisfaction of Judgment

4-20.01 Satisfaction of Judgment. It shall be the duty of the judgment creditor to notify the Court in writing that a judgment has been fully or partially satisfied.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-21 Preponderance of the Evidence

4-21.01 Preponderance of the Evidence. Judgment in civil cases shall be rendered upon a finding that the plaintiff has proved or failed to prove his case by a preponderance of the evidence.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-22 Full Faith and Credit For State and Foreign Tribal Court Judgments

4-22.01 Full Faith and Credit. Full faith and credit shall be given in the Spokane Tribal Court to the judicial proceedings of every State and of every federally recognized Indian Tribe in which a final judgment has been obtained, provided, the person seeking enforcement of such a judgment fully conforms to the procedures outlined below.

Readopted 8/01/06, Resolu. 2006-524.

4-22.02 State and Tribal Courts Entitled to Full Faith and Credit.

(a) Notwithstanding any of the provisions in this Title, the Spokane Tribal Court may refuse to recognize the judgment of any State or Tribal Court which has refused or has clearly indicated that it would refuse to honor the valid final judgments of the Spokane Tribal Court.

(b) The Tribal Council shall work in conjunction with the Tribal Court Administrator and the Chief Judge of the Tribal Court to develop agreements with the various States and other federally recognized Tribes concerning mutual recognition of valid Court judgments.

Readopted 8/01/06, Resolu. 2006-524.

4-22.03 Jurisdiction and Procedure for Establishing Full Faith and Credit. Any judgment creditor shall be entitled to seek enforcement of a final state or foreign Tribal Court judgment in accordance with the following procedures:

(a) Written Petition by Judgment Creditor. The judgment creditor shall file a written petition with the Clerk of the Spokane Tribal Court, accompanied by a verified copy of the State or foreign Tribal Court judgment sought to be enforced. The petition shall set forth the facts relevant, sufficient to fully advise the Court of the parties and nature of the underlying cause of action. The petition shall be served upon the judgment debtor in the same manner as authorized by the Law and Order Code of the Spokane Tribe for service of civil process.

(b) Written Answer by Judgment Debtor. The judgment debtor may file with the Clerk a written answer or response to the petition at any time prior to the hearing on the petition.

(c) Hearing on Petition. After reasonable notice to the judgment debtor, the petition seeking full faith and credit shall be heard. The debtor shall be required at the

hearing to show cause why the State or Tribal Court judgment should not be enforced. However, in accordance with the provisions of Sections 4.22.03 and .04 of this Title, the Spokane Tribal Court shall inquire into the underlying facts and circumstances of the incident which formed the basis for such proceeding.

Readopted 8/01/06, Resolu. 2006-524.

4-22.04 Review of Jurisdictional Basis for State or Tribal Judgment. At the hearing upon the petition, the Tribal Court shall examine the underlying facts of the State or Tribal judicial order sought to be enforced in order to determine:

(a) that the State or Tribal Court had proper subject matter jurisdiction over the dispute to enable it to render a valid judgment;

(b) that the State or Tribal Court had proper personal jurisdiction over the judgment debtor to enable it to render a valid judgment; and (c) that the judgment debtor received fair notice and opportunity to be heard prior to entry of the State or Tribal judgment.

(c) Full faith and credit shall be given to a State or foreign Tribal Court judgment only if the Spokane Tribal Court determines that all the requirements of sub-sections (a),

(b) and (c) were met.

Readopted 8/01/06, Resolu. 2006-524.

4-22.05 Review of Consumer Transactions. In considering a petition for full faith and credit from a judgment creditor in connection with a consumer transaction, the Tribal Court shall review the underlying facts and circumstances of the consumer transaction in order to determine the existence of any unconscionable act or practice by the supplier.

(a) In determining whether an act or practice by the supplier is unconscionable, the Tribal Court shall consider the following circumstances which the supplier knew or had reason to know:

(1) That the supplier 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) That when the consumer transaction was entered into, the price grossly exceeded the price at which similar property or services were readily obtainable in similar transactions by like consumers.

(3) That when the consumer transaction was entered into there was no reasonable probability of payment of the obligation in full by the consumer.

(4) That the supplier made a misleading statement of opinion on which the consumer was likely to rely to his detriment.

(b) If the Tribal Court determines that an act or practice in a consumer transaction was unconscionable, the Court may refuse to enforce the State or other Tribal Court judgment or may enforce only such part of the judgment that was not affected by the unconscionable act or practice.

Readopted 8/01/06, Resolu. 2006-524.

4-22.06 Entry of Judgment.

(a) Once the Spokane Tribal Court has satisfied itself that the State or Tribal judicial proceedings are entitled to full faith and credit, the Court shall enter a judgment in favor of the judgment creditor.

(b) The entry of said judgment shall entitle the judgment creditor to enforce its judgment against the judgment debtor.

Readopted 8/01/06, Resolu. 2006-524.

4-22.07 Remedies Available to Judgment Creditor. After judgment is entered in the Spokane Tribal Court, the judgment creditor may enforce its judgment in any manner currently available for judgment creditors in this Code.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-23 Procedure for Repossession of Property

4-23.01 Personal Property of Indians.

(a) The Spokane Tribe of Indians possesses exclusive jurisdiction over the repossession of any personal property located within the exterior boundaries of the Spokane Indian Reservation or upon Spokane Tribal and allotted Indian lands outside the exterior boundaries of the Reservation and is held by or belongs to an Indian.

(b) Such Indian personal property shall not be taken from such lands except in strict compliance with the procedures set forth in this Section.

Readopted 8/01/06, Resolu. 2006-524.

4-23.02 Repossession of Indian Personal Property. On-Reservation creditors may use the procedures outlined in this section or the procedures of Article 9-503 of the Uniform Commercial Code referred to as "self-help repossession."

(a) Because on-Reservation creditors using self-help repossession will be within the continuing jurisdiction of the Court, and because the property will be remaining on the Reservation, all disputes regarding the property and method of repossession can be resolved properly in the Tribal Court for the Spokane Tribe of Indians.

(b) Off-Reservation creditors shall not use "self-help repossession" but must repossess property only in conformity with this section as set forth below.

(c) 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 exterior boundaries of the Spokane Indian Reservation.

(d) Such Indian debtor may give written consent to the creditor permitting a repossession of the personal property without formal court proceedings.

(e) A creditor may enter the Reservation for the purpose of repossessing personal property pursuant to the debtor's written consent only when accompanied by a Tribal Police Officer.

Readopted 8/01/06, Resolu. 2006-524.

4-23.03 Court Order and Absence of Written Consent by Indian Debtor. If an Indian debtor refuses to sign a written consent allowing repossession, the property may be removed by the creditor from the Reservation only by order of a judge of the Spokane Tribal Court, entered in accordance with the procedures set forth in Section 4-23.04.

Readopted 8/01/06, Resolu. 2006-524.

4-23.04 Procedure to Obtain Court Order for Repossession. A creditor may seek an order of repossession against an Indian debtor in accordance with the following procedures:

(a) **Petition by Creditor.** The creditor shall file a written petition with the Clerk of the Spokane Tribal Court, accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the Indian debtor.

(1) The petition shall contain a concise statement of the creditor's claim against the Indian debtor.

(2) The petition shall be served upon the Indian debtor in the same manner as authorized by the Law and Order Code for service of other civil process.

- (b) Answer by Debtor. The Indian debtor may file with the Clerk a written answer or response to the creditor's petition at any time prior to the hearing on the petition.
- (c) Hearing on Petition. After reasonable notice to the Indian debtor, hearing shall be held on the petition for repossession.
- (d) Both the creditor and debtor may present evidence and witnesses relevant to the contract or debt dispute which forms a basis for the repossession request. The timing of the hearing on the petition for repossession 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 off the Reservation prior to a regularly scheduled hearing; and
 - (2) An accelerated hearing can be held without substantially prejudicing the ability of the Indian debtor to present any good faith defenses to the petition for repossession.
- (e) Contents of Court Order. If after a hearing, the Court determines that repossession is justified, the Court shall issue an order authorizing the creditor to repossess the personal property involved in the proceeding.
 - (1) Every such order may direct that a creditor shall repossess the property of the Indian debtor only when accompanied by a Tribal Police Officer.
 - (2) An order shall contain this directive if the Indian debtor has failed to appear at the hearing despite reasonable notice, and the Court has therefore entered the repossession order in the absence of the debtor.

Readopted 8/01/06, Resolu. 2006-524.

4-23.05 Remedies for Violation of this Section.

- (a) Exclusion from Reservation. Any non-member of the Spokane Tribe, except persons authorized by federal law to be present on the Spokane Reservation, may be excluded from the Reservation in accordance with procedures set forth in Chapter 21 of the Spokane Law and Order Code, if such non-member is found to be in deliberate or willful violation of this section.
- (b) Denial of Business Privileges. Any creditor and any agents or employees of any creditor who are found by the Tribal Council to be in deliberate and willful violation of this title may be denied the privilege of doing business within the Spokane Reservation.
 - (1) The Council shall afford any creditor fair notice and opportunity for hearing prior to denial of any business privileges on the Reservation.
- (c) Civil Damage Liability. Any person who violates this Title and creditor whose agents or employees violate this Title, shall be deemed to have breached the peace of the Spokane Reservation, and they shall be civilly liable to any debtor for any actual damages caused by the deliberate or negligent failure to comply with the provisions of this section.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-24 Service of Process - Foreign Civil Actions

4-24.01 Service of Process Involving Foreign Causes of Action. If service is desired to be obtained upon an Indian within the exterior boundaries of the Spokane Indian Reservation for purposes of a civil judicial proceeding in a foreign Tribal, state or federal court, such service must be performed by the Tribal Court.

- (a) Any person desiring such service shall submit a written request for such service to the Spokane Tribal Police together with the document that is desired to be served,

and a statement of the name of the individual desired to be served and the location where they can be served.

(b) A schedule of fees and mileage for such service shall be as determined by the Police Chief and approved by the Tribal Court.

(c) For that fee, an affidavit of service shall also be provided upon obtaining the desired service.

Readopted 8/01/06, Resolu. 2006-524.

Section 4-25 Injunctions

4-25.01 Restraining Orders and Injunctions. In addition to other remedies, the Court may also issue a temporary restraining order, preliminary injunction, permanent injunction or other appropriate order to enjoin or prevent a violation or threatened violation of any person's rights or legally protected interests, or any provision of the Spokane Law and Order Code, regulation, or order issued there under or other laws of the Spokane Tribe.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.02 Emergency Restraining Order. When the complaining party demonstrates by affidavit or verified complaint filed with the court that immediate and irreparable damage, injury, or loss will occur unless restrained by the court, the Court may issue an ex parte emergency restraining order; provided that the applicant provides the Court with written reasons supporting the claim that notice should not be required and certifying the efforts made, if any, to notify the adverse party.

(a) 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.

(b) An emergency restraining order shall expire by its own terms, but not more than 5 days from the date of its issuance, and this fact shall be shown on the face of the order.

(c) Such an order may be renewed for a like period of time not more than once.

(d) Such renewal must be requested before the expiration of the initial order, and shall be granted only upon notice to the opposing party.

(e) An emergency restraining order may be so renewed, vacated, set aside, or modified by motion of either party upon notice and opportunity for hearing.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.03 Preliminary Injunction.

(a) 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.

(b) 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.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.04 Permanent Injunction. Every order granting a permanent injunction shall set forth the reasons for its issuance and shall be specific in terms.

(a) It shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.

(b) The injunction is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.05 Security.

(a) The Court may require the applicant to give security as a condition to issuing a restraining order or preliminary injunction, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

(b) No such security shall be required of the Spokane Tribe or an agency or officer thereof.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.06 Security on Injunction Restraining Collection of Money; Injunction Made Permanent.

(a) Upon dissolution of a preliminary injunction or temporary restraining order restraining the collection of money, if the action is continued over for trial, the court may require the defendant to give security to be approved by the court, and payable to the plaintiff in the amount previously enjoined and such additional amount as the court requires, and conditioned upon refunding to the plaintiff the amount of money, interest and costs which may be collected by him in the action.

(b) If a permanent injunction is ordered on final hearing, the court may, on motion of the plaintiff, enter judgment against the security for the amount shown to have been collected and to which the plaintiff appears entitled.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

4-25.07 Disobedience of Injunction as Contempt; Order to Show Cause; Warrant; Attachment; Punishment.

(a) Disobedience of a restraining order or injunction may be addressed by the court as civil contempt.

(b) When a party in whose favor an injunction has been issued files an affidavit that the party against whom the injunction was issued has disobeyed the injunction and describes the acts constituting such disobedience, the court may order the person so charged to show cause at the time and place the court directs why such disobedient party should not be adjudged in contempt of court.

(c) The order to show cause, with a copy of the affidavit, shall be served upon the person charged with the contempt within sufficient time to enable him to prepare a response to the charge.

(d) If such a person fails or refuses to appear and show cause as ordered, a warrant of arrest may be issued directing the police to deliver him and bring him before the court at a time and place directed by the court.

(e) If the alleged contemnor is a corporation, an order of attachment for sequestration of the corporation may be issued seizing corporation property upon refusal or failure to appear, which may be held until the contemnor appears as directed by the court.

(f) Upon the appearance of the alleged contemnor, or at the trial of the issue, the court shall hear the evidence, and if the court finds by a preponderance of the evidence that the person enjoined has disobeyed the injunction he may be committed to jail until he purges himself of the contempt as may be directed by the court or until he is discharged by law.

Legislative History-Amended 12/10/97, Resolu. 1998-055; Readopted 8/01/06, Resolu. 2006-524.

Section 4-26 Arbitration

4-26.01 Scope of Code. This Code applies to any written contract, agreement or other instrument entered into by:

(a) the Spokane Tribe of Indians, or

(b) any other person in a transaction that is subject to the jurisdiction of the Spokane Tribe of Indians, in which the parties thereto agree to settle by arbitration any

controversy arising out of such contract, agreement or other instrument, or any other controversy existing between them at the time of the agreement.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.02 Agreements to Arbitrate are Enforceable. An agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated there under, including the failure or refusal to perform the whole or any part thereof, or a written agreement between 2 or more persons to submit to arbitration any controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.03 Law to be Applied.

(a) In any contract, agreement or instrument described in Section 1 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or controversy.

(1) Such choice of law shall be valid and enforceable, and not subject to revocation by 1 party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or controversy, and at least 1 of the parties thereto, shall have some contact with the jurisdiction so selected.

(b) In any proceeding under this Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Spokane Tribal Court shall apply the procedural rules of the Spokane Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Spokane Tribal Court shall be effective to bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies.

(c) In any proceeding under this Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Spokane Tribal Court shall first apply the substantive law of the Spokane Tribe of Indians, including any applicable choice of law principles, and then the substantive law of the State of Washington, including any applicable choice of law principles, provided that such law does not conflict with this Code or other applicable Tribal law.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.04 Stay of Proceedings and Order to Proceed with Arbitration.

(a) If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 1 of this Code, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement.

(b) A party to any contract, agreement or instrument described in Section 1 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration there under may make application to the Spokane Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement.

(1) In such event, the Spokane Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument

and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524

4-26.05 Advice of the Court. At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Spokane Tribal Court for advice on any question of Tribal or state law arising in the course of the arbitration, *provided that* such parties shall agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.06 Time Within Which Award Shall be Rendered.

(a) If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within 30 days from the date the arbitration has been completed.

(1) The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

(b) An arbitration award shall be in writing and signed by the arbitrator(s).

(1) The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.07 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

(a) At any time within 1 year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Spokane Tribal Court for an order confirming the award.

(b) Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Spokane Tribal Court for entry of judgment thereon, file the following papers with the Clerk:

(1) the agreement to arbitrate;

(2) the selection or appointment, if any, of the arbitrator(s);

(3) any written agreement requiring the reference of any question as provided in Section 5;

(4) each written extension of the time, if any, within which to make the award;

(5) the award;

(6) each notice and other paper used upon an application to confirm; and

(7) a copy of each order of the Spokane Tribal Court upon such an application.

(c) An arbitration award shall not be subject to review or modification by the Spokane Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s).

(1) The judgment confirming an award shall be docketed as if it were rendered in a civil action.

(2) The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court.

(3) When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26.08 Arbitration Award Not Appealable. No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing an agreement to arbitrate or an award issued by an arbitrator. Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

4-26-09 Jurisdiction of the Tribal Court in Actions to which the Spokane Tribe is a Party.

(a) The Spokane Tribal Court shall have exclusive Tribal Court jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 1 of this Code to which the Spokane Tribe of Indians is a party; *provided that* the Spokane Tribal Council explicitly has waived the defense of Tribal sovereign immunity in the contract, agreement, or other instrument; and *provided further* that the contract, agreement, or other instrument does not expressly prohibit the Spokane Tribal Court from exercising jurisdiction there under.

(b) The jurisdiction of the Spokane Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Spokane Tribe of Indians shall have explicitly consented in such contract, agreement or other instrument.

(1) Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1 of this Code to which the Spokane Tribe of Indians is a party shall be valid and enforceable in accordance with its terms.

Legislative History-Enacted, 06/20/01, Resolu. 2001-320; Readopted 8/01/06, Resolu. 2006-524.

Section 4-27 Good Samaritan

4-27.01 Definitions.

- (a) "Compensation" has its ordinary meaning but does not include:
- (1) Nominal payments, reimbursement for expenses, or pension benefits;
 - (2) Payments made to volunteer part-time and volunteer on-call personnel or fire departments, fire districts, ambulance districts, police departments, or any emergency response organizations; or
 - (3) Any payment to a person employed as a transit operator who is paid for his or her regular work, which work does not routinely include providing emergency care or emergency transportation.
- (b) "Emergency Care" means care, first aid, treatment, suicide prevention, or assistance rendered to the person in need of immediate medical attention or aid and includes providing or arranging for further medical treatment or care. Except with respect to an injured person or persons being transported for further medical treatment or care, the immunity granted by Subsection 4-27.02 does not apply to the negligent operation of any motor vehicle.
- (c) "Scene of an emergency" means the scene of an accident or other sudden or unexpected event or combination of circumstances, including but not limited to attempted suicide, which calls for immediate attention. This Section 4-27 only applies to scenes or accidents located within the Spokane Indian Reservation or other off-reservation trust lands of the Spokane Tribe.

Adopted 05/10/19, Resolu. 2019-254.

4-27.02 Civil Liability for Certain Types of Medical Care.

- (a) Any person, including but not limited to a volunteer provider of emergency or medical services, who without compensation, or the expectation of compensation, renders emergency care at the scene of an emergency, or who participates in transporting, not for compensation, therefrom an injured person or persons for emergency medical treatment, shall not be liable for civil damages resulting from any act or omission in the rendering of such emergency care or in transporting such persons, other than for acts or omissions that constitute gross negligence or willful or wanton misconduct.

- (b) Any person rendering emergency care during the course of regular employment and receiving compensation or expecting to receive compensation for rendering such care is excluded from the protection of this Subsection 4-27 .02.

Adopted 05/10/19, Resolu. 2019-254.