

REVIEWING PROPOSED TRIBAL CONSTITUTIONS: A CHECKLIST

YES/NO

TITLE

- _____ The title contains the words “amended” or “revised.”
_____ The title contains the phrase “constitution and by-laws.”

PREAMBLE

- _____ The objective of and basis for the organization are easily understood.
_____ Cites the specific authority under which the constitution will be adopted or ratified.
_____ If the tribe was organized under an earlier governing document, the earlier document is acknowledged along with an explanation that it is now superseded by the current proposed constitution.

TERRITORY AND JURISDICTION

- _____ Statements accurately describe the tribe’s geographical territory and the extent of jurisdiction.
_____ Reference is made to all treaties, Executive Orders, and/or specific congressional acts relating to establishment of the reservation or area within which the tribe has jurisdiction.
_____ Includes a statement that jurisdiction over the tribe’s territory is subject to Federal law.

MEMBERSHIP (ENROLLMENT)

The article clearly describes the requirements for tribal enrollment by addressing all the following:

- _____ Base Roll identification.
_____ Vested rights of previously recognized members.
_____ Authority to resolve enrollment questions.
_____ Application requirements.
_____ Content of ordinance for enrollment procedures.
_____ Adoption into membership.
_____ Disenrollment.
_____ Procedures for appeals or enrollment decisions.
_____ Viable procedures for resolving questions of membership in a fair and impartial manner.
_____ Provision is made for appeal of enrollment decision to an objective forum.

CIVIL RIGHTS

- _____ Sets forth those individual rights that the tribe must respect in exercising its power of self-government (as stated in the Indian Civil Rights Act of 1968).
- _____ Provides for a constitutionally-based judicial forum that is equal to but separate from the legislative and executive branches of government.

GOVERNING BODY

- _____ Clearly and thoroughly describes the nature of the entity (or entities) empowered to exercise the tribe's legislative and executive powers.
- _____ The article specifically provides for:
 - _____ The title and number of positions that constitute the governing body.
 - _____ The means through which office holders are elected (from within or by running for a particular office).
 - _____ Staggered terms of office.
 - _____ Incumbents to continue in office until their successors are duly elected and installed.
 - _____ Filling vacancies.

POWERS

- _____ Clearly delineates authorities delegated to the governing entity or entities (legislative and executive branches or tribal council and general council).
- _____ If more than one governing entity is established, the article specifies which powers are vested in each entity.
- _____ Includes a reserve powers clause that provides that any powers not specifically listed will be exercised only upon appropriate amendment to the constitution.

JUDICIARY

- _____ Clearly provides for exercise of the tribe's judicial authorities.
- _____ Requires creation of a judiciary that is independent from the legislative and executive functions of tribal government.
- _____ Enumerates accurately the scope of judicial powers.
- _____ Provides for election or appointment of judges by a process that frees the judiciary from potential pressures and influences of the tribal government.

ELECTIONS

This article explains fundamental principles for the conduct of tribal elections including:

- _____ The qualifications of voters and candidates.
- _____ A provision for an election board.
- _____ A tribal election ordinance including:
 - _____ Ongoing voter registration.
 - _____ Majority vote.

_____ Secret ballot.
_____ Absentee voting.
_____ Procedures for settling election disputes.
_____ Appeal procedures.
_____ The concept of “one man, one vote” is preserved.
_____ Promotes order in the choice of tribal officials.

VACANCIES

_____ Specifies procedures for filling positions in the event of death, resignation,
_____ removal, forfeiture, and recall.
_____ Clear and thorough enough to promote order in filling vacancies and to prevent
_____ undue confusion from arising around the loss of tribal officials.

POPULAR PARTICIPATION

_____ Provides for tribal election other than the regular elections of tribal officials—i.e.,
_____ initiative, referendum, recall.
_____ Provisions established a viable “checks and balance” system.
_____ Procedures make it possible to achieve a recall when necessary but not so easy
_____ that officials can be unduly harassed.

DUTIES OF OFFICERS

_____ Clearly defines the major duties of various officials.
_____ Describes how tribal members can gain access to tribal records.
_____ Provisions are included for transfer of documents and records to newly elected
_____ officials upon expiration of the incumbent’s terms.
_____ Authorities of various officials are clearly defined.

MEETINGS

The article clearly provides for calling and conducting regular and special meetings including specific instructions regarding:

_____ Who is responsible for calling the sessions.
_____ What constitutes a quorum.
_____ When and where regular meetings are to be held.
_____ How many special or emergency meetings can be called.
_____ Use of Robert’s Rules of Order in conducting meetings.
_____ Voting by secret ballot.

SAVINGS CLAUSE

_____ The article provides that all tribal legislation enacted under any previous constitutions will remain in force to the extent that those enactments are consistent with the new constitution.

SEVERABILITY

_____ The article provides that if any part of the constitution is held by a Federal court to be invalid or contrary to the U.S. Constitution or Federal law, the remainder of the document will continue in effect.

AMENDMENT

_____ The article clearly sets forth procedures for modifying or amending the constitution.