**PROBATE ORDINANCE**

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# AUTHORITY, FINDINGS, PURPOSE

## Authority

This Ordinance is enacted by the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation pursuant to Article VI of the Constitution of the Confederated Salish and Kootenai Tribes and the American Indian Probate Reform Act, 25 U.S.C. § 2205 et al., as this Ordinance relates to trust property. The Tribal Council of the Confederated Salish and Kootenai Tribes enacts this Ordinance as an exercise of inherent sovereign authority, as affirmed under the Treaty of Hell Gate, 12 Stats. 975.; and as recognized under Section 16 of the Indian Reorganization Act, 25 U.S.C. § 476 et al., and under the common law of the United States.

## Findings and Purposes

The Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation finds that the determination of how property is disposed upon a person’s passing is an exercise of self-governance crucial to the Tribes’ sovereignty and that a Probate Ordinance will simplify the probate process for tribal members. Accordingly, the Tribes find and declare that:

1. It is of paramount importance to encourage the preparation of wills or other estate plans for the transfer of property upon death, to carry out the intent of the decedent, and to provide a speedy, efficient, user-friendly, and conflict-reducing system to maintain family and community harmony and to administer all aspects of decedent estates, including all types of real and personal property;
2. It is of paramount importance that this system incorporates cultural practices and speaks to the spirit and values of our community;
3. Preservation and restoration of the land base of the Tribes is critical to the vitality of the sovereignty, environment, and economy of the Tribes;
4. It is of paramount importance to encourage and consolidate tribal and tribal member ownership of lands on the Reservation;
5. Because of the federal allotment policy that began in the late nineteenth century and the subsequent transfers of allotted lands, a significant portion of the Reservation is fractionated or owned by non-members;
6. The transfer or devise of interests in Reservation trust land upon the death of any individual owner could lead to further fractionation or non-member ownership of Reservation land; and
7. By establishing a probate code that covers all types of real estate and personal property, including trust and restricted land, and appending forms to this code, the Tribes intend to foster a uniform system to facilitate the probate process in a cost-efficient manner and to maintain and enhance its self-sufficiency, self-determination, and sovereignty.

# II. DEFINITIONS

For the purposes of this Code, the following definitions shall apply:

1. **“Abatement”** means a reduction or decrease.
2. **“Beneficiary”** means any person nominated in a will to receive an interest in property other than in a fiduciary capacity.
3. **“BIA”** means the Bureau of Indian Affairs within the Department of the Interior.
4. **“Child”** includes any biological or lawfully adopted child. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
5. **“Codicil”** means a will that modifies or partially revokes an existing earlier will.
6. **“Consolidation agreement”** means a written agreement under the provisions of 25 U.S.C. § 2206(e) or 25 U.S.C. § 2206(j)(9), by which a decedent’s heirs and devisees consolidate interests in trust or restricted land, entered during the probate process, approved by the judge, and implemented by the probate order.
7. **“Cultural Patrimony”** means an object that, according to the customs and traditions of the Tribes, has (1) historical, traditional, or cultural importance central to the Tribes, and (2) cannot be owned, conveyed, or appropriated by any individual.
8. **“Decedent”** means a person who is deceased.
9. **“Devise”** means a gift of property by will. Also, to give a gift of property by will.
10. **“Devisee”** means a person or entity that receives property under a will.
11. **“Estate”** means all of the assets and liabilities of a deceased person.
12. **“Executor”** means a person designated by a testator to carry out the directions and requests in a testator’s will and to dispose of the testator’s property according to the provisions of his or her will.
13. **“General creditor”** includes all creditors owed uncollateralized debt, except for tribal government agencies.
14. **“Heir”** means those persons who are entitled by a will or under the rules of intestate succession to the real or personal property or trust land of a decedent.
15. **“Indian”** means--
	1. Any person who is a member of a federally recognized Indian tribe, is eligible to become a member of any Indian tribe, or is an owner (as of October 27, 2004) of an interest in trust or restricted land;
	2. Any person meeting the definition of Indian under 25 U.S.C. § 479; and the regulations promulgated thereunder; and
	3. With respect to the inheritance and ownership of trust or restricted land in the State of California under 25 U.S.C. 2206, any person described in subparagraph (a) or (b) of this definition or any person who owns a trust or restricted interest in a parcel of land in that State.
16. **“Indian Tribe”** means any Indian tribe, band, group, pueblo, or community for which or for the members of which the United States holds lands in trust.
17. **“Intestate”** means that a person has died without making a valid will as to some or all of the estate assets. Such property will pass to other persons under the intestate succession rules of this Title.
18. **“Intestate succession”** means succession to property of a decedent who dies intestate or partially intestate.
19. **“Land”** means any real property.
20. **“Lawfully adopted child”** means a child adopted lawfully in accordance with CSKT Laws Codified Section 3-1-106 for non-trust property and 25 U.S.C. § 372a for trust property.
21. **“Life estate”** means an interest in property held for only the duration of a designated person’s life.
22. **“Minor”** means an individual who has not reached the age of majority as defined by the applicable law. For all trust and restricted property, the age of majority is 18 years of age. See 25 U.S.C. § 373.
23. **“Non-Probate Assets”** means those rights or interests of a person having beneficial ownership of an asset that passes on the person’s death under a written instrument or arrangement existing at the time of decedent’s death other than the person’s will or by descent and distribution under this Ordinance. “Non-Probate asset” includes, without limitation, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death bank account, transfer on death security or security account, a conveyance that has been postponed until the death of the person, or a trust that becomes effective or irrevocable only upon the person’s death.
24. **“Ordinance”** means this Ordinance and includes all amendments hereafter made to this Ordinance.
25. **“Parent”** means the biological or lawful adoptive mother or father of a child, as defined by Section II(4) and (20). It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.
26. **“Permanent improvements”** means buildings, other structures, and associated infrastructure attached to trust or restricted land, as well as any interests in such improvements.
27. **“Personal property”** means any property that is not included in the definition of real property.
28. **“Personal representative”** means that person appointed by the Tribal Court to carry out the powers and duties conferred by this Ordinance on behalf of the estate.
29. **“Probate”** means the legal process by which this Ordinance and any applicable Federal law that affects the distribution of a decedent’s estate is applied to:
	1. Determine the heirs;
	2. Determine the validity of wills and determine devisees;
	3. Determine whether claims against the estate will be paid from trust or non-trust funds; and
	4. Order the transfer of any real or personal property, trust or restricted land, or trust personalty to the heirs, devisees, or other persons or entities entitled by law to receive the funds or land.
30. **“Property”** means any interest, legal or equitable, in real or personal property, without distinction as to kind.
31. **“Real property”** means all interests and estates in land, including leasehold interests and improvements to land, such as houses or other buildings, which have been affixed to the land. A mobile or modular home located on individual trust property and subject to a security interest, mortgage, promissory note, or other financing agreement or which is located on tribal fee or trust property shall be considered personal property for purposes of this Title. All other mobile or modular homes shall be considered real property for purposes of this Title.
32. **“Reservation”** means the Flathead Reservation.
33. **“Remainder interest”** means the interests of an owner who does not have use of the property until the life estate terminates.
34. **“Restricted property”** means real property, the title to which is held by an Indian but which cannot be alienated or encumbered without the consent of the Secretary. For the purposes of probate proceedings, restricted property is treated as if it were trust property.
35. **“Secretary”** means the Secretary of the Interior or an authorized representative. The authorized representative of the Secretary for the performance of probate functions is the BIA. The authorized representative of the Secretary for adjudication of probate for trust and restricted interests is the Office of Hearings and Appeals (OHA).
36. **“Shall”** means an act that is required and is not permissive.
37. **“Special administrator”** means that person appointed by the court to administer decedent’s estate when it is necessary to probate or preserve the estate.
38. **“Spouse”** means a person who was married to the decedent under the laws of any jurisdiction.
39. **“Testate”** means that the decedent executed a valid will.
40. **“Testator”** means a decedent who has executed a valid will.
41. **“Tribal Court”** means the Confederated Salish and Kootenai Tribal Court.
42. **“Tribal Council”** means the Confederated Salish and Kootenai Tribal Council.
43. **“Tribes”** means the Confederated Salish and Kootenai Tribes.
44. **“Trust or restricted land”** means any real property, title to which is held in trust or restricted fee status by the United States for the benefit of the Tribes, enrolled members of the Tribes, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of “Indian” under this Ordinance. Improvements attached to trust land are not trust land or trust personalty.

1. **“Trust personalty”** means all funds and securities of any kind that are held in trust in an individual Indian money account (IIM account) or otherwise owned in trust by the United States for the benefit of an individual Indian.
2. **“Trust property”** means real or personal property, or an interest therein, for which the United States holds the title to the property in trust for the benefit of an individual Indian or tribe.
3. **“Will”** means a written document validly executed under this Ordinance that disposes of all or part of an individual’s estate at death. The requirements for valid execution are provided in Section IV.
4. **“Without regard to waste”** means, with respect to a life estate interest in land, that the holder of such estate is entitled to the receipt of all income, including bonuses and royalties, from such land to the exclusion of the person(s) who hold/own the remainder interest.

# SCOPE, JURISDICTION, AND COURTS

## Persons and Property Subject to Ordinance

1. This Ordinance applies to all persons who have an interest in trust land within the Reservation, including enrolled members of the Tribes, all enrolled members of a federally recognized Indian tribe, and all persons eligible for enrollment in a federally recognized Indian tribe, or who otherwise meet the definition of “Indian” under this Ordinance.
2. This Ordinance applies to enrolled members of the Tribes domiciled within the Reservation who have an interest in real or personal property subject to this Ordinance.
3. Except to the extent the descent and distribution of real or personal property is governed by federal law, this Ordinance governs the descent and distribution of trust property that is within the Reservation and real and personal property of any enrolled member of the Tribes domiciled within the Reservation.
4. For purposes of this Section, an enrolled member of the Tribes shall be presumed to be domiciled within the Reservation absent proof of domicile in another location.

## Jurisdiction of Tribal Court

1. The Tribal Court shall have all authority necessary to take evidence and determine the validity of any will or other document, the qualifications of any person to be a personal representative, the family relationships of the decedent, or any other matter necessary and relevant to determining the proper distribution of a decedent’s estate under this Ordinance. The court shall have the broadest possible authority to execute its duties and responsibilities under this Ordinance. It shall have authority to probate all estate interests subject to this Ordinance which do not come within the exclusive jurisdiction of the United States, including over all real or personal property except trust and restricted land and trust personalty.
2. Unless the American Indian Probate Reform Act is amended to allow tribes to carry out probate of trust and restricted land and trust personalty, the United States shall carry out the probate of such property, as currently set forth in 25 CFR 15 and other applicable law.

## Application of Ordinance to Probate of Trust and Restricted Property by the United States Department of the Interior

When probating an estate, United States Department of the Interior Administrative Law Judges or other Department of the Interior probate tribunals of trust and restricted property shall apply the provisions of this Ordinance to the maximum extent permitted by law.

## Indian Custom and Tradition

Notwithstanding the provisions of this Ordinance relating to descent and distribution, Cultural Patrimony possessed by the decedent shall be distributed in accordance with the customs and traditions of the Tribes.

## Non-Probate Assets

Non-Probate Assets are not covered by this Ordinance.

# WILLS (TRUST AND NON-TRUST PROPERTY)

## Scope of this Section

In determining the validity of a devise of both trust or restricted land *and* non-trust property, the rules contained in this section governing the creation, execution, and revocation of wills shall apply. This section allows individuals to create a single will that devises the testator’s entire estate, including trust or restricted land *and* non-trust property.

## Who May Make a Will (Trust and Non-Trust Property)

Any person of sound mind who is eighteen years of age or older may make a will.

## Valid and Invalid Devises and Wills (Trust and Non-Trust Property)

1. Wills for trust property shall be considered valid if they meet the requirements of Section IV(D) and Section V(C)(1)-(2).
2. Wills for non-trust property shall be considered valid if they meet the requirements of Section IV(D), (E), (F), or (G).
3. Any interest in real or personal property (trust or non-trust) that is not devised in accordance with the above sections or that is not disposed of by a valid will shall descend in accordance with this Ordinance.

## Requirements of Wills (Trust and Non-Trust Property)

To be valid and effective, a will must be (1) in writing, (2) dated, (3) signed by the testator or in the testator’s name by some other individual in the testator’s conscious presence and by the testator’s direction, and (4) attested to by two or more adult competent witnesses, not having an interest in the testator’s estate or in the will, signing their names to the will in the presence of the testator by the testator’s direction or request.

Notwithstanding the above provision, a will disposing of non-trust property will still be considered valid if:

1. It meets the requirements provided for in Section IV(E);
2. It meets the requirements provided for in Section IV(F);
3. It meets the requirements provided for in Section IV(G);
4. It solely disposes of non-trust property and one or more of the witnesses to the will have an interest in the testator’s estate or in the will; or
5. Its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

## Writings Intended as Wills (Non-Trust Property Only)

Although a document or writing added upon a document was not executed in compliance with the requirements of Section IV(D), the document or writing is treated as if it had been executed in compliance with that section for purposes of *non-trust* property if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute (a) the decedent’s will, (b) a partial or complete revocation of the will, (c) an addition to or alteration of the will, or (d) a partial or complete revival of the decedent’s formerly revoked will or of a formerly revoked portion of the will.

## Holographic Will (Non-Trust Property Only)

A will which does not comply with Section IV(D) is valid as a holographic will for *non-trust* property, whether or not witnessed, if the signature and material portions of the document are in the testator’s handwriting. Intent that the document constitute the testator’s will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator’s handwriting.

## Separate Writing Identifying Disposition of Tangible Personal Property (Non-Trust Property Only)

1. Whether or not Section IV(F) applies, a will disposing of non-trust property may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money.
2. To be admissible under this section as evidence of the intended disposition, the writing must be signed by the testator and must describe the items and the devisees with reasonable certainty.
3. The writing may be:
	1. Referred to as one in existence at the time of the testator’s death;
	2. Prepared before or after the execution of the will;
	3. Altered by the testator after its preparation; and
	4. A writing that has no significance apart from its effect upon the dispositions made by the will.

## Incorporation by Reference (Non-Trust Property Only)

For non-trust property, a writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

## Events of Independent Significance (Trust and Non-Trust Property)

A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator’s death. The execution or revocation of a will of another person is such an event.

## Codicil (Trust and Non-Trust Property)

1. A codicil may replace, in whole or in part, a prior will.
2. A codicil need not refer to or be attached to the prior will.
3. A codicil must include an affidavit from the testator. A testator’s affidavit must contain substantially the following content:

Tribe of \_\_\_\_ or

State of \_\_\_\_

County of \_\_\_\_.

I, \_\_\_\_, swear or affirm under penalty of perjury that, on the \_\_ day of \_\_\_\_, 20\_\_, I requested \_\_\_\_ and \_\_\_\_ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator (signature)

1. Each attesting witness’s affidavit must contain substantially the following content:

We, \_\_\_\_ and \_\_\_\_, swear or affirm under penalty of perjury that on the \_\_ day of \_\_\_\_, 20\_\_, \_\_\_\_ of the State of \_\_\_\_, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all his/her estate by will.

Witness (signature)

Witness (signature)

Subscribed and sworn to or affirmed before me this \_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_ testator, and by \_\_\_\_ and \_\_\_\_, attesting witnesses.

## Rules for Interpretation of Wills (Trust and Non-Trust Property)

Unless there is clear evidence of contrary intent, wills shall be construed as follows:

1. A will shall apply to all real and personal property and trust land that the testator owned at death, including property acquired after the execution of the will and all property acquired by the estate after the testator’s death;
2. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as “brothers,” “sisters,” “nieces,” or “nephews,” are construed to include both types of relationships;
3. A transfer by will of a trust interest in land shall be presumed to include the interest of the testator in any permanent improvements attached to that land;
4. Any devise of a trust or restricted interest in land to an eligible heir as defined by Section V(C)(1)(a) or to the Tribe shall be deemed to be a devise of the interest in trust or restricted status.

## Revocation of Will (Trust and Non-Trust Property)

1. A will or any part of a will is revoked:
	1. By executing a subsequent will that revokes the previous will or part of it expressly or by inconsistency; or
	2. By performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part of the will or if another individual performed the act in the testator’s conscious presence and by the testator’s direction. For purposes of this subsection (b), “revocatory act on the will” includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.
2. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.
3. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator’s estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator’s death.
4. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator’s estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator’s death to the extent they are not inconsistent.
5. Except as provided in Section IV(O) and Section VIII, a change of circumstances does not revoke a will or any part of it.

## Revival of Revoked Will (Trust and Non-Trust Property)

1. If a subsequent will that wholly revoked a previous will is thereafter revoked by a revocatory act under Section IV(L)(1)(b), the previous will remains revoked unless it is revived. The previous will is revived if it is evident from the circumstances of the revocation of the subsequent will or from the testator’s contemporary or subsequent declarations that the testator intended the previous will to take effect as executed.
2. If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under Section IV(L)(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator’s contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.
3. If a subsequent will that revoked a previous will in whole or in part is thereafter revoked by another, later will, the previous will remains revoked in whole or in part, unless it or its revoked part is revived. The previous will or its revoked part is revived to the extent it appears from the terms of the later will that the testator intended the previous will to take effect.

## Self-Proved Will, Codicil, or Revocation (Trust and Non-Trust Property)

1. “Self-proved will” means a will with attached affidavits, signed by the testator and the witnesses before an officer authorized to administer oaths, certifying that they complied with the requirements of execution of the will.
2. A will, codicil, or revocation may be made self-proved as provided in this section.
	1. A will, codicil, or revocation may be made self-proved by the testator and attesting witnesses at the time of its execution.
	2. The testator and the attesting witnesses must sign the required affidavits before an officer authorized to administer oaths, and the affidavits must be attached to the will, codicil, or revocation.
3. A testator’s affidavit must contain substantially the following content:

Tribe of \_\_\_\_ or

State of \_\_\_\_

County of \_\_\_\_.

I, \_\_\_\_, swear or affirm under penalty of perjury that, on the \_\_ day of \_\_\_\_, 20\_\_, I requested \_\_\_\_ and \_\_\_\_ to act as witnesses to my will; that I declared to them that the document was my last will; that I signed the will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read and explained to me (or read by me), after being prepared and before I signed it, and it clearly and accurately expresses my wishes; and that I willingly made and executed the will as my free and voluntary act for the purposes expressed in the will.

Testator (signature)

1. Each attesting witness’s affidavit must contain substantially the following content:

We, \_\_\_\_ and \_\_\_\_, swear or affirm under penalty of perjury that on the \_\_ day of \_\_\_\_, 20\_\_, \_\_\_\_ of the State of \_\_\_\_, published and declared the attached document to be his/her last will, signed the will in the presence of both of us, and requested both of us to sign the will as witnesses; that we, in compliance with his/her request, signed the will as witnesses in his/her presence and in the presence of each other; and that the testator was not acting under duress, menace, fraud, or undue influence of any person, so far as we could determine, and in our opinion was mentally capable of disposing of all of his/her estate by will.

Witness (signature)

Witness (signature)

Subscribed and sworn to or affirmed before me this \_\_ day of \_\_\_\_, 20\_\_, by \_\_\_\_ testator, and by \_\_\_\_ and \_\_\_\_, attesting witnesses.

## Subsequent Divorce of Testator (Trust and Non-Trust Property)

1. If, after executing a will, the testator is divorced or the testator’s marriage is annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as personal representative, executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.
2. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator’s remarriage to the former spouse. A decree of separation, which does not terminate the status of the marriage is not a divorce for purposes of this section. No change of circumstances other than as described in this section revokes a will.

## Spouse After Will Created (Trust and Non-Trust Property)

1. If a testator’s surviving spouse married the testator after the execution of the will, the surviving spouse may be entitled to receive, as an intestate share, no less than the value of the share of the estate that the spouse would have received if the testator had died intestate. The surviving spouse can only receive this intestate share if the testator’s will does not devise that portion of the testator’s estate to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse, unless:
	1. It appears from the will or other evidence that the will was made in contemplation of the testator’s marriage to the surviving spouse;
	2. The will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or
	3. The testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator’s statements or is reasonably inferred from the amount of the transfer or other evidence.
2. In satisfying the share provided by this section, devises made by the will to the testator’s surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse, abate as provided in Section VII(Y)(1).
3. This Subsection shall not apply to an interest in trust land where the spouse of a testator is not an Indian as defined by 25 U.S.C. § 2201(2).

## Omitted Spouse (Trust and Non-Trust Property)

1. If the surviving spouse is omitted from the will of the testator, the surviving spouse shall receive the intestate share in the testator’s estate that the spouse would have received if the testator had died intestate if any one or more of the following apply:
	1. The testator and surviving spouse were married without legal separation; or
	2. The testator and surviving spouse have a surviving child who is the child of the testator; or
	3. The surviving spouse has made substantial payments toward the purchase of, or improvements to, the trust land in such estate; or
	4. The surviving spouse is under a binding obligation to continue making loan payments for the trust land for a substantial period of time.
2. This Subsection shall not apply if it appears from the will that the omission was intentional, or there is evidence that the testator adequately provided for the surviving spouse and any minor children by a transfer of share of the estate outside of the will.

## Omitted Children (Trust and Non-Trust Property)

1. Except as provided in Section IV(R)(2), if a testator fails to provide in the testator’s will for any of the testator’s children born or adopted after the execution of the will, the omitted after-born or after-adopted child receives a share in the estate as follows:
	1. If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which the child would have received had the testator died intestate, unless the will devised all or substantially all of the estate to the other parent of the omitted child, and that other parent survives the testator and is entitled to take under the will.
	2. If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator’s estate as follows:
		1. The portion of the testator’s estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator’s then-living children under the will.
		2. The omitted after-born or after-adopted child is entitled to receive the share of the testator’s estate, as limited in Section IV(R)(1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.
		3. To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator’s then-living children under the will.
		4. In satisfying a share provided by this Section IV(R)(1)(b), devises to the testator’s children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.
2. Sections IV(R)(1)(a) and (b) do not apply if:
	1. It appears from the will that the omission was intentional; or
	2. The testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator’s statements or is reasonably inferred from the amount of the transfer or other evidence.
3. If at the time of execution of the will the testator fails to provide in the testator’s will for a living child solely because the testator believes the child to be dead, the child is entitled to share in the estate as if the child were an omitted after-born or after-adopted child.
4. In satisfying a share provided by Section IV(R)(1)(a), devises made by the will abate as provided in Section VII(Y)(1).

## Death of Related Devisee or Legatee Before Testator (Non-Trust Property)

Unless a will specifically provides otherwise, if an heir that is related to the testator is named in a will but predeceases the testator, then the descendants of that heir take that heir’s interest by representation.

## Homesite Lease Successor Forms

In a probate proceeding, the Tribal Court shall distribute the leasehold interest of an established homesite lease according to the beneficiary listed on the homesite lease successor form. When the beneficiary listed on the homesite lease successor form differs from the beneficiary listed in a decedent’s will, the document executed most recently shall control.

## Testamentary Additions to Trusts

1. A will may validly devise property to the trustee of a trust established or to be established:
	1. During the testator’s lifetime by the testator, by the testator and some other person, or by some other person, including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts; or
	2. At the testator’s death by the testator’s devise to the trustee if the trust is identified in the testator’s will and its terms are set forth in a written instrument, other than a will, executed before, concurrently with, or after the execution of the testator’s will or in another individual’s will if that other individual has predeceased the testator, regardless of the existence, size, or character of the corpus of the trust.
2. The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator’s death.
3. Unless the testator’s will provides otherwise, property devised to a trust described in subsection (1) is not held under a testamentary trust of the testator but it becomes a part of the trust to which it is devised and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator’s death.
4. Unless the testator’s will provides otherwise, a revocation or termination of the trust before the testator’s death causes the devise to lapse.

## Contracts Concerning Succession

1. A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, may be established only by:
	1. Provisions of a will stating material provisions of the contract;
	2. An express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or
	3. A writing signed by the decedent evidencing the contract.
2. The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

##

## Deposit of Will with Court in Testator’s Lifetime

A will may be deposited by the testator or the testator’s agent with Tribal Court for safekeeping, under rules of the Court. The will must be sealed and kept confidential. During the testator’s lifetime, a deposited will may be delivered only to the testator or to a person authorized in writing signed by the testator to receive the will. A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ensure that it will be resealed and kept on deposit after the examination. Upon being informed of the testator’s death, the Court shall notify any person designated to receive the will and deliver it to that person on request or the Court may deliver the will to the appropriate court.

## Penalty Clause for Contest

A provision in a will purporting to penalize an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings.

# V. PROBATE OF TRUST OR RESTRICTED PROPERTY

## A. Applicability

This Section applies to trust or restricted land within the Reservation and trust personalty. The United States Department of the Interior Office of Hearings and Appeals shall follow these rules when exercising jurisdiction over estates that include such land and personalty.

## B. Evidence of Death or Status

In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death apply:

1. A certified copy of a death certificate is required to probate the estate of a trust or restricted landowner. An individual whose death is not established by a death certificate but who is absent for a continuous period of *not less than* six years, during which the individual has not been in contact with those who knew her/him/them, is presumed to be dead.

## Distribution of Trust Property by Will

### Distribution of Trust Land by Will

* 1. An owner of an interest in trust land may devise trust land to any of the following:
		1. Any lineal descendant;
		2. Any person who owns an interest in the same parcel;
		3. The Tribes; or
		4. Any Indian, as defined by the American Indian Probate Reform Act, as amended.
	2. The land shall remain in trust status.
	3. If the land is devised to a person not eligible under Section V(C)(1)(a) to hold the land in trust, that person shall hold a life estate without regard to waste and the remainder shall go to the person(s) who would have inherited under intestate succession as outlined in Section V(D).

### Distribution of Trust Personalty by Will

* 1. Trust personalty may be devised to any person or entity in accordance with the American Indian Probate Reform Act, as amended.
	2. If devised to the Tribes or an Indian, the trust personalty shall be managed by the Secretary of the Interior.
	3. If devised to any other person or entity, the trust personalty shall be distributed to that person or entity.

### Joint Tenancy; Right of Survivorship

If a testator devises an interest in the same parcel of trust land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship in the interests devised.

## Intestate Succession of Trust Property

### Intestate Succession of Interests in Trust Land of Five Percent or Greater

1. Surviving Spouse. If the decedent owns five percent or more in any parcel of trust land and leaves a surviving spouse:
	1. If the surviving spouse is a CSKT tribal member, the surviving spouse shall receive all of the decedent’s trust land interests of the entire undivided ownership of the parcel of land of which such interest is a part.
	2. If the surviving spouse is not a CSKT tribal member, the surviving spouse shall receive a life estate without regard to waste in any such parcel. Upon the surviving spouse’s death, all such ownership interests transfer to the surviving heir listed in Section V(D)(1)(b) below.

b. Remainder Interest or No Surviving Spouse

If the decedent leaves no surviving spouse, or if there is a remainder interest, all parcels of trust land are transferred to one or more eligible heirs as defined by Section V(C)(1)(a) in the following order:

* + 1. Children, in equal shares, provided, if any child does not survive the decedent, the child(ren) of such deceased child who survived decedent shall receive the share of the deceased child by right of representation;
		2. Grandchildren, in equal shares;
		3. Great-grandchildren, in equal shares;
		4. Parents, in equal shares;
		5. Siblings, in equal shares;
		6. The Tribes, provided an Indian co-owner or a parcel of trust land may acquire an interest that would otherwise descend to the Tribes by paying into the estate of the decedent, before the close of the probate estate, the fair market value of the interest in land; if more than one Indian (including the Tribes) offers to pay for such interest, the highest bidder shall acquire such interests.

### Intestate Succession of Interests in Trust Land of Less Than Five Percent

Notwithstanding the provisions relating to intestacy and testamentary disposition, and subject to any applicable federal law, any trust or restricted interest in land in the decedent’s estate that is not disposed of by a valid will and represents less than five percent of the entire undivided ownership of the parcel of land of which such interest is a part, as evidenced by the decedent’s estate inventory at the time of the heirship determination, shall descend as follows:

1. Surviving Spouses.

CSKT Tribal Member: If a decedent owns less than five percent in any parcel of trust land and leaves a surviving spouse who is a CSKT tribal member and who was residing on the property at the time of decedent’s death, the surviving spouse receives all of the decedent’s trust land interests in that parcel of trust land.

Not a CSKT Tribal Member: If a decedent owns less than five percent in any parcel of trust land and leaves a surviving spouse who is not a CSKT tribal member, but who was residing on the property at the time of decedent’s death, the surviving spouse receives a life estate without regard to waste in any such parcel. Upon the surviving spouse’s death, all such ownership interests transfer to the surviving heir listed in Section V(D)(2)(b) below.

b. No Residing Surviving Spouse.

If there is no surviving spouse residing on the property at the time of decedent’s death, all parcels of trust land in which the decedent owned less than a five percent interest are transferred to an eligible heir as defined by Section V(C)(1)(a) in the following order:

i. Oldest surviving child;

ii. Oldest surviving grandchild;

iii. Oldest surviving great-grandchild;

iv. Oldest surviving sibling;

v. The Tribes.

### Permanent Improvements on Trust Land

* 1. A permanent improvement on trust land shall descend to:
		1. The eligible heirs as defined by Section V(C)(1)(a) who inherit the trust land; or
		2. If the eligible heir renounces his or her interest in the trust land, then to the person or the Tribes who receive the trust land.
	2. This provision applies even though the permanent improvement is not held in trust.
	3. This provision does not alter or otherwise affect the non-trust status of such improvement.

### Trust Personalty

Trust personalty shall be distributed in accordance with the American Indian Probate Reform Act, as amended, and other federal law as applicable.

### Inheritance by Adopted Child

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property or trust land to his or her biological child who has been adopted out of the family by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

### Child Born After Death of Decedent

A child of a decedent born after the death of the decedent is considered living at the time of the death of the decedent.

## E. Other Trust Property Rules

### Renunciation or Disclaimer of Interests

* 1. Any person 18 years of age or older may renounce or disclaim an inheritance of trust land or personalty, either in full or subject to the reservation of a life estate interest in land, in accordance with this Subsection (Section V(E)), by filing a signed and acknowledged declaration with the probate decisionmaker prior to entry of a final probate order. No interest so renounced or disclaimed shall be considered to have vested in the renouncing or disclaiming heir, devisee, or legatee, and the renunciation or disclaimer shall not be considered to be a transfer or gift of the renounced or disclaimed interest.
	2. Interests in Land. A trust or restricted interest in land may be renounced or disclaimed only if the interest passes in trust status in favor of:
		1. Any other eligible heir as defined by Section V(C)(1)(a) or Indian related to the heir by blood;
		2. A co-owner of the land or
		3. The Tribes;

and the interest so renounced shall pass to its recipient in trust or restricted status. Trust land interests of less than five percent may only pass to a single eligible person or the Tribes.

* 1. Trust Personalty. An interest in trust personalty may be renounced or disclaimed in favor of any person who would be eligible to be a receiver of such an interest.
	2. Unauthorized Renunciations and Disclaimers. If a renouncement or disclaimer is not made in compliance with this Subsection (Section V(E)), the renounced or disclaimed interest shall pass as if the renunciation or disclaimer had not been made.
	3. Acceptance of Interest. A renunciation or disclaimer of an interest filed in accordance with this Subsection (Section V(E)) shall be considered accepted when implemented in a final order by a decisionmaker, and shall thereafter be irrevocable. No renunciation or disclaimer of an interest shall be included in such order unless the recipient of the interest has been given notice of the renunciation or disclaimer and has not refused to accept the interest.
	4. A renunciation or disclaimer of an interest that is subject to the rules for intestate succession trust land interests of less than five percent may not be in favor of more than one person.

### Right to Purchase Trust Land During Probate

* 1. The following may purchase trust land during probate for fair market value:
		1. Eligible heirs, as defined in Section V(C)(1)(a);
		2. Any person who owns an interest in the land; or
		3. The Tribes, or the Secretary of the Interior on behalf of the Tribes.
	2. Prior to any purchase, there shall be:
		1. A bona fide appraisal of the trust land to determine fair market value;
		2. Reasonable advance written notice by first class mail of the proposed purchase to the United States Office of Hearings and Appeals, Tribal Council, and any eligible heir or purchaser, stating that the land is available for purchase;
		3. Written consent to the purchase from the surviving spouse and any heir who resides on the land;
		4. Written consent to the purchase from the surviving spouse and any eligible heir who does not reside on the land if the decedent’s ownership interest in the land is five percent or more, there is a valid will addressing disposition of that land, and either the Tribes are the purchaser from a non-tribal member or the Secretary is the purchaser; and
		5. A written request by the purchaser prior to distribution of the interest in the land stating the results of the appraisal and providing proof of any required notice and consent.
	3. If more than one party requests to purchase the same interest in the land, the land shall be sold by public auction or sealed bid after reasonable notice to Tribal Council and all eligible purchasers at no less than fair market value to the purchaser with the highest bid.
	4. Proceeds from the sale of interests under this Subsection (Section V(E)) shall be distributed to the devisee, surviving spouse, or eligible heir whose interest was sold in accordance with the amount of their respective interests. The proceeds may be deposited or held in an account as trust personalty if the interest sold would otherwise pass to:
		1. The heir, by intestate succession; or
		2. The devisee in trust or restricted status.

### Consolidation and Partition

Nothing in this Ordinance shall diminish the rights to enter into consolidation agreements or partition trust property as provided by federal law.

# PROBATE OF NON-TRUST PROPERTY

## Distribution of Non-Trust Property by Will

If there is a valid will under Section IV, then non-trust property shall be disposed of in accordance with that will.

## Distribution of Non-Trust Property by Giveaway

Distribution of non-trust property by giveaway shall be handled in accordance with the customs and traditions of the Tribes.

## Intestate Succession of Non-Trust Property

### Intestate Succession Rules

a. Any part of a decedent’s estate not effectively disposed of by valid will, by giveaway per Section VI(B), or by Section V(D), passes by intestate succession to the decedent’s heirs as prescribed in this Subsection (Section VI(C)), except as modified by the decedent’s will.

b. A decedent may by will expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent’s intestate estate to which that individual or class would have succeeded passes as if that individual or each member of that class had disclaimed an intestate share.

### Inheritance by Spouse

The intestate share of a decedent’s surviving spouse is:

1. the entire intestate estate if:
	1. no descendant or parent of the decedent survives the decedent; or
	2. all of the decedent’s surviving descendants are also descendants of the surviving spouse and there is no other descendant of the surviving spouse who survives the decedent;
2. the first $200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;
3. the first $150,000, plus one-half of any balance of the intestate estate, if all of the decedent’s surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;
4. the first $100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent’s surviving descendants are not descendants of the surviving spouse.

### Inheritance by Adopted Children

A lawfully adopted child shall be considered a child of the adopted family rather than a child of his or her biological family unless the decree of adoption provides for the continuation of inheritance rights from the biological family. This provision shall not prevent a biological family from giving or devising property to his or her adopted child by will. A child who has been cared for, or considered adopted by custom, but not by law, shall remain an heir of his or her biological family.

### Inheritance by Other Heirs

1. Any part of the intestate estate not passing to the decedent’s surviving spouse under Section VI(C)(2), or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:
	1. to the decedent’s descendants by representation;
	2. if there is no surviving descendant, to the decedent’s parents equally if both survive or to the surviving parent;
	3. if there is no surviving descendant or parent, to the descendants of the decedent’s parents by representation;
	4. if there is no surviving descendant, parent, or descendant of a parent and the decedent is:
		1. survived by one or more grandparents or descendants of grandparents:
			1. one-half to:
				1. the decedent’s paternal grandparents equally if both survive;
				2. the surviving paternal grandparent; or
				3. the descendants of the decedent’s paternal grandparents or either of them if both are deceased, the descendants taking by representation; and
			2. the other one-half to the decedent’s maternal relatives in the same manner; or
		2. not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent’s relatives on the other side in the same manner as the half;
	5. if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in Section VI(C)(4)(b), if more than one person is of that closest degree, those persons share equally.
2. If more than one person is of the closest degree as provided in Section VI(C)(4)(a)(v) but they claim through different ancestors, those who claim through the nearer ancestor must receive to the exclusion of those claiming through a more remote ancestor.
3. If there is no taker under the provisions of this chapter, the intestate estate passes to the Tribe.

### Representation

1. As used in this section, the following definitions apply:
	1. “Deceased descendant”, “deceased parent”, or “deceased grandparent” means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under Section VI(C)(6).
	2. “Surviving descendant” means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under Section VI(C)(6).
2. If, under Section VI(C)(4)(a)(i), a decedent’s intestate estate or a part of the intestate estate passes by representation to the decedent’s descendants, the estate or part of the estate is divided into as many equal shares as there are:
	1. surviving descendants in the generation nearest to the decedent that contains one or more surviving descendants; and
	2. deceased descendants in the same generation who left surviving descendants, if any.
3. Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.
4. If, under Section VI(C)(4)(a)(iii) or 4(a)(iv), a decedent’s intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent’s deceased parents or either of them or to the descendants of the decedent’s deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:
	1. surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and
	2. deceased descendants in the same generation who left surviving descendants, if any.
5. Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

### Requirement that Heir Survive Decedent by 120 Hours

An individual who fails to survive the decedent by 120 hours is considered to have predeceased the decedent for purposes of homestead (Section VII(G)(1)), exempt property (Section VII(G)(2)), and intestate succession (Section VI(C)), and the decedent’s heirs are determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by 120 hours, it is considered that the individual failed to survive for the required period. This section is not to be applied if its application would result in a taking of intestate estate by the Tribes under Section VI(C)(4)(c).

### After Born Heirs

An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.

### Debts to Decedent

A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor’s descendants.

### Advancement

1. If an individual dies intestate as to all or a portion of the individual’s estate, property the decedent gave during the decedent’s lifetime to an individual who, at the decedent’s death, is an heir is treated as an advancement against the heir’s intestate share only if:
	1. the decedent declared in a contemporaneous writing or the heir acknowledged in writing that the gift is an advancement; or
	2. the decedent’s contemporaneous writing or the heir’s written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent’s intestate estate.
2. For purposes of Section VI(C)(9)(a) above, property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of the decedent’s death, whichever first occurs.
3. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the division and distribution of the decedent’s intestate estate, unless the decedent’s contemporaneous writing provides otherwise.

### Individuals Related to Decedents Through Two Lines

An individual who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle the individual to the larger share.

11. Parent and Child Relationship

1. Except as provided in Sections VI(C)(11)(b) and (c) below, for the purposes of intestate succession by, through, or from a person, an individual is the child of the child’s natural parents, regardless of their marital status. The parent and child relationship may be established under CSKT Laws Title 3 Chapter 1 Part 2.
2. An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:
	1. the relationship between the child and that natural parent; or
	2. the right of the child or a descendant of the child to inherit from or through the other natural parent.
3. Inheritance from or through a child by either natural parent or the parent’s kindred is precluded unless that natural parent has openly treated the child as the parent’s and has not refused to support the child.

# TRIBAL COURT PROBATE PROCEEDINGS (FOR NON-TRUST PROPERTY)

## Intent of Testator Controlling

When any member of the Tribes dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall, at the request of any person named in the will, determine the validity of the will after giving notice to appear in Court to all persons who might be heirs of the decedent. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or their heirs.

## Duty to Present Will for Probate

After the death of a testator and on request of an interested person, a person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court. A person who willfully fails to deliver a will is liable to any person aggrieved for any damages that may be sustained by the failure. A person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court.

## Commencement of Probate Proceedings

At any time after the death of a person subject to this Chapter, an heir of the decedent, a beneficiary of the decedent’s will, or a person designated to serve as Personal Representative by the decedent’s will may file a Probate Petition with the Tribal Court for the probate of the will and the administration of the decedent’s intestate estate.

## Probate Petition

##

The Probate Petition shall contain:

* 1. The name of the decedent;
	2. The decedent’s enrollment status with the Tribes or other tribe;
	3. The basis for Tribal Court’s jurisdiction;
	4. The decedent’s date of death;
	5. A certified copy of the decedent’s death certificate;
	6. The names, relationship to decedent, and the mailing addresses of persons who are or would be heirs of the decedent upon the death of the decedent intestate, and the ages of any who are minors, so far as such information is known to the petitioner;
	7. The original or a true and correct copy of any will found or document alleged to be the last will of the decedent. If no original is available, the petition shall include a description of the efforts made to obtain the original and any facts relating to its absence;
	8. If the decedent left a will, the names and addresses of the beneficiaries under the will;
	9. A general description of the decedent’s estate subject to probate in Tribal Court, and a general description of those portions of the decedent’s estate, if any, not subject to probate in the court, including, but not limited to any interests in trust or restricted property;
	10. Any other information about the estate or other relevant information that may be necessary to establish that the court has jurisdiction over the probate proceedings;
	11. A statement of whether any probate proceedings are pending in any other jurisdiction, and, if so, the name and case number of the other proceedings, and the name and address of the personal representative or similar person appointed in such proceedings;
	12. A request for appointment of a personal representative and a statement of the qualifications of the proposed personal representative including, without limitation, relation to the decedent;
	13. If the will is available, a request for approval of the will of the decedent;
	14. If a will is not available, a request that the court find that the decedent died without a valid will; and
	15. A verification signed under penalty of perjury by the petitioner that the contents of the petition are true and correct.
	16. Items 5 and 7 above may be provided at the time of filing the petition or as soon as practicable thereafter.

## Hearing on the Probate Petition

Hearing Date. After receiving the Probate Petition, the Tribal Court shall schedule a hearing at which the Tribal Court shall determine whether the will shall be admitted to probate, shall appoint a personal representative, and shall determine whether summary probate procedures apply.

### Notice of Hearing

The Tribal Court shall provide notice by first class mail at least ten days before the hearing to the following persons: the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, and all persons involved in any other probate proceeding involving the decedent. The notice shall include (1) the date, time, and location of the hearing, (2) the name of the proposed personal representative, and (3) a copy of the will, if any, that has been submitted for probate.

### Evidence About Admission of the Will to Probate

If a will is self-proved under Section IV(N) and no objection is raised, the Tribal Court may admit the will to probate without a hearing. If the will is not self-proved, an objection is raised, or the Tribal Court determines that further evidence is required, the Tribal Court shall obtain testimony to determine whether the will shall be admitted to probate. Based on the evidence presented at the hearing, the Tribal Court shall decide, based on a preponderance of the evidence, whether the will is valid and should be admitted to probate.

### Evidence About Appointment of Personal Representative

At the initial hearing, the Tribal Court shall determine based on a preponderance of the evidence who should be appointed as personal representative of the estate pursuant to Section VII(H).

### Evidence About Summary Probate

At the initial hearing, the Tribal Court shall determine based on a preponderance of the evidence whether summary probate procedures should be used pursuant to Section VII(J).

### Continuances

Upon a showing of good cause, the Tribal Court may grant a continuance to provide more time to present or obtain evidence.

## Inventory and Appraisement

* 1. Within 90 days of appointment, the personal representative shall file with the court an inventory in the form of an affidavit listing all property of the estate passing under the will or by laws of intestacy which is in the possession or knowledge of the personal representative.
	2. The inventory shall provide the appraised value of each item as of the date of decedent’s death, and all encumbrances, liens, or other secured charges against any item and all other debts. Such property and debts shall be classified as follows:
		1. Real property, by legal description;
		2. Leases, including without limitation leases of personal property on trust land not disposed of by the United States Department of the Interior Office of Hearings and Appeals;
		3. Stocks and bonds;
		4. Bank accounts and money;
		5. Furniture and household goods;
		6. All other personal property, including without limitation the decedent’s non-probate assets and any share in any business, but no inventory of the business property shall be required; and
		7. Mortgages, liens, notes, and other written evidences of debt, which shall be listed with the property the debt is associated with, and otherwise listed separately.
	3. The appraised value may be an estimated value so long as there is a rational basis. A formal appraisal is not required, but may be ordered by the court if there is no other reasonable way to estimate the value.
	4. Notice of the filing of the inventory shall be served on each heir, devisee, legatee, creditor, and the Tribal Chair.
	5. If the personal representative obtains knowledge of any additional property of the estate, the inventory shall be amended and the procedures in this Subsection shall be completed within 30 days of acquiring such knowledge.

## Family Protections

### Descent of Homestead

* 1. If there is a surviving spouse, the homestead, including a manufactured home which is the family residence, descends free from any testamentary or other disposition of it to which the spouse has not consented in writing as follows:
		1. If there is no surviving descendant of decedent, to the spouse; or
		2. If there are surviving descendants of decedent, then to the spouse for the term of the spouse's natural life and the remainder in equal shares to the decedent's descendants by representation.
	2. If there is no surviving spouse and the homestead has not been disposed of by will it descends as other real estate.
	3. If the homestead passes by descent or will to the spouse or decedent's descendants, it is exempt from all debts which were not valid charges on it at the time of decedent's death. If the homestead passes to a person other than a spouse or decedent's descendants, it is not exempt from expenses and claims by creditors.

### Exempt Property

* 1. In addition to the homestead exemption provided in Section VII(G)(1), the surviving spouse of a decedent who was domiciled on the Reservation is entitled from the estate to value not exceeding $10,000 therein in household furniture, automobiles, furnishings, appliances, and personal effects. The $10,000 in value of the aforementioned items shall be over and above any security interest in said items. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $10,000, or if there is not $10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000 value.
	2. One automobile, if any, shall be exempt property, regardless of its value.
	3. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided or by intestate succession.

### Family Allowance

* 1. In addition to the right to the homestead exemption and exempt property in Sections VII(G)(1-2), if the decedent was domiciled on the Reservation, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.
	2. The family allowance is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case of any minor child or dependent child that is not living with the surviving spouse, the allowance may be made partially to the child or their guardian or other person having their care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead exemption in Section VII(G)(1).
	3. The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates their right to allowances not yet paid.

### Source, Determination, and Documentation

* 1. If the estate is otherwise sufficient, property specifically devised is not used to satisfy rights to homestead and exempt property in Sections VII(G)(1-2). Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as the homestead and exempt property in Sections VII(G)(1-2). The personal representative may make these selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are no guardians of the minor children.
	2. The personal representative may determine the family allowance in a lump sum not exceeding $6,000 or periodic installments not exceeding $500 per month for one year, and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash. The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the Tribal Court for appropriate relief, which relief may provide a family allowance larger or smaller than that which the personal representative determined or could have determined.

## Appointment of Personal Representative

In under either Section V or Section VI, the Tribal Court may, in its discretion, appoint from among the survivors of a decedent, an administrator of the estate, who will take possession and control of the property of the decedent until the administration of the estate has been completed and he/she has been discharged by Order of the Court.

### Purpose and Qualifications of Personal Representative and Special Administrator

* + 1. The purpose of a personal representative is to vest one or more persons with the responsibility and authority to settle the decedent’s estate in accord with the decedent’s will, if any, and applicable law. In the event a personal representative is not available and the decedent’s estate must be administered to avoid loss, waste, or depreciation of property of the decedent’s estate, a special administrator may be appointed by the court.
		2. A personal representative must be at least 18 years old, legally competent, and willing and able to properly carry out the duties of the personal representative. Persons who have been convicted of any felony or of a misdemeanor involving moral turpitude may not serve as personal representative or special administrator. A special administrator may not be an heir or named beneficiary of decedent’s estate. More than one person may serve jointly as personal representative or special administrator.
		3. The provisions of this Title that apply to personal representatives apply equally to special administrators.

### Priority of Appointment.

The following persons, if qualified, shall be afforded priority in order of their listing for appointment as personal representative:

* + 1. The person or persons named to serve as personal representative, executor, or administrator in the decedent’s will;
		2. The surviving spouse or such person as the surviving spouse may request to have appointed;
		3. Children over 18 years of age in descending order of age;
		4. Other blood relatives in order of the closeness of their relationship and then in descending order of age;
		5. Any potential heir or person named in the decedent’s will; and
		6. Any adult member of the Tribes.

### Oath

Upon their appointment as personal representative, the person appointed shall take an oath to be prescribed by the Tribal Court to the effect that they will faithfully and honestly administer the estate.

### Letters Testamentary and Letters of Administration

After the personal representative has taken the oath under Section VII(G)(3), the Tribal Court shall issue Letters Testamentary and Letters of Administration to the personal representative. The Letters Testamentary and Letters of Administration shall be in substantially the following form:

Letters Testamentary and Letters of Administration

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose address is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, having been appointed and qualified as Personal Representative of the estate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, deceased, who died on or about\_\_\_\_\_\_\_\_\_\_\_\_\_, is hereby authorized to act as Personal Representative for and in behalf of the estate and to take possession of the estate’s property as authorized by law.

Issued this date:

By:

Tribal Court Clerk

(Seal)

### Removal After Appointment

* + 1. If, at any time after the Letters of Administration have been issued, a personal representative does not meet the requirements of Section VII(H)(1), the court shall revoke his or her Letters of Administration.
		2. The Letters of Administration may be revoked by the court for any good cause.

### Termination

The appointment of the personal representative shall be terminated upon the following grounds:

* + 1. The death of the personal representative;
		2. Voluntary termination by the personal representative;
		3. Removal would be in the best interests of the estate;
		4. The personal representative has intentionally misrepresented material facts in the proceedings leading to his or her appointment;
		5. The personal representative has disregarded an order of the Tribal Court;
		6. The personal representative has become incapable of discharging his or her duties;
		7. The personal representative has mismanaged the estate; or
		8. The personal representative has failed to perform any duty pertaining to the office.

### Supervised Administration

* + 1. Supervised administration is a single in rem proceeding to secure complete administration and settlement of a decedent’s estate under the continuing authority of the court, which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceeding.
		2. If a probate estate has not been closed within 2 years after the first appointment of a personal representative or administrator, any devisee under a will, beneficiary of a trust, or intestate heir of the decedent is entitled to petition for supervised administration under this section and is presumptively entitled to receive an order for supervised administration. The burden of proof to show cause why supervised administration should not be granted is on the personal representative or administrator.

### Petition for Supervised Administration

* + 1. A petition for supervised administration may be filed by any interested person or by a personal representative at any time or the prayer for supervised administration may be joined with a petition in a testacy or appointment proceeding. If the testacy of the decedent and the priority and qualification of any personal representative have not been adjudicated previously, the petition for supervised administration shall include the matters required of a petition in a formal testacy proceeding and the notice requirements and procedures applicable to a formal testacy proceeding apply. If not previously adjudicated, the court shall adjudicate the testacy of the decedent and questions relating to the priority and qualifications of the personal representative in any case involving a request for supervised administration, even though the request for supervised administration may be denied.
		2. After notice to interested persons, the court shall order supervised administration of a decedent’s estate:
			1. If the decedent’s will directs supervised administration, unless the court finds that circumstances bearing on the need for supervised administration have changed since the execution of the will and that there is no necessity for supervised administration;
			2. Only upon a finding that it is necessary for protection of persons interested in the estate if the decedent’s will directs unsupervised administration; or
			3. In other cases if the court finds that supervised administration is necessary under the circumstances.

### Effect Previously Appointed Personal Representative

After a personal representative has received notice of the filing of a petition for supervised administration, a personal representative who has been appointed previously may not exercise the power to distribute any estate. The filing of the petition does not affect the personal representative’s other powers and duties unless the court restricts the exercise of any of them pending a full hearing on the petition.

## Duties of Personal Representative

* 1. To act in a fiduciary capacity in the name of the estate, subject to applicable orders of the court, provide notice of creditors and settle any claim against the estate as provided in Section VII( R-X), collect any debts owed to the estate, initiate or defend any litigation involving the estate, and distribute the assets of the estate;
	2. To avoid any conflict of interest between the personal interests of the personal representative and the interests of the estate by always placing the interests of the estate ahead of such personal interests; provided, however, that no person shall be disqualified from serving as personal representative because the personal representative may be an heir or beneficiary of the estate;
	3. To take possession and control of all of decedent’s assets subject to the probate jurisdiction of the court, and preserve such assets for the benefit of the estate;
	4. To give all notices to family members, heirs, beneficiaries, government agencies, or creditors as required or allowed by this Chapter;
	5. To request to receive reasonable compensation in an appropriate amount given the nature and amount of services required by the personal representative and size of the estate; and
	6. To exercise any power granted by the decedent’s will or by order of the court.

## J. Summary Probate of Small Estates

* 1. An estate with an appraised value which does not exceed $10,000 and which is to be inherited through the rules of intestacy or by devise exclusively by a surviving spouse and/or minor children of the decedent shall be exempt from the claims of all general creditors and the probate thereof may be expeditiously processed as provided in this Subsection (Section VII(J)). In summary probate, the Creditor’s Rights procedures in Section VII(R) shall not be used.
	2. If summary probate procedures apply and the proper distribution of the estate can be easily determined, the Tribal Court may issue a Distribution Order following the initial hearing and the distribution procedures in Section VII(Y) need not be used. Based on the Distribution Order, the Personal Representative shall distribute the estate and the estate shall be closed pursuant to Section VII(Z).
	3. If, upon such hearing, the court finds that such estate is an exempt estate, the court shall enter an order directing: (1) the personal representative to distribute such estate to the surviving spouse and/or minor children of the decedent as set forth in the order; (2) that no further proceedings are necessary; and (3) that, upon distributing the distributive share or shares of such estate to those entitled to them and filing receipts with the court, the estate shall be closed and the personal representative discharged.

## K. Sale of Estate Property

* 1. No sale of any property of an estate is valid unless made pursuant to an order of the court.
	2. After filing the inventory and appraisement and before full distribution of the estate, the personal representative may petition the court for authority to sell property of the estate for purposes of paying the expenses of last illness and burial of decedent, estate administration, claims against the estate, distribution, or any lawful purpose in the best interest of the estate, heirs, devisees, or legatees. If, in the court’s judgment, such sale is in the best interest of the estate, the court shall order such sale and prescribe the terms upon which the property shall be sold.
	3. The personal representative shall comply with the requirements with respect to the sale of trust land set forth in Section V(E)(2).

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## L. Interim Reports of Personal Representative

* 1. Within 180 days of appointment, and each 180 days thereafter, and more frequently if necessary or required by the court, the personal representative shall file with the court a report on the estate signed under penalty of perjury. Such report shall contain:
1. The claimant, amount, and nature of any claims filed against the estate;
2. Whether such claims have been allowed or rejected;
3. Whether any property of the estate has been sold, mortgaged, leased, or exchanged, and the purpose of such action, such as to pay debts or settle obligations against the estate, pay expenses of administration, or an allowance to an heir, devisee, or legatee;
4. A detailed statement of the amount of property, real and personal, of the estate;
5. A detailed statement of all sums collected, and of all sums paid out, on behalf of the estate, including documentation to support all sums paid out; and
6. Any other information necessary to fully show the condition and affairs of the estate.
	1. The personal representative shall serve the report on all heirs, devisees, and legatees of the estate.

## M. Final Report and Petition

* 1. When the affairs of an estate have been fully administered, the personal representative shall file a final report and petition with the court, signed under penalty of perjury, which states:
1. The information listed in Section VII(L) not included in a prior interim report;
2. That all claims against the estate have been paid; or that all such claims have been paid except as shown, and that the estate has adequate unexpended and unappropriated funds to fully pay all such remaining claims;
3. The amount and recipients of funds expended, with documentation supporting each such payment;
4. That there is nothing further to be done in the administration of the estate except as shown in the final report;
5. The remaining assets of the estate, including unexpended and unappropriated funds, at the time of filing the final report;
6. The proposed determination of heirs, devisees, and legatees, indicating the names, ages, addresses, and relationship to the decedent of each distributee and the proposed share and value thereof which each is to receive;
7. A request for reasonable compensation to be paid to the personal representative, if any, as provided in Section VII(I)(5); and
8. A request that the court set a hearing to approve the final report, to determine the heirs, devisees, and legatees of the decedent and the share each is to receive, if any.

##

## N. Order Setting Hearing to Approve Final Report and Determine Distribution of the Estate

Upon filing the final report and petition, the court shall set a hearing for objections to the approval of the personal representative’s final report.

## O. Notice of Hearing Final Report and to Determine the Distribution of the Estate

The Clerk of Court shall serve a true and correct copy of the order setting a hearing to approve the final report and the petition on each heir, devisee, legatee of the decedent, and interested parties at their last known address.

## P. Hearing on Final Report and Determining the Distribution of Estate

On or before the time set for the hearing for the final report, any heir, devisee, or legatee, or other person having an interest in the distribution of the estate, may file an objection to the final report, or to the proposed determination of the heirs, devisees, or legatees, or to the proposed share each is to receive, stating the objections with specificity. The court shall consider all evidence relevant to the objection and shall make a determination.

## Q. Order Allowing Final Report and Order of Distribution

After the hearing upon the final report, the court shall enter an order:

1. Allowing the final report, either in whole or in part, as may be just and proper; and directing the personal representative to appropriate and expend funds to pay unpaid claims, charges, or allowances against the estate as shown in the final report which have been approved;
2. Determining the decedent’s heirs, devisees, and legatees, indicating the names, ages, and addresses of each, and the share of the remaining estate which each is to receive; and
3. Directing the personal representative to distribute such share or shares to the distributees entitled thereto.

## R. Notice to Creditors

If the decedent’s entire estate is not exempt from claims pursuant to Sections IV(P-S) and VII(G), the following procedures shall apply:

### General Notice to Creditors

The Tribal Court may publish in a newspaper, such as the Tribes’ “Char Koosta” newspaper, a notice to creditors of the decedent. The notice shall provide a deadline, at least 90 after the date when the notice is first published, for the submission of claims against the estate. The notice shall inform creditors that probate proceedings involving the decedent are pending, shall provide the name and address of the Tribal Court and of the personal representative, and shall inform creditors that any claims not presented to the Tribal Court and the personal representative by the deadline shall be barred. The notice shall be published in at least two consecutive issues of the newspaper.

### Notice to Known Creditors

In addition to the notice given in paragraph (a), the Tribal Court may provide notice to all known creditors by first class mail. The notice shall inform and address of the Tribal Court and of the personal representative, and shall inform creditors that any claims not presented to the Tribal Court and the personal representative by the deadline shall be barred.

### Barred Claims

Any claim by a creditor not filed by the deadline set in paragraph (a) shall be barred.

### Allowance of Claims

The personal representative shall decide whether to allow or disallow any claims. If a claim is disallowed, the personal representative shall notify the creditor and the Tribal Court. The Tribal Court shall schedule a hearing on the disallowed claims and shall provide the personal representative and the affected creditors with notice of the claim by first class mail at least 10 days in advance.

### Hearing on Disallowed Claims

At the hearing on disallowed claims, the Tribal Court shall decide based on a preponderance of the evidence whether the disallowed claim is valid and should be allowed. The hearing on disallowed claims may, at the Tribal Court’s discretion, be combined with the distribution hearing described in Section VII(Y)(4).

### Priority of Claims Against the Estate

All just claims of creditors allowed by the Tribal Court shall be paid before distribution of the estate but shall be paid only after payment of the family allowance and the distribution of exempt property as provided herein.

### Secured Transactions

If a creditor’s claim is secured by any property of the decedent, this chapter does not affect the right of a creditor to realize on the creditor’s security, whether or not the creditor presented the claim in the manner provided in this chapter.

## S. Allowance or Rejection of Claims: Notice

* 1. The personal representative shall allow or reject, in whole or in part, all claims against the estate timely presented. Within 30 days of receipt of the claim, the personal representative shall provide notice to the claimant at the address stated on the claim setting forth whether the claim has been allowed or rejected.
	2. If the personal representative rejects the claim or fails to notify the claimant of the allowance or rejection of the claim within 30 days of the personal representative’s receipt of the claimant’s notice, the claimant may petition the court as provided in Section VII(T). The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.
	3. Within 10 days of allowing or rejecting any claim, the personal representative shall file with the court and serve on any known heirs, devisees, legatees, and creditors a notice setting forth the claims allowed or rejected and stating that the claimant must bring a petition for allowance of the claim in the probate action within 30 days after notification of rejection or the claim will be forever barred.
	4. To the extent there are sufficient assets of the estate, allowed claims may be paid by the personal representative, without court order, in the order provided in Section VII(U) 20 days after providing notice to any known heirs, devisees, legatees, and creditors, unless otherwise ordered by the court.

## T. Challenging Rejection of Claims

If the personal representative rejects a claim against the estate, in whole or in part, or fails to respond to a claim within 30 days of receipt of the claimant’s notice, the claimant must bring a petition for allowance of the claim in the probate action within 30 days of notification of rejection or the claim is forever barred.

The court shall set the matter for hearing as in other civil proceedings and determine whether the claim should be allowed or rejected.

## U. Order of Payment of Debts

After payment of costs of estate administration, the claims against or debts of the estate shall be paid in the following order:

1. Funeral expenses, including a reasonable amount for the cost of a monument;
2. Claims of the Tribe; and
3. All other claims

## V. Judgment Against Decedent — Execution Barred Upon Decedent’s Death —

## Presentation

If a judgment was entered against the decedent during the decedent’s lifetime, an execution may not issue on the judgment after the death of the decedent. The judgment must be presented as a claim as provided in Section VII(R-X).

## W. Secured Claim -- Creditor’s Right

If a creditor’s claim is secured by any property of the decedent, the creditor may realize on the creditor’s security, whether or not the creditor presented the claim as provided in Section VII(R-X).

## X. Miscellaneous Claim Provisions

The time limitations for presenting claims do not accrue to the benefit of any liability or casualty insurer.

This Subsection (Section VII(X)) does not serve to extend any applicable statutes of limitations.

## Y. Distribution

### Order of Distribution; Abatement

The personal representative shall determine the distribution of the estate based on the family protections in Sections IV(P-S) and VII(G), the allowed claims against the estate, the decedent’s will, and the rules of intestate succession.

The following rules apply to abatement:

* + 1. Except as provided in Section VII(Y)(1)(b) below, and except as provided in connection with the share of the surviving spouse who elects to take an elective share, shares of distributees abate, without any preference or priority between real and personal property, in the following order:
			1. Property not disposed of by the will;
			2. Residuary devises;
			3. General devises;
			4. Specific devises.
		2. For purposes of abatement, a general devise charged on any specific property or fund is a specific devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.
		3. If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in Section VII(Y)(1)(a), the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.
		4. If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

### Partition of Property

When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the Tribal Court to make partition. After notice to the interested heirs or devisees, the Tribal Court shall partition the property in the same manner as provided by the common law for actions of partitions. The Tribal Court may direct the personal representative to sell any property which cannot be partitioned without prejudice to the owners and which cannot be conveniently allotted to any one party.

### Proposed Distribution

Based on the provisions in Section VII(Y)(1)(a) and (b), the personal representative shall file with the Tribal Court a proposed distribution of the estate. The proposed distribution shall note any family allowances already distributed by the personal representative and any payments already made by the personal representative in the course of carrying out his or her duties. The proposed distribution shall include computation of any attorney’s and/or personal representative’s fees involved for which approval for payment is sought.

### Distribution Hearing

After receiving the proposed distribution of the estate, the Tribal Court shall schedule a Distribution Hearing. The Tribal Court shall provide notice at least 10 days before the hearing by first class mail to the following persons: the personal representative, the surviving spouse, children, and other heirs of the decedent, the devisees and personal representatives named in any known will, all persons involved in any other probate proceeding involving the decedent, all persons who appeared at the initial hearing, and all known creditors. At the Distribution Hearing, the Tribal Court shall determine, based on a preponderance of the evidence, whether the proposed distribution is proper under this Ordinance or whether a different distribution should be ordered.

### Distribution Order by the Tribal Court

Following the Distribution Hearing, the Tribal Court shall issue a Distribution Order, which shall direct the personal representative to distribute the estate and shall provide the personal representative with instructions for the distribution.

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## Z. Petition and Order to Close Estate

### Affidavit by the Personal Representative

After the estate has been distributed, the personal representative shall file an affidavit with the Tribal Court stating that the estate has been distributed and is ready to be closed.

### Order Closing the Estate

After receiving the affidavit from the personal representative stating that the estate has been distributed, the Tribal Court shall issue an order closing the estate and revoking the letters testamentary and letters of administration.

### Property Discovered After Estate Closed

An estate may be reopened whenever necessary to dispose of a decedent’s property discovered after his or her estate has been closed. The Tribal Court shall order distribution of the property to the person or persons entitled thereto after making whatever orders appear necessary to assure a just participation of the after discovered property in the expenses of the estate.

## AA. Application of Foreign Law

The Tribal Court may apply foreign law, including laws of other tribes and states, federal law, common law and uniform or model laws, to resolve probate issues when an issue is not covered by this Ordinance.

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# HEIRSHIP BY KILLING (TRUST AND NON-TRUST PROPERTY)

## No Acquisition of Property By Killing

1. An “heir by killing” means any person who knowingly participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of the decedent.
2. No heir by killing shall in any way acquire any interests in the decedent’s property, but such property shall pass in accordance with this Section (Section VIII).
3. The heir by killing shall be deemed to have predeceased the decedent as to the decedent’s property which would have passed in any manner or form from the decedent or his or her estate to such heir.

## Disposition of Joint Interests and Life Estates

1. Any property held by only the heir by killing and the decedent as joint tenants, joint owners, or joint obligees shall pass upon the death of the decedent to his or her estate, as if the heir by killing had predeceased the decedent.
2. Any propertyheld jointly by 3 or more persons, including both the heir by killing and the decedent, and any income which would have accrued to the heir by killing as a result of the death of the decedent, shall pass to the estate of the decedent as if the heir by killing had predeceased the decedent and any surviving joint tenants.
3. Notwithstanding any other provision of this Subsection (Section VIII(B)), the decedent’s property that is held in a joint tenancy with the right of survivorship shall be severed from the joint tenancy as though the property held in the joint tenancy were to be severed and distributed equally among the joint tenants and the decedent’s interest shall pass to his or her estate. The remainder of the interests shall remain in joint tenancy with right of survivorship among the surviving joint tenants.
4. If decedent’s estate is held by a third person whose possession expires upon the death of the decedent, it shall remain in such person’s hands for the period of time following the decedent’s death equal to the life expectancy of the decedent but for the killing.

## Preadjudication Rule

* + 1. If a person has been charged, whether by indictment, information, or otherwise by the United States, a tribe, or any state, with voluntary manslaughter or homicide in connection with a decedent’s death, then any real or personal property or trust land that would otherwise pass to that person from the decedent’s estate shall not pass or be distributed until the charges have been resolved in accordance with the provisions of this Subsection (Section VIII(C)).
		2. Upon dismissal or withdrawal of the charge, or upon a verdict of not guilty, such real or personal property or trust land shall pass as if no charge had been filed or made.
		3. Upon conviction of such person, and the exhaustion of all appeals, if any, such real and personal property and trust land shall pass in accordance with this Subsection, Section VIII(C).
		4. This Subsection (Section VIII(C)) shall not be considered penal in nature, but shall be construed broadly in order to effect the policy that no person shall be allowed to profit by his or her own wrong.

# GENERAL PROVISIONS

## Effective Date

The provisions of this Chapter shall become effective thirty (30) days from adoption by the Tribal Council. For purposes of provisions applicable to trust lands, the tribal probate code will become effective the earlier of either: (A) 180 days after it is approved by the Secretary of the Interior; or (B) if the Secretary of the Interior fails to approve or disapprove this code within 180 days, 181 days after it was submitted for such approval.

## Applicability

This Chapter only applies to the estate of a decedent who dies on or after the effective date of this code.

## Appeals

1. Appeals from any order of the Tribal Court issued under this Chapter shall be made in accordance with the Appellate Procedures of the Confederated Salish & Kootenai Tribes.
2. For all trust or restricted property estates, application for appellate review, including the right to appellate review, will be governed by 43 CFR Part 4 Subpart D Rules Applicable in Indian Affairs Hearings and Appeals.

## Amendments

The Tribal Council may amend this Chapter by resolution as it deems necessary to protect the public health, safety and welfare of the Confederated Salish & Kootenai Tribes. For purposes of provisions applicable to trust lands, amendments to this Ordinance shall be subject to approval from the Secretary of the Interior and will become effective 180 days after approval from the Secretary of the Interior.

## Repealing Prior Inconsistent Enactments

Any prior enactment by the Tribal Council which is found to be inconsistent with this Chapter is hereby repealed.

## Rescission

The Tribal Council may rescind this Chapter by resolution as it deems necessary to protect the public health, safety and welfare of the Confederated Salish & Kootenai Tribes. For purposes of provisions applicable to trust lands, rescission will become effective no sooner than 180 days after the Secretary of the Interior receives notification of the decision to rescind the Chapter.

## Severability

If any provision of this Title or its application to any person or circumstances is held invalid, the remainder of this Chapter or the application of the provision to other persons or circumstances is not affected.