



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 12- 29

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Tribe has duly enacted an Arbitration Code, codified at Chapter 4.52 of the Squaxin Island Tribal Code; and

WHEREAS, the Tribe wishes to enact certain clarifications and amendments to the Code;

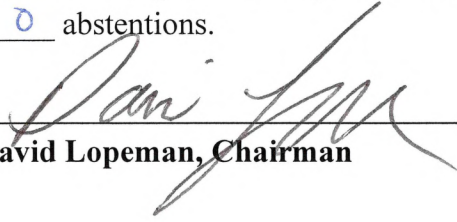
NOW THEREFORE BE IT RESOLVED, that the attached amendments to the Arbitration Code are effective with respect to all actions brought after today's date, irrespective of when a claim arose or arbitration was initiated;

BE IT FURTHER RESOLVED, that new Section 4.52.075 is a clarification of existing law and practice to the extent it bars the assertion of a claim in arbitration that would be barred by the Squaxin Island Tribal Code if asserted directly in Tribal Court, and represents the Tribal Council's understanding of the proper application of existing periods of limitation under the Squaxin Island Tribal Code; and


BE IT FINALLY RESOLVED, that if any provision of these amendments or their application to any person, entity, or circumstance is held invalid, the remainder of the act or the application of the provision to other persons, entities, or circumstances is not affected.

CERTIFICATION

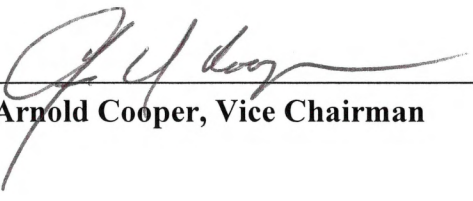
The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 10th day of May, 2012, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger, Secretary



Arnold Cooper, Vice Chairman

Chapter 4.52

ARBITRATION CODE

Sections:

4.52.010 Authority.

4.52.020 Scope of Code.

4.52.030 Agreements to arbitrate are enforceable.

4.52.040 Law to be applied.

4.52.050 Stay of proceedings and order to proceed with arbitration.

4.52.060 Advice of the Court.

4.52.070 Time within which award shall be rendered.

4.52.080 Application for order confirming award--Record to be filed with Clerk of Court--Effect and enforcement of judgment.

4.52.090 Arbitration award not appealable.

4.52.100 Jurisdiction of the Tribal Court in actions to which the Tribe is a party--Qualification of Judges.

4.52.110 Waivers of sovereign immunity must be express and unequivocal.

4.52.010 Authority.

The Squaxin Island Tribal Council's authority to adopt the chapter is found in the Squaxin Island Tribal Constitution and in the inherent sovereign authority of the Squaxin Island Tribe.

(Res. 01-39 (part))

4.52.020 Scope of Code.

This Code applies to any written contract, agreement or other instrument entered into (a) by the Squaxin Island Tribe (the "Tribe"), or (b) by any other person, in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration (i) any claim, dispute or controversy arising out of such contract, agreement or other instrument, or (ii) any other claim, dispute or controversy existing between them at the time of the agreement.

(Res. 01-39 (part))

4.52.030 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 claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid and enforceable, and shall be irrevocable except by written agreement by all parties.

(Res. 01-39 (part))

4.52.040 Law to be applied.

A. In any contract, agreement or instrument described in Section 4.52.020 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 claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected.

B. In any proceeding under this Arbitration Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall 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 Arbitration Code, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, 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 Arbitration Code or other applicable tribal law. (Res. 01-39 (part))

4.52.050 Stay of proceedings and order to proceed with arbitration.

A. Except as provided under subsection (C) of this section, 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 4.52.020 of this Arbitration 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. Except as provided under subsection (C) of this section, a party to any contract, agreement or instrument described in Section 4.52.020 of this Arbitration Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the 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).

C. In any action under subsection (A) or (B) of this section, the Tribal Court may issue an order addressing whether (1) a claim, dispute or controversy arises under a contract described in Section 4.52.020, (2) the Squaxin Island Tribe has waived sovereign immunity,

allowing Tribal Court jurisdiction under Section 4.52.100, (3) the Squaxin Island Tribe has prohibited the exercise of Tribal Court jurisdiction, preventing Tribal Court jurisdiction under Section 4.52.100, or (4) a claim, dispute, or controversy is barred by a period of limitation or Section 4.52.075.

(Res. 12-__ (part); Res. 01-39 (part))

4.52.060 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 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.

(Res. 01-39 (part))

4.52.070 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 thirty (30) days from the date the arbitration has been completed. 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). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

(Res. 01-39 (part))

4.52.075 Periods of Limitation

If, at the time that a demand for arbitration was made or a notice of intention to arbitrate was served, the claim sought to be arbitrated would have been barred by limitation of time had it been asserted in the Tribal Court, such limitation shall be a bar to asserting such claim in arbitration and a bar to 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. (Res. 12-__ (part))

4.52.080 Application for order confirming award--Record to be filed with Clerk of Court--Effect and enforcement of judgment.

A. At any time within one (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 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 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, 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 Tribal Court upon such an application.

C. Except as provided in subsection (D) of this section, an arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. 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. 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.

D. Upon motion by a party to the arbitration proceeding, the Tribal Court shall vacate an award if:

1. The award was procured by corruption, fraud, or other undue means.
2. There was:
 - (a) Evident partiality by an arbitrator appointed as a neutral;
 - (b) Corruption by an arbitrator; or
 - (c) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.
3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing so as to prejudice substantially the rights of a party to the arbitration proceeding;
4. An arbitrator exceeded the arbitrator's powers;
5. There was no agreement to arbitrate.
6. The award was based on a facial error of law, including but not limited to an error related to any issue described under subsection 4.52.050(C).

(Res. 12-__ (part); Res. 01-39 (part))

4.52.090 Arbitration award not appealable.

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Code enforcing or vacating an agreement to arbitrate or an award issued by an arbitrator.

(Res. 12-__ (part); Res. 01-39(part))

**4.52.100 Jurisdiction of the Tribal Court in actions to which the Tribe is a party--
Qualification of Judges.**

A. The 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 4.52.020 of this Arbitration Code to which the Tribe is a party; provided that the Tribal Council ("Council") has explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that the said contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

B. The jurisdiction of the Tribal Court under this Arbitration Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in contract, agreement or other instrument described in Section 4.52.020 of this Arbitration Code to which the Tribe is a party shall be valid and enforceable in accordance with its terms.

(Res. 01-39 (part))

4.52.110 Waivers of sovereign immunity must be express and unequivocal.

Nothing in this Arbitration Code, or in any arbitration or other provision of any contract, agreement, or other instrument, shall constitute a waiver, in whole or in part, of the sovereign immunity of the Squaxin Island Tribe, its subsidiaries, departments, affiliates, agents, officers or employees, but any such waiver must be explicit, unequivocal and in writing, and can only be enforced in accordance with its express terms.

(Res. 01-39 (part))